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EUROPEAN SOCIAL CHARTER

Comments submitted by
the United Nations High Commissioner for Refugees
concerning the 19th National Report on the implementation of
the European Social Charter

submitted by
THE GOVERNMENT OF HUNGARY
Articles 7, 8, 16, and 17
for the period 01/01/2018 – 31/12/2021

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CYCLE 2023

Submission by the United Nations High Commissioner for Refugees to the European Committee of Social Rights of the Council of Europe

On the 19th National Report on the implementation of the European Social Charter submitted by the Government of HUNGARY covering the period from 1 January 2018 to 31 December 2021

1. Introduction

During the 2022-23 Reporting Period on the implementation of the European Social Charter, the Government of Hungary submitted its National Report providing information on, *inter alia*, the treatment of unaccompanied and separated children in the transit zones, as well as measures adopted to address childhood statelessness.¹ With the present submission, UNHCR wishes to provide additional information on issues pertaining to the prevention and reduction of statelessness in Hungary, based on Rule 21A of the European Committee of Social Rights.²

UNHCR has been mandated by the UN General Assembly to prevent and reduce statelessness around the world, as well as to protect the rights of stateless people. UN General Assembly resolutions 3274 (XXIV) and 31/36 designated UNHCR as the body to examine the cases of persons who claim the benefit of the 1961 Convention on the Reduction of Statelessness and to assist such persons in presenting their claims to the appropriate national authorities. In 1994, the UN General Assembly further entrusted UNHCR with a global mandate for the identification, prevention, and reduction of statelessness and for the international protection of stateless persons.³ UNHCR has recognized expertise on statelessness issues.⁴

In the present submission, UNHCR is not providing additional information on applicable laws and practice related to the treatment of unaccompanied and separated children in the transit zones, considering that the latter were closed on 21 May 2020. However, UNHCR would like to underline its grave concern relating to the current lack of access to the territory of Hungary by persons wishing to seek asylum, as well as the lack of access to the asylum procedure within the territory of Hungary since 27 May 2020.⁵

2. Prevention and reduction of statelessness in Hungarian law

Hungary is party to the 1961 Convention on the Reduction of Statelessness (1961 Convention) and the 1954 Convention Relating to the Status of Stateless Persons (1954 Convention).

National legislation foresees several provisions that contribute to the identification and protection of stateless persons and the prevention and reduction of statelessness. For example, children of stateless parents who have a registered residence in Hungary and foundlings, *ex lege* obtain Hungarian nationality at birth. Furthermore, otherwise stateless persons born in the territory of Hungary can apply to acquire Hungarian nationality before the age of 19. Despite these provisions, gaps still exist in Hungary's national legislation on nationality and birth registration, which prevent some children from exercising their right to acquire Hungarian nationality.

¹ Covering the reporting period between 1 January 2018 and 31 December 2021. See Government of Hungary, *19th National Report on the implementation of the European Social Charter*, 21 December 2022, available at: <https://rm.coe.int/rap-rcha-hun-19-2023/1680aa54fb> [accessed 12 July 2023]

² Rules of the European Committee of Social Rights, available at: <https://rm.coe.int/rules-rev-328-en-06-07-22-final/1680a72b88> [accessed 12 July 2023]

³ UNGA resolutions A/RES/49/169 of 23 December 1994 and A/RES/50/152 of 21 December 1995. The latter endorses UNHCR's Executive Committee Conclusion No. 78 (XLVI) – 1995, Prevention and Reduction of Statelessness and the Protection of Stateless Persons, available at: <http://www.unhcr.org/refworld/docid/3ae68c443f.html> [accessed 12 July 2023]

⁴ In 2014, UNHCR published the Handbook on Protection of Stateless Persons, available at: <http://www.refworld.org/docid/53b676aa4.html> [accessed 12 July 2023]. The UNHCR Handbook is intended to guide government officials, judges and practitioners, as well as UNHCR staff and others involved in addressing statelessness and results from a series of expert consultations on the definition of a stateless person, procedures for determination of statelessness and the status of stateless persons under national law.

⁵ UNHCR, Three years after the introduction of the “embassy procedure,” access to territory and asylum in Hungary remains curtailed, press release, 26 May 2023, available at: <https://www.unhcr.org/ceu/49141-three-years-after-the-introduction-of-the-embassy-procedure-access-to-territory-and-asylum-in-hungary-remains-curtailed.html> [accessed 12 July 2023]. Please see also: in Case C-823/21, the Court of Justice of the European Union ruled that “Hungary has unduly hindered the possibility of making an asylum application”.

2.1. Access to nationality at birth

2.1.1. Children of stateless parents with no registered residence

As mentioned above, Hungarian nationality law provides that, in addition to foundlings, children of stateless parents who have a registered residence in Hungary *ex lege* obtain Hungarian nationality at birth.⁶ Although this is a positive measure aimed at the prevention of statelessness, it should be noted that Article 1(1) of the 1961 Convention focuses on the child and requires that States assess whether a child is stateless, because he or she acquires neither the nationality of the parents nor that of the State.⁷

Additionally, persons recognized as stateless do not have access to a registered residence – a specific legal status in Hungary – immediately after recognition: their stay needs to be lawful and uninterrupted in the territory of Hungary for at least three years before they can obtain registered residence.⁸ In practice, this requirement can hinder access to nationality for children who are born to stateless parents who have not yet been able to register their residence.⁹ Furthermore, it should be noted that according to Article 2(2) of the Convention on the Rights of the Child, States Parties shall take all appropriate measures to ensure that the child is protected against all forms of discrimination on the basis of, *inter alia*, the status of the child's parents.¹⁰

2.1.2. Children born to parents who are unable to pass on their nationality to their children

Hungarian nationality law does not provide for Hungarian nationality at birth to children whose parents are unable to pass on their nationality to their children for legal or practical reasons. The risk of statelessness of the child can be exacerbated by the statelessness or absence of one of the parents (for example, if the father is stateless, and the mother cannot pass on her nationality to the child because of the discriminative nationality laws of her country of nationality). In such situations, Hungarian law does not provide for the automatic acquisition of Hungarian nationality for children at birth, as it is only provided in case the child is a foundling, or if both parents are stateless and have a registered residence.¹¹

2.1.3. Children born to beneficiaries of international protection

Beneficiaries of international protection (refugees, beneficiaries of subsidiary protection) or tolerated status may be unable to pass on their nationality to their children due to nationality rules in their country of citizenship or in cases where the nationality of the parents can only be acquired through a registration or other procedure, that would require them to contact their consular authorities.¹² In such circumstances where the child of a refugee would otherwise be stateless, the safeguard set out in Article 1(1) of the 1961 Convention shall apply, and he or she shall acquire the nationality of the State automatically at birth or at a later time through an application procedure.¹³

⁶ Section 3(3)(a) of Act LV of 1993 on Hungarian citizenship.

⁷ UN High Commissioner for Refugees (UNHCR), Guidelines on Statelessness No. 4: Ensuring Every Child's Right to Acquire a Nationality through Articles 1-4 of the 1961 Convention on the Reduction of Statelessness, para. 18, 21 December 2012, HCR/GS/12/04, available at: <https://www.refworld.org/docid/50d460c72.html> [accessed 12 July 2023]

⁸ Most non-permanent residence statuses (residence permits based on employment, gainful activity, studies, family reunification or humanitarian grounds – including statelessness) do not confer the right to establish a registered residence to its holder. See Section 4(1) of Act LXVI of 1992 on keeping records on personal data and addresses of citizens.

⁹ To become eligible for a registered residence, stateless persons must first obtain a permanent residence permit in Hungary. This means either a so-called national permanent residence permit or an EC permanent residence permit. To qualify for either type of permanent residence permit, recognized stateless persons must comply with a certain period of uninterrupted and lawful stay in the territory of Hungary (generally 3 years for the national and 5 years for the permanent residence permit), and they need to prove that their coverage for healthcare, housing and livelihood in Hungary are provided for. After obtaining either type of these permanent residence permits, stateless persons will become eligible to have a registered residence in Hungary as permanent residents. See Section 4(1)(a) of Act LXVI of 1992 on keeping records on personal data and addresses of citizens and Act II of 2007 on the entry and stay of third-country nationals.

¹⁰ Also, according to UNHCR Guidelines on Statelessness No. 4, para. 33, “Any distinction in treatment of different groups must serve a legitimate purpose, cannot be based on discriminatory grounds and must be reasonable and proportionate.”

¹¹ Section 3(3) of Act LV of 1993 on Hungarian citizenship.

¹² UN High Commissioner for Refugees (UNHCR), Guidelines on Statelessness No. 4: Ensuring Every Child's Right to Acquire a Nationality through Articles 1-4 of the 1961 Convention on the Reduction of Statelessness, para. 27, 21 December 2012, HCR/GS/12/04, available at: <https://www.refworld.org/docid/50d460c72.html> [accessed 12 July 2023]

¹³ *Ibid.*

Similarly, situations can also arise in which the parents who are beneficiaries of international protection or tolerated status would be able to pass on their nationality to their children automatically at birth, but this cannot be certified without contacting the authorities of the country of origin. Therefore, the nationality of the child does not translate into documentation, which in practice places the child at heightened risk of statelessness.¹⁴

2.1.4. Registration of children as “unknown nationals”

Children whose nationality is not confirmed at birth are registered as “unknown nationals” in the Hungarian birth registration system.¹⁵ This rule assumes that parents will be able to obtain evidence about the child’s foreign nationality in due course, meaning that “unknown nationality” will only be a temporary entry in the civil registry.¹⁶ However, beneficiaries of international protection may not be in a position to undertake the necessary steps to establish and register the nationality of their children after birth. In these cases, their birth certificate remains indicating “unknown nationality,” which places them at risk of statelessness in the long term.¹⁷

2.2. Acquisition of nationality by stateless persons

2.2.1. Acquisition of nationality by application

In Hungarian law, children born in Hungary who could not obtain the nationality of either of their parents at birth have a legal option to make an application to obtain Hungarian nationality prior to their 19th birthday.¹⁸ The application is followed by a non-discretionary decision-making process to assess whether the individual circumstances presented in the application comply with the requirements, which are the following: 1. The parents of the child must have had a registered residence in Hungary at the time of birth; 2. The child must have a registered residence in Hungary for at least five years; 3. The application must be made before the 19th birthday of the child.¹⁹

The above-mentioned criteria are at odds with the provisions of the 1961 Convention. First, under Article 1(2)(b) of the 1961 Convention, States may stipulate that an individual who would otherwise be stateless born in its territory fulfils a period of “habitual residence” in the territory of the State of birth in order to acquire that State’s nationality.²⁰ “Habitual residence” is to be understood as “stable, factual residence”, which does not imply a legal or formal residence requirement.²¹ Second, the condition that the parents should have had a registered residence at the time of the birth of the child is an additional requirement not foreseen among the exhaustive list of possible conditions spelled out in Article 1(2) of the 1961 Convention. Third, requiring that the applicant makes the application before his or her 19th birthday is not in line with Article 1(2)(a) of the 1961 Convention which requires that the period to make the application shall be available until at least the age of 21 years.

¹⁴ Hungarian Helsinki Committee, *Nationality Unknown? An Overview of the Safeguards and Gaps Related to the Prevention of Statelessness at Birth in Hungary*, January 2014, available at: <https://www.refworld.org/docid/5310640b4.html> [accessed 12 July 2023]

¹⁵ Section 16(4) of Act I of 2010 on civil registration procedures.

¹⁶ Hungarian Helsinki Committee, *Nationality Unknown? An Overview of the Safeguards and Gaps Related to the Prevention of Statelessness at Birth in Hungary*, January 2014, available at: <https://www.refworld.org/docid/5310640b4.html> [accessed 12 July 2023]

¹⁷ According to UNHCR Guidelines on Statelessness No. 4, para. 22, “Some States make findings that a child is of ‘undetermined nationality’. When this occurs, States need to determine whether a child would otherwise be stateless as soon as possible so as not to prolong a child’s status of undetermined nationality. [...] It is appropriate that such a period [does] not exceed five years.” Currently, in Hungary there is no referral system in place between the authority responsible for birth registration and the authority conducting the statelessness determination procedure.

¹⁸ Section 5/A(1)(b) of Act LV of 1993 on Hungarian citizenship.

¹⁹ Sections 5/A(1)(b) and 5/A(1a) of Act LV of 1993 on Hungarian citizenship.

²⁰ UN High Commissioner for Refugees (UNHCR), Guidelines on Statelessness No. 4: Ensuring Every Child's Right to Acquire a Nationality through Articles 1-4 of the 1961 Convention on the Reduction of Statelessness, para. 40, 21 December 2012, HCR/GS/12/04, available at: <https://www.refworld.org/docid/50d460c72.html> [accessed 12 July 2023]

²¹ According to UNHCR Guidelines on Statelessness No. 4, para. 41, “The term ‘habitual residence’ is to be understood as stable, factual residence. It does not imply a legal or formal residence requirement. The 1961 Convention does not permit Contracting States to make an application for the acquisition of nationality by individuals who would otherwise be stateless conditional upon lawful residence”.

2.2.2. Facilitated naturalisation

Access to naturalisation has remained limited for recognized stateless persons in Hungary. While they can apply for naturalisation after three years of continuous registered residence in Hungary,²² obtaining a registered residence for stateless persons is not automatic.²³ The three-year continuous registered residence required for facilitated naturalisation can only commence after being recognized as a stateless person and obtaining permanent residence after a minimum of three years of subsequent residence in Hungary.²⁴

Even if a stateless person has fulfilled the residence conditions, the Hungarian naturalisation procedure entails further stringent requirements, such as having sufficient income and housing, and passing a constitutional exam in Hungarian.²⁵ An applicant for naturalisation must not have a criminal record, nor any pending criminal proceedings and should not violate Hungarian law or pose a threat to public security.²⁶ Unstable housing conditions, the lack of adequate Hungarian language skills, difficulty to pass the citizenship exam and the costs incurred with the procedure are among the dominant obstacles for stateless persons applying for as well as obtaining Hungarian nationality. In the absence of mandatory reasoning of negative decisions and lack of access to judicial review, the naturalisation procedure lacks basic rule of law principles of transparency, accountability and fairness and safeguards against arbitrariness and non-discrimination. This is not consistent with Article 32 of the 1954 Convention.²⁷

3. Conclusions and recommendations

In view of above considerations, UNHCR wishes to recommend that the Government of Hungary ensures that Act LV of 1993 on Hungarian citizenship provides adequate safeguards against statelessness at birth in line with the 1961 Convention. This includes removing the requirement of “registered residence” with respect to acquiring nationality at birth, thereby ensuring that all children are treated equally, irrespective of their parent’s residence status. Additionally, UNHCR wishes to recommend Hungary to review the procedure for acquisition of nationality by application, to bring it in line with Article 1(2) of the 1961 Convention.²⁸ Furthermore, UNHCR recommends that a formal mechanism is established to determine the nationality of children at birth, to avoid categorizing children as “unknown nationals” and thereby placing them at heightened risk of statelessness. Finally, UNHCR wishes to recommend Hungary to ensure that stateless persons have a clear and facilitated pathway to acquiring a nationality in full compliance with Article 32 of the 1954 Convention.

**UNHCR MCO Hungary
July 2023**

²² Section 4(2)(e) of Act LV of 1993 on Hungarian citizenship.

²³ See footnotes 8 and 9.

²⁴ *Ibid.*

²⁵ Section 4(1) of Act LV of 1993 on Hungarian citizenship.

²⁶ *Ibid.*

²⁷ Under Article 32 of the 1954 Convention on the Status of Stateless Persons, *Hungary “shall as far as possible facilitate the [...] naturalisation of stateless persons. In particular, it shall make every effort to expedite naturalisation proceedings and to reduce as far as possible the charges and costs of such proceedings”.*

²⁸ UNHCR wishes to acknowledge that as of 1 July 2023 (outside of the relevant reporting period), Hungary introduced a new ground for making an application for the acquisition of Hungarian nationality by stateless persons born in the territory of Hungary. Section 5/A(1)(d) of Act LV of 1993 on Hungarian citizenship renders it possible for persons “who were born in the territory of Hungary and became stateless” to submit an application for the acquisition of Hungarian nationality in case they have resided in Hungary in the previous five years directly before making the application. See Hungarian Official Gazette No. 70/2023, available at: <https://magyarkozlony.hu/dokumentumok/86b749c3453b589bafd08b0cb60ea6dfdc910cc0/megtékintes> [accessed 12 July 2023]