



Strasbourg, 4 June 2019

CDCJ-GT-APA(2019)1  
*(English only)*

## **AD-HOC MEETING ON STATELESSNESS**

**11-12 June 2019**

Strasbourg, Council of Europe  
Agora, Room G06  
Opening at 9.30 a.m.

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**Pointers for discussion**  
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## Introduction

1. The European Committee on Legal Co-operation (CDCJ) of the Council of Europe decided, at its 93<sup>rd</sup> plenary meeting (Strasbourg, 14-16 November 2018), to undertake a preliminary review of protocols and procedures used by member States to determine and resolve cases of statelessness, in particular of migrant children. This activity is meant to be part to the [Council of Europe Action Plan on protecting refugee and migrant children for 2017-2019](#).

2. To seek how best the Committee can provide its expertise and contribute to the ongoing efforts undertaken in this field, the CDCJ decided to organise, within the framework of this review, an ad hoc meeting bringing together national experts and key stakeholders in Europe to exchange views and experiences on national practices, recent gaps or new challenges and practical difficulties encountered by both national authorities and stateless persons

3. The results of the ad hoc meeting will be taken into account when preparing the detailed analysis of the review. It will highlight notably the current gaps and difficulties encountered by practitioners and a step-by-step strategy of possible activities to be undertaken by CDCJ within its next biennium (2020-2021). The detailed analysis of the review will be presented to the CDCJ for consideration at its plenary meeting in November 2019.

## Modalities of the ad hoc meeting

4. Participants are encouraged to participate in the discussions as actively as possible in order to maximise the sharing of experience, national policies and practice, difficulties encountered and to provide input on issues to be addressed, either at national or international level. Additionally, participants are welcome to bring a case example which can be discussed within the group.

5. Each session will be led by a moderator who will be responsible for directing the discussion, reframing the debate, and time management. A meeting rapporteur (consultant) will take notes of the views expressed by the participants and will present his concluding remarks at the end of the meeting. The outcome of the discussions should also be consigned in the detailed analysis.

6. To facilitate the exchange of views, certain issues are highlighted below. **The latter are pointers only, participants will be welcome to raise other items they consider relevant.** The topics to be discussed have been regrouped under different but complementary themes. Participants may therefore be called upon to share their views on these issues from the different angles of the themes covered.

## Tuesday 11 June 2019

### 09.30 – 10.00 OPENING

7. Overview of estimates of stateless persons in Council of Europe member States and status of ratifications of conventions and implementation of other legal instruments relating to statelessness.

## Part A - Protocols and procedures to determine statelessness

### 10.00 – 11.00 SESSION 1

8. On several occasions,<sup>1</sup> the Parliamentary Assembly of the Council of Europe has called Member States to “introduce or *upgrade existing statelessness determination procedures in accordance with the guidelines of the Office of the United Nations High Commissioner for Refugees (UNHCR), in order to ensure that all stateless persons in their territories can be identified, protected and ultimately acquire nationality through facilitated naturalisation*”.

#### Lead-up to the establishment or improvement of statelessness determination procedures (SDPs)

- ❖ Have there been any recent (or on-going) initiatives in your country to identify stateless persons? If, so which one? What were the difficulties and main triggers that contributed to building the necessary political will to improve on your national policy in this field?
- ❖ What has been the added value in practice, particularly for your national authorities?
- ❖ In countries with no formal SDP, what are the other procedures in place? What are their benefits and downside? What are the reasons or remaining obstacles for not having a formal SDP?

#### Definition of stateless person

9. The UN Convention relating to the status of stateless persons (1954) provides in its Article 1(1) that “*For the purpose of this Convention, the term ‘stateless person’ means a person who is not considered as a national by any State under the operation of its law.*” This definition of who qualifies as a ‘stateless person’ is accepted as customary international law and is also relevant for the scope of application of other conventions. In respect of this definition of a *de iure* stateless person:

- ❖ What is the relation to *de facto* statelessness? Who are stateless persons at risk of statelessness? How to deal with cases where the nationality status of a person is registered as “undetermined” or “under investigation”?

<sup>1</sup> See [Resolution 1989\(2014\)](#) on access to nationality and the effective implementation of the European Convention on Nationality and [Resolution 2099\(2016\)](#) on the Need to Eradicate Statelessness of Children.

- ❖ What are the practices in your country with regards to “nationality screening procedures” implemented as part of first line reception of irregular arrivals at the borders? How can a wrongful registration impact the further administrative treatment of the individual concerned who may be potentially stateless?
- ❖ What is your national policy for stateless children born in your State’s territory who could, by registration, acquire the nationality of the parent’s State?
- ❖ What is the relationship between statelessness determination in your country and the situation of children refugee?

**11.00 – 11.30**    *Coffee break*

**11.30 – 13.00**    **SESSION 2**

*Institutional location of determination procedures*

- ❖ Is there a centralised SDP in place in your country? How does it function?
- ❖ Is there an authority, with existing expertise and infrastructure, responsible for statelessness determination in your country? Is this authority the same as the one determining refugee status?
- ❖ Would it make sense to “integrate” the statelessness determination within an existing authority (i.e the one determining refugee’s status)?
- ❖ What difficulties can be encountered of having this centralised SDP, bearing in mind the various profile of the stateless population in the country in question (i.e. whether stateless persons are present predominantly in a migration or *in situ* context)?
- ❖ When a decision has been taken by your national authorities regarding the status of an individual, is it binding to all other authorities in your country (*Erga omnes* effect)?

*Information and access to procedures*

- ❖ Do all individual have access to SDP, regardless of whether or not a person has already a lawful stay or residence in your country?
- ❖ Is access to SDP subject to time limit in your country? If so, what are the reasons for such time limit? Have any downsides been encountered because of it?
- ❖ Based on your practical experience, how could the procedure(s) be more efficient and accessible to the concerned population across your country, particularly the dissemination of information on such procedure?
- ❖ How and what kind of information and counselling services are provided? By whom? In what languages?

- ❖ Is there a possibility of *ex officio* referral to be initiated by your authorities when approached by individuals who present as potentially stateless, especially unaccompanied children?

### Procedural safeguards

- ❖ What are the procedural safeguards in place in your country for stateless individual to ensure fairness and efficiency?
- ❖ Are there any particular procedural safeguards in your country that require specific attention when it comes to SDP in light of an individual's personal circumstances? (e.g. no detention of stateless migrant)

### **13.00 – 14.30 Lunch**

### **14.30 – 16.00 SESSION 3**

### Forms of evidence

- ❖ What kinds of evidence are relevant in your country, given that statelessness determination often requires a complex assessment of fact and law?
- ❖ Evidence concerning personal history helps identify States and nationality procedures need to be considered in determining an applicant's nationality status. In your country, what kinds of evidence (oral evidence, written evidence) are relevant concerning the individual's personal circumstances?

### Burden and standard of proof

- ❖ How is the burden of proof shared between the applicant and your national authorities?
- ❖ What degree of certainty that an individual is not a national by any State is enough to conclude that this individual is stateless?
- ❖ In general, the lack of nationality does not need to be established in relation to every State in the world. Thus, in relation to which country it has to be established that the applicant involved does not possess the nationality? Are there any considerations that should prevail (birth on the territory, descent, marriage, adoption or habitual residence, etc.)?
- ❖ What is the consequence of the non-co-operation of the applicant in establishing the facts or providing false evidence?

### Evidence assessment

- ❖ How is the credibility of information received from the applicant evaluated?

- ❖ Is the possession of an authentic unexpired passport of a State being considered in your country as full evidence of the possession of nationality of that State? Can this presumption be rebutted by your authorities (e.g. issue with passport of convenience)?
- ❖ What is the evidentiary value of enquiries with and responses received from foreign authorities?
- ❖ How interviews with the applicant are conducted in practice in your country? How is the right to an interview regulated in countries with existing SDP?

**16.00 – 16.30**    *Coffee break*

**16.30 – 18.00**    **SESSION 4**

Linguistic concerns

- ❖ Are linguistic concerns relevant in the context of a SDP, e.g. in respect of the selection of States of which the applicant may possess the nationality or in the context of the assessment of the credibility of the applicant?

Specific training

- ❖ Given the fact that statelessness determination is a complex issue, do your national authorities (including judges) dealing with statelessness determination benefit from a special training? If yes, have the complex character of statelessness determination also have consequences for the institutional location of determination procedures?

Contact with foreign authorities

- ❖ Who should contact the foreign authorities: the applicant or your national authorities?
- ❖ What are the difficulties encountered, either by the applicant or your national authorities, when obtaining information from foreign authorities (length, procedures, identifying the relevant authorities, etc.)?
- ❖ What should be done in your country in cases where foreign authorities do not reply to enquiries during a long period of time? Are time-limits for a response imposed in your country? In lack of any response, what are the consequences in the context of the SDP?
- ❖ Under which circumstances do your national authorities not contact foreign authorities?

**18.00**                    **End of 1<sup>st</sup> day**

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**Wednesday 12 June 2019**

**Part B - Resolving cases of statelessness**

**09.30 – 11.00    SESSION 1**

Protection during determination procedure

- ❖ In your country, which status is best appropriate for individuals awaiting the determination of their statelessness?
- ❖ What are the rights of stateless individuals in your country during the SDP and how can they enjoy them?
- ❖ In practice, what are the rights during the determination procedure which are the most problematic to stateless individuals (in terms of accessibility)?
- ❖ What are the general rules of appeal (formal requirements, deadlines, place to submit the appeal, etc.) under administrative procedural law in your country and in specific procedures (if applicable, in countries with a statelessness determination procedure)?

Status

- ❖ Where the statelessness of an individual has been determined by foreign states, can this same individual be granted of a right to residence in your country? If yes, for how long?
- ❖ If a stateless person is simultaneously recognized as a refugee, which status and protection should be granted?

Access to nationality

- ❖ Which facilitation to nationality via naturalization or similar procedures are given to stateless persons in your country?
- ❖ Under which circumstances can your competent authorities not grant the nationality of a stateless person?

**11.00 – 11.30    Coffee break**

## 11.30 – 13.00 SESSION 2 – CASE EXAMPLES

### Children born in a country who would otherwise be stateless

- ❖ Under which conditions should children born in a country who otherwise be stateless be entitled to (acquire) the nationality of their country of birth?<sup>2</sup>

### Foundlings found in a country of unknown parentage

- ❖ Should only new-born infants found in a country of unknown parentage be entitled to the nationality of this countries or also children found abandoned on this territory with no known parentage?<sup>3</sup>
- ❖ Should foundlings provision also apply on a child born in the territory of a State without having a parent, who is legally recognised as such (e.g. because the child is born out of wedlock and the woman who gave birth to the child is legally not recognised as the mother)?<sup>4</sup>
- ❖ What should be the consequence if, at a later moment, it is discovered that the child concerned acquired the nationality of another country?<sup>5</sup>

### Children whose parents lose citizenship of a country

- ❖ What is the nationality position of a minor whose parents lose the nationality of a country?<sup>6</sup>

## 13.00 – 14.30 Lunch

## Part C - On-going initiatives and way(s) forwards

### 14.30 – 15.30 On-going initiatives undertaken by international and European organisations

10. For sake of efficiency and good cooperation, key international and European organisations will present their respective work and recent initiatives on determining and resolving cases of statelessness, particularly for migrant children.

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<sup>2</sup> See Articles 1-4 of the 1961 Convention and of Article 6 (2) ECN. Note that the ECN allows requiring lawful and habitual residence, whereas the 1961 only allows requiring habitual residence. Compare also Principle 2 of Rec. 2009/13 and EM para 10-12 and ER on ECN, para 49 and 50. See on the obligations under the 1961 Convention in light of more recent human rights norms extensively the UNHCR Guidelines No 4, para 29-48 and the Annex.

<sup>3</sup> See Article 6(1)(b) ECN and ER, para 48. See also principle 9 of Rec. 2009/13 and EM, para 23-25; UNHCR Guidelines No 4, para 57-61.

<sup>4</sup> See UNHCR Guidelines No 4, para 61.

<sup>5</sup> See UNHCR Guidelines No 4, para 60.

<sup>6</sup> See Article 6 of the 1961 Convention forbids the extension of loss of nationality to children if this would result in statelessness (see also Tunis Conclusions, para 41); Article 7 (3) ECN also forbids such extension of loss of nationality except in the case of loss of nationality because the acquisition took place by means of fraudulent conduct, false information or concealment of any relevant fact See also ER, para 77. Compare also ILEC Guidelines 2015 (Guidelines on involuntary loss of European citizenship), Principles IV.6. See also the judgment of the Court of Justice of the European Union 12 March 2019 in re *Tjebbes e.a.*, C-221/17, ECLI:EU:C:2019:189, in particular para 47: proportionality test is necessary with special attention to the best interests of the child.



- ❖ Activities of the UNHCR - key achievements to date and way forward in light of the High-Level Segment on Statelessness in October 2019
- ❖ Mapping statelessness activities of the European Network on Statelessness (ENS)
- ❖ Activities within the European Union
- ❖ Activities of the European Migration Network

**15.30 – 16.00 Way(s) forwards**

11. In light of the discussions held during the event and the presentation of the on-going initiatives and activities, participants will be invited to exchange views on which of the following actions would it be most desirable and feasible for the Council of Europe to undertake.

- ❖ Elaboration or review of standards? If so, in which kind of instruments (protocol to European Convention on Nationality, Recommendation Committee of Ministers, other type of instrument)?
- ❖ Endorsement of guidance set by the UNHCR?
- ❖ Promotion and support to the implementation of existing instruments?
- ❖ Specific cooperation projects in the field with interested member States on a voluntary basis? Other actions or collaboration with stakeholders?

**16.00 – 16.30 *Coffee break***

**16.30 – 17.00 Conclusions**

- ❖ Summary by the rapporteur
- ❖ Final observations by participants

**17.00 Close of the meeting**

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