



European
Network on
Statelessness



Institute on
Statelessness and
Inclusion



Hungarian Helsinki Committee

THE COMMITTEE ON THE RIGHTS OF THE CHILD

84th Pre-Sessional Working Group (30 Sept 2019 – 04 Oct 2019)

HUNGARY

**Civil Society Comments on the State Party Report and Questions for the
Constructive Dialogue**

**Thematic Joint Submission on the right of every child to acquire a nationality
under Article 7 CRC**

1 September 2019

Introduction

1. The Institute on Statelessness and Inclusion (ISI),¹ the European Network on Statelessness (ENS)² and the Hungarian Helsinki Committee (HHC)³ welcome the opportunity to make this submission to the Committee on the Rights of the Child regarding Hungary's compliance with Article 7 of the Convention on the Rights of the Child (the Convention), which enshrines every child's right to acquire a nationality.
2. **Despite a positive ratification record of relevant international treaties and some existing safeguards in domestic legislation, Hungarian law and practice fail to respect, protect and fulfil every child's right to acquire a nationality, while also failing to uphold related obligations of non-discrimination and the best interests of the child. Consequently, children continue to be denied the right to acquire a nationality in Hungary, even where this results in their statelessness, or subjects them to years or even decades of their childhood with an undetermined or unknown nationality, as well as discrimination based on nationality status between children in a comparable situation.**
3. **The co-submitting organisations believe that this unnecessary strain inflicted on children, as a result of the denial of their right to acquire a nationality and related violations of Convention rights, can be addressed through law and policy reform, as set out in this submission.**
4. This submission highlights challenges in the realisation of the right of every child to acquire a nationality and the avoidance of childhood statelessness in Hungary as a result of requirements to determine nationality at birth, and gaps in legal safeguards to prevent statelessness where children are born on the territory who would otherwise be stateless. In light of Hungary's obligations under the Convention, State recommendations issued to Hungary during the first Cycle of the Universal Periodic Review⁴, and the importance of the eradication of statelessness as expressed by the UN High Commissioner for Refugees #IBelong campaign,⁵ the submitting organisations hope the Committee will **raise the issue of realising the right of every child to acquire a nationality in its Constructive Dialogue with Hungary and address recommendations to the Government of Hungary to further prevent and reduce the problem of childhood statelessness in the country.**
5. Through this thematic submission, which draws on ISI's, ENS's and the HHC's expertise and research in this area,⁶ we provide:
 - a. comments on Hungary's Sixth Periodic Report to the Committee, submitted on 15 July 2019,⁷ in which Hungary responded to the List of Issues Prior to Reporting (LOIPTR) issued by the Committee on 29 November 2018;⁸ and
 - b. recommended questions to be addressed to Hungary during the Constructive Dialogue, which will be held at the 84th Pre-Session of the Committee.

¹ See further: <http://www.institutesi.org/ourwork/children.php>.

² See further www.statelessness.eu.

³ See further: www.helsinki.hu/en

⁴ In July 2011, Ecuador recommended that Hungary "Recognize and guarantee the human rights of all foreigners, independent and regardless of their migratory status" A/HRC/18/17, 11 July 2011, Para 95.28. Hungary rejected this recommendation but accepted recommendations relevant to the human rights of stateless persons from Poland, Islamic Republic of Iran, Argentina, Chile, Morocco and Belarus).

⁵ The UNHCR #IBelong campaign aims to eradicate statelessness by the year 2024, see further: <http://www.unhcr.org/ibelong/>.

⁶ See #StatelessnessIndex Hungary country profile: <https://index.statelessness.eu/country/hungary>; Hungarian Helsinki Committee (2014) Nationality Unknown? An overview of the safeguards and gaps related to the prevention of statelessness at birth in Hungary): <https://www.refworld.org/docid/5310640b4.html>; ENS (2015), No Child Should be Stateless: https://www.statelessness.eu/sites/www.statelessness.eu/files/ENS_NoChildStateless_final.pdf

⁷ CRC/C/HUN/6

⁸ CRC/C/HUN/QPR/6

6. Consequently, this submission has been structured to highlight questions that may be raised by the Committee in its Constructive Dialogue with Hungary. These questions are included in text boxes under each substantive section. At the end of the submission, we have included recommendations that may be drawn on by the Committee in formulating its Concluding Observations to Hungary.

The Co-Submitting Organisations

7. ISI is an independent non-profit organisation committed to promoting the human rights of stateless persons and fostering inclusion to ultimately end statelessness. Addressing childhood statelessness is one of the core thematic priorities of the Institute. As part of this work, ISI has made over fifteen country submissions to the Committee,⁹ developed a range of resources on the child's right to a nationality and childhood statelessness, including a Toolkit on *Addressing the Right to a Nationality through the Convention on the Rights of the Child*,¹⁰ Statelessness Essentials Booklets on *Childhood Statelessness*,¹¹ *the Convention on the Rights of the Child*¹² and other related issues,¹³ *The 2017 World's Stateless Report: Children*,¹⁴ and a range of resources for children, which can be found online.¹⁵ ISI has also contributed its expertise and information towards General Recommendations of the Committee as well as Joint General Recommendations by the Committee and the CMW.
8. The European Network on Statelessness (ENS) is a civil society alliance of NGOs, lawyers, academics and other independent experts committed to addressing statelessness in Europe. Based in London, it currently has over 140 members in 40 European countries. ENS organises its work around three pillars – namely, law and policy development, awareness-raising, and capacity-building. ENS provides expert advice and support to a range of stakeholders, including governments. Promoting every child's right to a nationality in Europe is a thematic priority for ENS and its #StatelessKids campaign¹⁶ aimed to promote the enjoyment of a nationality – and thereby the prevention of statelessness – by all children who are born in Europe or who are born to European parents in other parts of the world. The Statelessness Index¹⁷, maintained and developed by ENS and its members, 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.
9. The Hungarian Helsinki Committee is a leading human rights organisation, with a primary focus on preserving the rule of law, independent civil society and a fair criminal justice system, the right to be free from torture and inhuman treatment, and the right to asylum and international protection. The HHC has been, since 2006, a pioneering NGO in defending the rights of stateless persons and providing free-of-charge legal assistance to stateless persons, and, as a founding member of ENS, a key provider of training for state, civil society and international actors on statelessness-related legal matters. In the past decade, the HHC has conducted ground-breaking research into the prevention and reduction of statelessness in Hungary, as well as the protection of stateless persons. The HHC has been awarded with some of the world's most prestigious human rights awards in recent years, including the Calouste Gulbenkian Prize (Portugal, 2017), the William D. Zabel Human Rights Award by Human Rights First (US, 2018), the Freedom Award by the International Federation of Liberal Youth (2018), the ProAsyl Prize (Germany, 2018) and the global "Civil Rights Defender of the Year" award by Civil Rights Defenders (2019, Sweden).

⁹ See <https://www.institutesi.org/core-activities/human-rights-advocacy-crc>.

¹⁰ See https://files.institutesi.org/CRC_Toolkit_Final.pdf

¹¹ See <https://files.institutesi.org/childhood-statelessness.pdf>

¹² See <https://files.institutesi.org/statelessness-and-CRC.pdf>

¹³ For all the *Essentials Booklets*, see <https://www.institutesi.org/core-activities/statelessness-essentials-booklet-series>.

¹⁴ See <https://files.institutesi.org/worldsstateless17.pdf>

¹⁵ See <http://kids.worldsstateless.org/>.

¹⁶ See <https://www.statelessness.eu/statelesskids-no-child-should-be-stateless>. ISI was an expert partner for the campaign.

¹⁷ See <https://index.statelessness.eu>

The LOIPR and Hungary's Report to the Committee

10. For ease of reference, the relevant paragraph 13 of the Committee's LOIPR to Hungary, on the child's right to acquire a nationality, is quoted below:

Nationality

13. Please provide information on measures the State party has taken or intends to take to review and amend the Citizenship Act, in order to prevent statelessness of:

- (a) Children of foreign parents unable to confer their nationality on children born abroad;*
- (b) Children of recognized stateless persons who have no established residence in the country;*
- (c) Children of parents recognized as refugees, currently registered as children of undetermined nationality.*

11. It is of deep concern that the State report completely failed to address these issues raised by the Committee.¹⁸ The failure of the state to even acknowledge these issues is perhaps indicative of the extent to which the state prioritises promoting and protecting every child's right to acquire a nationality, as well as its obligation to avoid childhood statelessness.

Hungary's International Obligations

12. In addition to the CRC, Hungary is party to the core international human rights treaties, including the ICCPR, the ICESCR, ICERD, CEDAW, CRPD and CAT. Hungary is party to the 1954 Convention relating to the Status of Stateless Persons and acceded to the 1961 Convention on the Reduction of Statelessness in 2009, with both conventions given full effect in national law. Hungary is also party to the European Convention on the Avoidance of Statelessness and the European Convention on Nationality but retains significant reservations impacting on procedural safeguards relating to the acquisition of nationality. Hungary is not party to the Convention on the Rights of all Migrant Workers and their Families.
13. Considering Hungary is a state party to the above instruments, it has the following obligations with regard to protecting every child's right to acquire a nationality and the prevention of statelessness of 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;¹⁹
 - (ii) The automatic acquisition of nationality by foundlings found on its territory who would otherwise be stateless;²⁰
 - (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; enabling children who remain stateless to acquire nationality upon application (with the possibility to require maximum five years of habitual residence before submitting the application, no other

¹⁸ CRC/C/HUN/6: https://tbinternet.ohchr.org/Treaties/CRC/Shared%20Documents/HUN/CRC_C_HUN_6_7530_E.docx

¹⁹ 1989 Convention on the Rights of the Child, Article 7

²⁰ 1997 European Convention on Nationality, Article 6 (1) (b); 1961 Convention on the Reduction of Statelessness, Article 2

conditions).²¹ 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;²²

- (iv) The Guiding Principles of the CRC including the prohibition of discrimination against any child or their parents or guardians and ensuring that the best interests of the child are a primary consideration for authorities in dealing with all the matters above.²³

Statelessness in Hungary²⁴

14. Although Hungary has acceded to most of the relevant conventions and this has translated into some positive law, policy and practice at national level, there remain some significant gaps and the stateless population has never been comprehensively mapped.²⁵ A statelessness determination procedure is established in law, and access, assessment, procedural protections and appeal rights under the procedure are generally positive.²⁶ However, the definition of a stateless person in national law is narrower than the 1954 Convention, applicants under the procedure lack protection from detention and removal, and the law provides only limited rights to people recognised as stateless.²⁷ Access to nationality, although provided for in law, is very difficult to acquire in practice leaving most stateless people in the country unable to acquire a nationality even in the long term.²⁸ Research by the HHC found that between 2011 and 2015 only 38 stateless persons could naturalise as Hungarian citizens.²⁹ The rate of positive decisions was 33%, representing only half the average rate (57%) in cases of applicants for naturalisation with *no* Hungarian background/ancestry.³⁰ This data – considered in conjunction with the legislative shortcomings and the experiences of individual cases as described in the HHC’s research, clearly indicate that the naturalisation of stateless persons is, in practice, not facilitated, but actually rendered more difficult in Hungary, despite the country’s obligation to the contrary under the 1954 Convention.

15. Safeguards exist in nationality law to prevent statelessness in the case of foundlings, children born abroad to Hungarian nationals, and in cases of withdrawal of nationality.³¹ However, there are only partial safeguards to prevent children from being born stateless on the territory.³² Adopted children may be stateless unless and 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 this can be proven otherwise, causing significant problems for children later in life.³³

²¹ 1997 European Convention on Nationality, Article 2 (6) (b); 1961 Convention on the Reduction of Statelessness, Article 1 (2) (b)

²² 1961 Convention on the Reduction of Statelessness, Article 1 (2) (a)

²³ 1989 Convention on the Rights of the Child, Articles 2 and 3

²⁴ According to Article 1.1 of the 1954 Convention relating to the Status of Stateless Persons, a stateless person is someone “who is not considered as a national by any state under the operation of its law.” The United Nations High Commissioner for Refugees estimates more than 10 million people worldwide are stateless and without the protection of any state.

²⁵ <https://index.statelessness.eu/country/hungary>

²⁶ *ibid*

²⁷ *ibid*

²⁸ *ibid*

²⁹ 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>

³⁰ Persons of Hungarian ancestry can apply for ‘simplified naturalisation’, under a different legal regime and significantly facilitated conditions.

³¹ 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>

³² *ibid*

³³ *ibid*

Issues of concern related to birth registration and suggested questions for the constructive dialogue

Determination of nationality at birth

16. The general framework of birth registration in Hungary is set by Act I of 2010 on Civil Registration Procedures,³⁴ 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.³⁵ Births are entered in the registry regardless of the status of parents.
17. 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 hospital³⁶ or the respective lead medical professional assisting during the birth if born outside a hospital.³⁷ The civil registrar will examine the child's nationality upon registration.³⁸ If the child's nationality or statelessness is not proven, they will be registered as 'unknown nationality' in the birth registry,³⁹ 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'.⁴⁰ Due to these rules, children born to non-Hungarian parents are regularly registered at birth as being of 'unknown nationality'.⁴¹
18. 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 origin that they inherit their parents' – or at least their father's – nationality.⁴² 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.⁴³ There are no specific rights or forms of protection attached to the condition of 'unknown nationality',⁴⁴ impacting on the enjoyment of other rights enshrined in the CRC.

19. In light of the context outlined above, the Committee is urged to ask Hungary:

- **What steps are being taken to ensure children born in Hungary only remain registered as being of unknown nationality for the shortest possible time period?**
- **Which concrete authority is in charge of determining, *ex officio*, the nationality (or the statelessness) of children registered as of 'unknown nationality' at birth? What is the legal basis for the procedure in domestic law and what are the deadlines applicable?**

³⁴ Act I of 2010 on Civil Registration Procedures, Section 1(3)(a) (HU): http://njt.hu/cgi_bin/njt_doc.cgi?docid=129886.346948

³⁵ 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)

³⁶ 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)

³⁷ Government Decree 35/2011 of 21 March on the rules, conditions of and exclusion grounds from birth outside a medical institution, Section 12 (6)

³⁸ 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)

³⁹ 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)

⁴⁰ <https://index.statelessness.eu/country/hungary>

⁴¹ 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: <https://www.refworld.org/docid/5310640b4.html> p. 8

⁴² Ibid p. 17

⁴³ Ibid

⁴⁴ Ibid p. 18

- In how many cases did the competent Hungarian authority initiate a nationality determination procedure in cases of children registered as of 'unknown nationality' at birth in 2016, 2017 and 2018?
- What steps are being taken to protect the rights and best interests of the child when the child is registered as 'unknown nationality'?

Issues of concern related to the right to nationality and suggested questions for the constructive dialogue

20. As identified above, safeguards exist in Hungarian nationality law to prevent statelessness in the case of foundlings⁴⁵ and children born abroad to Hungarian nationals.⁴⁶ There are only partial safeguards to prevent children from being born stateless on the territory⁴⁷ and children adopted by Hungarian nationals may be stateless until and unless they can acquire nationality through naturalisation.⁴⁸
21. There are two partial safeguards in law to prevent statelessness in the case of children born in Hungary who would otherwise be stateless.⁴⁹ 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 – see below),⁵⁰ or whose parents are unknown (foundlings).⁵¹ 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.⁵²
22. There is also a non-automatic provision for children born in Hungary who do not obtain the nationality of either of their parents at birth.⁵³ For these children, there is a legal option to acquire Hungarian nationality by declaration prior to their 19th birthday.⁵⁴ In this case too, parents must be domiciled, and the child must have resided in Hungary for five years or more.⁵⁵

Children born in Hungary to stateless persons with no domicile

23. In order for a child born in Hungary to obtain Hungarian nationality automatically at birth, *both* parents are required to be stateless and have 'domicile'.⁵⁶ 'Domicile' status is limited to certain groups,⁵⁷ and recognised stateless persons, beneficiaries of tolerated (*befogadott*) status, and third-country nationals

⁴⁵ 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

⁴⁶ 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>

⁴⁷ 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

⁴⁸ Act LV of 1993 on Hungarian nationality, Section 4(2)(c) (HU): http://njt.hu/cgi_bin/njt_doc.cgi?docid=19290.348713

⁴⁹ 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

⁵⁰ *ibid*

⁵¹ 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

⁵² See paragraph 18

⁵³ 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

⁵⁴ *ibid*

⁵⁵ *ibid*

⁵⁶ 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

⁵⁷ Citizenship Act, Section 23 (1). Act LXVI of 1992 on the Registration of Citizens' Personal Data and Residence, Section 4 (1).

without a permanent long-term residence status⁵⁸ cannot establish a domicile in Hungary.⁵⁹ Refugees, beneficiaries of subsidiary protection, EU citizens and third-country nationals holding a permanent residence permit⁶⁰ can establish a domicile.⁶¹

24. This means that children born to stateless parents who do not have a domicile in Hungary will be born stateless, even if they are residing legally. If the stateless child's parents hold a status that includes domicile, for example if they are refugees, there will be no minimum residence requirement for the parents for the safeguard to apply. If the stateless child's parents hold a status that excludes establishing a 'domicile', for example, if they are recognised stateless persons, the safeguard will only apply if the parents have already obtained a permanent residence permit (and thus the right to establish a 'domicile'), which they can apply for after three years of residence in a discretionary procedure.
25. The ability to obtain Hungarian nationality through declaration was created to fulfil Hungary's international obligations and prevent statelessness at birth.⁶² 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.
26. The right of children born to stateless parents who have been living in Hungary for several years with stateless status is no different from 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. This differentiation between groups in provisions to prevent statelessness leads to further discrimination for these children, negatively impacting on their access to rights and services, legal status and nationality in the future.

27. In light of international standards on the right of every child to acquire a nationality, without discrimination and regardless of the status of the parents, the Committee is urged to ask Hungary:

- **On what basis does Hungary justify discriminating between children born to stateless persons without 'domicile' and parents with 'domicile' status in facilitating access to Hungarian nationality?**
- **What steps are being taken to ensure children born in Hungary to stateless parents without 'domicile' (such as parents granted stateless status in Hungary), acquire a nationality at birth or within a reasonable time after birth, thus avoiding childhood statelessness?**
- **How many stateless children acquired Hungarian nationality through declaration (*nyilatkozat*) in 2016, 2017 and 2018? What was their average age at the time of acquiring Hungarian nationality through declaration?**

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

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

⁵⁹ See Id., Sections 13-29.

⁶⁰ Cf. Id., Section 32 (1).

⁶¹ Cf. Act LXXX of 2007 on Asylum, Section 17(1).

⁶² 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

do not allow the mother to pass on her nationality under the same conditions as the father.⁶³ 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.⁶⁴ These restrictive conditions mean that children in need of this safeguard are excluded.

30. In this context, the Committee is urged to ask Hungary:

- **On what basis does Hungary justify discriminating between children born to parents who cannot confer their nationality without ‘domicile’ and such parents with ‘domicile’ status in facilitating access to Hungarian nationality?**
- **What steps are being taken to ensure children born in Hungary to parents who cannot confer their nationality acquire a nationality at birth or within a reasonable time after birth, thus avoiding childhood statelessness?**
- **How many stateless children acquired Hungarian nationality through declaration (*nyilatkozat*) in 2016, 2017 and 2018? What was their average age at the time of acquiring Hungarian nationality through declaration?**

Children of beneficiaries of international protection

31. Children born to beneficiaries of international protection in Hungary also risk being stateless at birth.⁶⁵ As identified above, Hungarian civil registry authorities are obliged to examine a new-born child’s nationality,⁶⁶ and if the child’s Hungarian or foreign nationality or statelessness is not proven, ‘unknown nationality’ will be registered.⁶⁷ 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.⁶⁸ Parents who are beneficiaries of international protection may have a well-founded fear of contacting the authorities of their country of origin to establish and register the nationality of their children after birth. It may, for example, expose them to a risk of persecution or serious harm, or may lead to the cancellation of their protection status.⁶⁹ This means beneficiaries will not be able to register their children by contacting the consular authorities of their country of origin.

⁶³ 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>

⁶⁴ See paragraph 18

⁶⁵ 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: <https://www.refworld.org/docid/5310640b4.html> p. 14

⁶⁶ 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)

⁶⁷ 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)

⁶⁸ 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: <https://www.refworld.org/docid/5310640b4.html> p. 14

⁶⁹ Ibid

32. 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.⁷⁰ 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.⁷¹ The authorities may not recognise the nationality of children born abroad to refugees under the operation of the law.⁷² Children in this scenario are at significant risk of statelessness.
33. 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.⁷³ If the parents have tolerated stay (*befogadott*)⁷⁴ or are still in the asylum procedure, they are not allowed to establish a domicile, meaning the child cannot use the safeguard.⁷⁵ 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.⁷⁶

34. Based on this information, the Committee is urged to ask Hungary:

- **What is being done to ensure children of beneficiaries of international protection who are registered as 'unknown nationality' are recorded as such for the shortest possible period of time?**
- **In the case of children born in Hungary to beneficiaries of international protection, what steps are being taken to establish whether the child is born stateless, due to the parents' inability to contact the authorities of their country of origin due to a well-founded fear of persecution?**
- **How does Hungary justify the restrictive conditions that prevent children born to parents with a tolerated stay and remaining stateless at birth from obtaining Hungarian nationality?**
- **Does Hungary operate any specific mechanism for determining the nationality of children born to beneficiaries of international protection? If yes, which authority is in charge, what is the legal ground for its procedure and what are the applicable deadlines?**

Children adopted by Hungarian nationals

35. Children adopted by Hungarian nationals may be stateless until and unless they can acquire nationality through naturalisation.⁷⁷ 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.⁷⁸ The child can apply on their own behalf if aged 14-18 years.⁷⁹ There is a risk of

⁷⁰ Ibid p. 15

⁷¹ Ibid

⁷² Ibid

⁷³ 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

⁷⁴ 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.

⁷⁵ See paragraph 18

⁷⁶ Ibid

⁷⁷ Act LV of 1993 on Hungarian nationality, Section 4(2)(c) (HU): http://njt.hu/cgi_bin/njt_doc.cgi?docid=19290.348713

⁷⁸ Ibid

⁷⁹ Ibid

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.⁸⁰

36. In this context, the Committee is urged to ask Hungary:

- **Why is nationality not granted to stateless children adopted by Hungarian parents immediately upon adoption?**
- **What measures are being taken to identify adopted children at risk of statelessness and ensure they are granted nationality?**

Recommendations

37. Based on the content of this submission, the following recommendations are made, which we hope the Committee will consider in urging the Government of Hungary to ensure the right of every child to acquire a nationality:

- I. The domicile (*lakóhely*) condition should be eliminated from Section 3 (3) (a) of the Citizenship Act, in order to allow all children born in Hungary to stateless parents to acquire Hungarian nationality *ex lege* at birth. In order to create an unambiguous norm, it is recommended that this provision is explicitly extended to children born to a stateless mother and an unknown father. In addition, the safeguard should be explicitly extended to children born in Hungary who are unable to acquire the nationality of their parents at birth.
- II. The domicile condition should be eliminated from Section 5/A (1) (b) of the Citizenship Act. The norm should allow for non-discretionary acquisition of Hungarian nationality by declaration *solely* with the conditions of having been born in Hungary, having habitually resided in the country for a period set by the law (see next recommendation), and not having acquired a nationality from their parents at birth. Consequently, the requirement of the parents to have a domicile at the time of the birth should be eliminated, and the term “have been living with a domicile” (*lakik*) should be amended to “have been habitually residing” (*szokásos tartózkodási helye*). In this provision, habitual residence should be understood – in line with Hungary’s international obligations – as a matter of *fact* and not of legal status, domicile or other legal condition.
- III. The required residence period before the possibility of acquiring Hungarian nationality through a non-discretionary declaration process (*nyilatkozat*) for children who did not acquire a nationality from their parents at birth should be as short as possible (in case Hungary would not opt for the *ex lege* acquisition of nationality at birth in such cases). In light of this principle, it is recommended that the minimum period of residence required by Section 5/A (1) (b) of the Citizenship Act be reduced from 5 years to 1 year. 1 year is a realistic maximum timeframe in which a new-born child’s lack of nationality – and thus the applicability of the declaration provision – can and should be established.
- IV. Concrete safeguards should be included in Hungarian legislation to ensure that children born in Hungary only remain registered as being of unknown nationality for the shortest possible period. One specific state authority should be appointed as responsible for taking action *ex officio* to apply these safeguards in practice, with due regard to the child’s best interests.

⁸⁰ See:

- V. Section 5/A (1a) of the Citizenship Act should be amended, allowing for the acquisition of Hungarian nationality through declaration until the 21st (instead of the 19th) birthday of those concerned.
- VI. The Government Office (*Kormányhivatal*) of Budapest, as the competent authority for citizenship matters, is recommended to keep and publish up-to-date statistics about the application of the declaration provision of Section 5/A (1) (b) of the Citizenship Act (and not just the declaration provision in general), in order to demonstrate through statistical information Hungary's compliance with Article 1 (2) (a)-(b) of the 1961 Convention on the Reduction of Statelessness, Article 6 (2) (b) of the 1997 European Convention on Nationality and Articles 3 and 7 of the 1989 Convention on the Rights of the Child. This statistical information should include data about the number of claims submitted, as well as the number of positive and negative decisions, disaggregated according to the age of the applicant.
- VII. Section 3 of the Citizenship Act should be amended to grant children of foreign nationality (or as a minimum those who are stateless or of unknown nationality) Hungarian citizenship automatically, upon adoption by a Hungarian national.