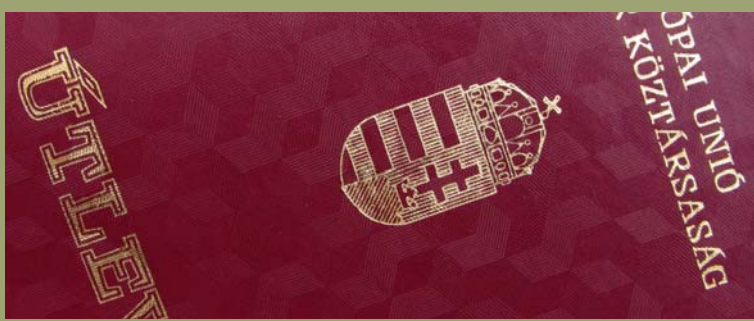
HUNGARIAN HELSINKI COMMITTEE

Statelessness *in* Hungary

THE PROTECTION OF STATELESS PERSONS AND THE PREVENTION AND REDUCTION OF STATELESSNESS



Written by
Gábor Gyulai

December 2010

Hungarian Helsinki Committee

Funded by
the United Nations High Commissioner for Refugees
Regional Representation for Central Europe

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Executive Summary

1. Context and Methodology

Statelessness has long been an unjustifiably forgotten issue of international protection and human rights. More than half-a-century after the adoption of the cornerstone 1954 Statelessness Convention, only a handful of countries operate a statelessness-specific protection regime, regulated in law. Hungary took a pioneer step when in 2007 it established a statelessness determination regime, based on sophisticated legislative rules. The Hungarian statelessness-specific protection mechanism has been in the focus of international interest since its inception, yet no empirical research has been conducted so far on its actual functioning. This report aims to fill in this gap, as well as to examine whether effective mechanisms are in place for the prevention and reduction of statelessness in Hungary. The report's conclusions have been drawn from desk research, analysis of administrative and judicial decisions on statelessness and the first-hand experiences of the Hungarian Helsinki Committee.

2. Main Findings – Protection of Stateless Persons

Between 1 July 2007 and 30 September 2010, 109 persons applied for stateless status in Hungary. Of which, 56 were recognised as stateless (the majority being Palestinians or originating from the former Yugoslavia or Soviet Union, many of them living in Hungary for years or decades), while 23 applicants were rejected. The overall recognition rate thus amounted to 71%.

The Hungarian statelessness determination procedure constitutes a positive model for a number of reasons:

- Statelessness is considered as a ground for protection *per se*, which is identified in a specific, well-regulated procedure.
- Authorities have a positive obligation to promote access to the determination procedure, if potential statelessness is perceived in any immigration or alien policing procedure (however, the actual application of this rule is difficult to assess).
- The hearing of the applicant is mandatory both at first instance and on appeal.
- The UNHCR is granted a set of rights in the procedure, and these rights are duly observed in practice.
- The judicial review of administrative decisions on stateless status is delegated to a centralised body, the proceeding judge being entitled not only to quash the decision, but also to grant stateless status.
- The circle of countries with regard to which the applicant's nationality should be tested is realistically determined by law, and this provision is duly applied in practice.

- While the burden of proof lies principally on the applicant, in practice, the authority plays an active role in establishing relevant facts and provides assistance in verifying potential national ties upon request by the applicant.
- The law foresees a flexible (lowered) standard of proof in statelessness determination, enabling the claimant to only "substantiate" the foundedness of her/his claim (if "proving" is not possible). The application of this standard can be observed in some of cases.
- Both the law and the practice allow for the consideration of various different means of evidence.
- The vast majority of the administrative and judicial decisions analysed are well-argued and contain justified legal conclusions.

At the same time, a number of shortcomings shall also be pointed out:

- The current regulation only enables lawfully staying foreigners to apply for stateless status. Unlawful stay has been referred to in a number of cases as a ground for rejection. This provision undermines the credibility of the entire protection regime, excluding genuine stateless persons from protection and raising concerns of compatibility with international legal obligations. The requirement of lawful stay was applied in most (but not all) cases.
- Hungarian law contains no provisions regarding the rights or social entitlements (e.g. accommodation, temporary prohibition of expulsion, etc.) of those applying for stateless status.
- No sufficient information materials are made available to potential applicants on the statelessness-specific protection regime.
- Some negative decisions were based on erroneous arguments or misinterpreted the evidentiary framework, e.g. by setting unjustified additional conditions for the recognition of statelessness, by referring to speculative presumptions which contradict the available evidence or by applying an additional exclusion ground not foreseen by the 1954 Convention.
- Some decisions referred to an erroneous interpretation of *de facto* statelessness (as a ground not justifying protection).
- In some cases, a certain divergence between different regional practices could be noted (like cases were not decided in like manner).

Hungarian law provides for a separate stateless status, which includes the provision of a humanitarian residence permit and a stateless travel document, as well as access to free-of-charge primary and secondary education. This status is a positive practice for its mere existence, though it fails to sufficiently facilitate integration and self-reliance, as unlike refugee status

- it ensures limited and difficult access to the labour market;
- it does not foresee any specific accommodation or financial support measures; and
- it does not set forth any provision to facilitate access to health care for those without the means to cover the costs.

As a whole, the Hungarian model for the protection of stateless persons is a progressive and in many aspects exemplary practice, nevertheless, certain amendments and progress are indispensable in order to make this system truly functional.

3. Main Findings – Prevention of Statelessness

Hungarian law provides sufficient protection against statelessness with regard to the voluntary and involuntary loss of nationality. The avoidance of statelessness at birth, however, remains problematic. While specific *jus soli* provisions in the Citizenship Act (complementing the general *jus sanguinis* framework) are to prevent statelessness in an important proportion of cases, the following categories fall outside the scope of the prevention scheme:

- Children born to stateless parents not having a "place of residence" in Hungary (e.g. stateless persons with a humanitarian residence permit who are not yet permanent residents);
- Children born to parents whose nationality cannot be "transmitted" to them (e.g. for gender-based discrimination in applying *jus sanguinis*);
- Children born to persons granted international protection in Hungary (e.g. refugees);
- Children born to a foreign national mother and an unknown father and abandoned by the mother after birth.

These categories may remain stateless after birth or may find themselves in a protracted situation of "unknown nationality".

4. Main Findings – Reduction of Statelessness

The Hungarian framework for naturalisation has been long criticised for its lack of transparency (e.g. decisions contain no reasoning, there is no possibility of administrative or judicial review, etc.). Stateless persons can apply for Hungarian nationality after 5 years of residence in Hungary, to which a minimum of 3 years should be added in most cases (as the 5-year waiting period starts after the establishment of a "place of residence" in Hungary, which usually happens when obtaining permanent resident status). The actual minimum waiting period of 8 years can be considered as excessively lengthy, mostly in comparison with the 3 years applicable for refugees. The dysfunctional character of the Hungarian system for the reduction of statelessness is well-demonstrated by statistics: in 2008 for example, only 3 stateless persons obtained Hungarian citizenship.

Recommendations

Recommendation 1 – Hungarian law should ensure that persons falling under the scope of Article 1 (1) of the 1954 Statelessness Convention and not excluded under Article 1 (2) of the same instrument shall be granted protection. Section 78 (1) (b) of the Aliens Act needs to be amended to this end.

Recommendation 2 – In order to make the provisions aiming at facilitating the access to procedure (Section 160 (1) of the Aliens Government Decree) effective and functional, asylum, immigration and police officers who do not deal with statelessness as part of their daily work should be duly trained on this issue. A short information note in Hungarian language could facilitate this process.

Recommendation 3 – The Office of Immigration and Nationality (OIN) should be enabled to initiate statelessness determination procedures *ex officio* if the person concerned is an unaccompanied minor.

Recommendation 4 – Lawful stay should cease to be a pre-condition of submitting an application for stateless status in order to ensure conformity with international law and to enable the Hungarian stateless protection mechanism to become truly functional. Section 76 (1) of the Aliens Act needs to be amended to this end.

Recommendation 5 – The OIN is recommended to post a short multilingual information note on the statelessness determination procedure on its website. The Hungarian Helsinki Committee and the UNHCR should prepare and disseminate further information materials.

Recommendation 6 – A special status for applicants for stateless status should be created. This status should be similar to that of asylum-seekers under Hungarian law, at least with regard to the suspensive effect on expulsion measures and basic housing and support arrangements (for those in need).

Recommendation 7 – The OIN, the Ministry of the Interior, the Metropolitan Court, the Hungarian Helsinki Committee and the UNHCR are recommended to organise a joint training session in 2011 on the evidentiary framework of statelessness determination. The training should touch upon the relevant international developments, including the conclusions of the global expert consultation process on-going at the moment of publishing this report under the auspices of the UNHCR.

Recommendation 8 – Stateless persons should be enabled to renew their humanitarian residence permit for three-year periods even after the expiry of the first such period. Section 29 (2) (a) of the Aliens Act should be amended to this end.

Recommendation 9 – In order to ensure the effectiveness of the protection offered by the Hungarian stateless status it is recommended that stateless persons proved to be in need are provided with accommodation and financial support, as well as health care services under a scheme similar to that of refugees (within a reasonable time period following recognition).

Recommendation 10 – In order to ensure the effectiveness of the protection offered by the Hungarian stateless status and to facilitate the integration and self-reliance of those granted this

form of protection stateless persons should have unrestricted access to the labour market (similar to refugees and beneficiaries of subsidiary protection).

Recommendation 11 – In order to ensure the effectiveness of the protection offered by the Hungarian stateless status and to facilitate the integration and self-reliance of those granted this form of protection stateless persons should be granted access to free-of-charge higher education.

Recommendation 12 – Hungarian nationality legislation should be amended in order to ensure that all children born in Hungary who do not acquire any nationality at birth are considered Hungarian citizens until the contrary is proved. This should include the grant of Hungarian nationality to the children of stateless persons staying in Hungary (regardless of their immigration status and with no condition of permanent residence), as well as to the children whose parents cannot "transmit" their nationality to her/him at birth (no or discriminative application of *jus sanguinis* by the country of nationality).

Recommendation 13 – A protocol should be elaborated for the establishment of nationality at birth in case of children born in Hungary to persons granted international protection (refugees, beneficiaries of subsidiary protection and those granted tolerated status). The protocol should be based on international best practices and should aim at the prevention of statelessness as well as minimising the period during which children are registered as of "unknown nationality".

Recommendation 14 – All children born in Hungary to foreign national parents (or to a foreign national mother and an unknown father) and left unaccompanied by their parents after birth should be considered as foundlings and should therefore be granted Hungarian nationality if all efforts to establish their foreign nationality and to repatriate them to their country of nationality has remained unsuccessful until their first birthday.

Recommendation 15 – Naturalisation should become a standard administrative procedure, with realistic procedural deadlines, mandatory reasoning of negative decisions and possibility of seeking judicial review. Hungary is urged to lift its reservations made to the 1997 European Convention on Nationality and ensure full compliance with the entirety of this key international legal instrument.

Recommendation 16 – In order to ensure compliance with the relevant mandatory provision of the 1997 European Convention on Nationality, the "waiting period" before the possibility to naturalise should be counted from the establishment of lawful stay instead of a place of residence in Hungary.

Recommendation 17 – The minimum "waiting period" before the possibility to naturalise should be reduced from five to three years in case of stateless persons, whom thus should belong to the group benefiting from the most preferential treatment in this respect.

This publication has been prepared upon the request and with the support of the United Nations High Commissioner for Refugees (UNHCR) Regional Representation for Central Europe. The information included in this report is based on desk research (analysis of legal provisions and available literature), the examination of administrative and judicial decisions on statelessness determination and the Hungarian Helsinki Committee's first-hand experiences on this matter. The author had access to a representative sample of administrative and judicial decisions (~80% and 100% respectively). All quoted decisions are referred to by their registration number in this report for data protection purposes. The author wishes to express his gratitude to the UNHCR Regional Representation for Central Europe, the Office of Immigration and Nationality and the Metropolitan Court for granting access to the relevant decisions as well as other indispensable data for this publication.

The present report concentrates on stateless persons not entitled to more favourable forms of international protection in Hungary (practically speaking refugee status or subsidiary protection).

"Nationality" and "citizenship" are used as synonyms, following the relevant international terminology.

I. Protection of Stateless Persons

I.1 Legislative History and Protection Context

Statelessness has long been a forgotten protection ground in Europe, with very few countries operating a statelessness-specific protection regime. Hungary played a pioneering role when it introduced its identification mechanism and specific protection status in 2007.

The country did not have any particular historical background in protecting stateless persons prior to this amendment. Nevertheless, the previous legislation (adopted in 2001) already defined statelessness as a ground for issuing a humanitarian residence permit[1] and set a lower standard of proof when establishing such condition by stipulating that

> the foreigner shall prove or substantiate her/his statelessness, which upon her/his request shall be given administrative assistance by the alien policing authority through the competent Hungarian foreign representation.[2]

Notwithstanding this positive approach, the law-maker did not set any specific procedural rule or guarantee regarding statelessness determination, nor did it create a specific status for stateless persons.

It appears that the reason for adopting a more sophisticated protection framework in the **2006–2007 reform of immigration legislation** was the willingness to better fulfil international obligations and to fill with actual content the vague legal framework already in place. Therefore, **no specific political or historical background factors** can be identified; it was rather the law-maker's positive approach, as well as the previous awareness-raising activities of the UNHCR in conjunction with the Hungarian Helsinki Committee that inspired such a progressive change.

Hungary's "positive awareness" is also shown by the extremely **high ratification rate** of statelessness-related international instruments: the country has become party to basically all relevant conventions in recent years.

Since the entry into force of Act II of 2007 on the Admission and Right of Residence of Third-Country Nationals (hereinafter Aliens Act), statelessness constitutes **one of the four non-EU-harmonised protection statuses**, together with

- the tolerated status *(befogadott)*;
- the victim of trafficking status; and
- the unaccompanied minor status.

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1 Act XXXIX of 2001 on the Entry and Stay of Foreigners, Section 2 (b)

2 Government Decree No. 170/2001 (IX.26.) on the implementation of Act XXXIX of 2001 on the Entry and Stay of Foreigners, Section 25 (4)

In addition to these, an EU-harmonised refugee status, subsidiary and temporary protection regime are also in place in Hungary.[3] The entitlement to stateless status is determined in the framework of a specific alien policing[4] procedure (and not in the asylum procedure).

I.2 Relevant International Obligations

The 1951 Convention Relating to the Status of Refugees (hereinafter 1951 Refugee Convention) and the EU asylum *acquis* provide for the protection of certain stateless persons: those who have a well-founded fear of being persecuted for one of the convention grounds[5] or who face a real risk of suffering a serious harm as defined by the EU Qualification Directive[6]. These regimes, however, do not define statelessness as a protection ground *per se* and thus cannot ensure protection for a large part of the stateless population. Stateless refugees and those entitled to subsidiary protection should be able to benefit from functioning asylum systems, and the analysis within this chapter should therefore concentrate on the protection of stateless persons not qualifying for these statuses.

Unlike the reduction and prevention of statelessness, the **explicit obligation** to protect stateless persons (for the mere reason of their statelessness) is not very well "covered" in binding international law. The **1954 Convention relating to the Status of Stateless Persons** (hereinafter 1954 Statelessness Convention) is the only relevant instrument in this respect. Despite all its problematic aspects (the analysis of which falls beyond the scope of the present study) this convention plays a crucial role in ensuring the protection of stateless persons, as it defines:

- the term "stateless person" (limited to *de jure* statelessness);[7]
- basic principles determining the application of its provisions (such as non-discrimination, exemption from reciprocity, etc.);[8] as well as
- the juridical status and social rights contracting states shall grant to stateless persons.[9]

Meanwhile, the 1954 Statelessness Convention is **completely silent about procedural questions**, i.e. about *how* to determine whether a person is indeed stateless.[10] Hungary acceded to the 1954 Statelessness Convention on 21 November 2001.

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3 For an in-depth comparative analysis of all these statuses, see Gábor Gyulai, *Practices in Hungary Concerning the Granting of Non-EU-Harmonised Protection Statuses*, European Migration Network, August 2009. http://helsinki.hu/dokumentum/Non-EU-Harmonised-Protection-Statuses-Hungary%20final.pdf

4 The Hungarian legal terminology upheld even after various reforms the unfortunate term of alien policing *(idegenrendészeti)* procedure and authority, instead of applying the expressions of immigration or migration, which would be commonly used in most European countries to describe the procedures in question.

5 1951 Convention Relating to the Status of Refugees, Article 1A; 1967 Protocol Relating to the Status of Refugees, Article I

6 Council Directive 2004/83/EC of 29 April 2004 on minimum standards for the qualification and status of third country nationals or stateless persons as refugees or as persons who otherwise need international protection and the content of the protection granted, Articles 2 (e) and 15

7 Article 1

8 Articles 2–11

9 Articles 12–32

10 Similarly to the 1951 Refugee Convention

Hungary's **implicit obligation** to protect stateless persons can be further derived from a number of sources. Several binding international instruments[11], to which the country is party to, echo Article 15 of the 1948 Universal Declaration of Human Rights, according to which

> (1) Everyone has the right to a nationality.
>
> (2) No one shall be arbitrarily deprived of his nationality nor denied the right to change his nationality.

Because the **right to nationality is considered a basic human right**, with a crucial impact on the ability to enjoy other human rights, the deprivation of nationality is to be regarded as a grave violation of human rights. This can be interpreted as giving rise to a positive indirect obligation to protect the victims of this serious form of human rights violation.

I.3 The Stateless Definition Applied

According to Section 2 (b) of the Aliens Act, a stateless person shall mean

> a person who is not considered as a national by any state under the operation of its law.

The stateless definition of the Aliens Act is thus **limited to *de jure* statelessness**, complying with the relevant mandatory provision of the 1954 Statelessness Convention, but disregarding soft law recommendations that call for an equal treatment of *de jure* and *de facto* statelessness (at least in some aspects).[12] It is noteworthy that three of the examined administrative decisions refer to a certain interpretation of *de facto* statelessness when stating that

> […] only *de jure* stateless persons fall under the scope of the Convention, but not the *de facto* stateless – e.g. those who following the dissolution of a federal state failed to arrange their nationality with any of the successor states, even though they would have had the chance to do so.[13]

De facto statelessness is not defined in international law. However, the above interpretation does not correspond to any of the definitions available in interpretative literature[14] and appears to be based on a misunderstanding of the undoubtedly problematic *de jure-de facto* dichotomy.

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[11] 1965 Convention on the Elimination of All Forms of Racial Discrimination, Article 5 (d) (iii); 1966 International Covenant on Civil and Political Rights, Article 24 (3); 1979 Convention on the Elimination of All Forms of Discrimination against Women, Article 9; 1989 Convention on the Rights of the Child, Article 7; 1997 European Convention on Nationality, Article 4

[12] See the Final Acts of the 1954 Statelessness Convention and the 1961 Convention on the Reduction of Statelessness, as well as Articles 6 and 11 (b) of the Council of Europe Parliamentary Assembly Recommendation 696 (1973) on certain aspects of the acquisition of nationality

[13] 106-2-1244/10/2009-Áp, 106-2-1246/8/2009-Áp, 106-1-21359/6/2010-Ht (all three decisions equally include the quoted text)

[14] See for example: *Nationality and Statelessness: A Handbook for Parliamentarians*, UNHCR, 1 October 2005, p. 11; Hugh Massey, *UNHCR and De Facto Statelessness*, UNHCR, April 2010; *Expert Meeting – The Concept of Stateless Persons under International Law (Summary Conclusions)*, UNHCR, May 2010; Laura van Waas, *Nationality Matters – Statelessness under International Law*, Intersentia Publishing, November 2008, pp. 19–26; Niraj Nathwani, *Rethinking Refugee Law*, Martinus Nijhoff Publishers/Kluwer Law, 2003, pp. 12–17; see also the International Observatory on Statelessness (www.nationalityforall.org), etc.

Section 78 (1) (a) of the Aliens Act sets a list of **exclusion clauses**, directly referring to Article 1 (2) of the 1954 Statelessness Convention, according to which

This Convention shall not apply:

> (i) To persons who are at present receiving from organs or agencies of the United Nations other than the United Nations High Commissioner for Refugees protection or assistance so long as they are receiving such protection or assistance;
>
> (ii) To persons who are recognised by the competent authorities of the country in which they have taken residence as having the rights and obligations which are attached to the possession of the nationality of that country;
>
> (iii) To persons with respect to whom there are serious reasons for considering that:
>
> (a) They have committed a crime against peace, a war crime, or a crime against humanity, as defined in international instruments;
>
> (b) They have committed a serious non-political crime outside the country of their residence prior to their admission to that country;
>
> (c) They have been guilty of acts contrary to the purposes and principles of the United Nations.

The Aliens Act sets forth an **additional exclusion ground**, when stipulating that a claim for stateless status shall be rejected if

> […] the applicant renounced her/his nationality on purpose, with the intention to obtain stateless status.[15]

According to the Aliens Act's official justification by the Minister of Justice and Law Enforcement, this provision is based on Recommendation No. R (99) 18 of the Committee of Ministers of the Council of Europe on the avoidance and reduction of statelessness. However, this reference can only be based on a misunderstanding or mistranslation, as the document in question does not set forth any recommendation that would support the problematic provision.

The rationale behind this provision – i.e. the avoidance of **"abusive" claims** – is understandable, as there are still states that enable their citizens to renounce their nationality without the prior acquisition of another one, and such provisions can be misused with the sole purpose of obtaining a protection status in another country. Nevertheless, the provision in question **raises concerns** about the regulation's compliance with

- the 1954 Statelessness Convention (which includes an exhaustive list of exclusion clauses);
- as well as with the general obligation to avoid statelessness and ensure the right to a nationality.[16]

[15] Aliens Act, Section 78 (1) (b)

[16] 1997 European Convention on Nationality, Article 4

The above problems could be solved by complementing the provision with an additional condition, stipulating that in order to reject a claim on this ground, the decision-making authority shall prove that the former nationality (lost on purpose with an "abusive" intention) can be recovered in a reasonable time. The latter appears to be a realistic option in most cases, as the *jus sanguinis* or *jus soli* entitlement for a country's nationality may not cease to exist by the mere fact of a previous renunciation.

The exclusion clauses were **not applied** during the period in examination, thus no information exists about the practical use of these provisions.

I.4 Access to Procedure

Persons in need of international protection, most of whom are forced migrants, usually face several difficulties (lack of language knowledge, cultural shock, bad psychological and/or health conditions, uprootedness, etc.) when trying to find protection and regularise their status. Hence, in order for a protection mechanism to fulfil its role in practice, states (in cooperation with non-state actors) are expected to facilitate the access to the relevant procedures through a number of different legislative provisions and practical measures.

I.4.1 The Initiation of a Statelessness Determination Procedure

The statelessness determination procedure **starts upon request** by the person concerned. Claims should be submitted to the **regional directorate of the Office of Immigration and Nationality** *(Bevándorlási és Állampolgársági Hivatal)*, hereinafter OIN, competent according to the applicant's place of accommodation, stay or residence.[17] The OIN has currently seven regional directorates. According to a rule generally applicable in administrative procedures, if the application is submitted to an administrative authority not competent over the given matter, it shall transfer the claim (and the entire file) to the competent and responsible authority without delay and within maximum eight days after the lack of competence has been established.[18] This provision may prove to be an important safeguard, as it can easily happen that a person submits a claim for protection on the ground of her/his statelessness to the police or the asylum authority, which are therefore obliged to immediately forward the application to the competent branch of the OIN. Unfortunately, there is no information available about such cases (based on the decisions examined), and it is possible that this provision has no practical effect, mainly due to the general lack of awareness about statelessness and the related procedural frameA claim for stateless status may be lodged in the form of a **written application** as well as by a **verbal statement**.[19] In the latter case, the authority has to prepare a written record of the statement.[20] There are no further

17 Government Decree 114/2007. (V. 24.) on the execution of Act II of 2007 on the Admission and Right of Residence of Third-Country Nationals (hereinafter Aliens Government Decree), Section 159 (1)

18 Act CXL of 2004 on the general rules of administrative procedures and services, Section 22 (2)

19 Aliens Act, Section 76 (1)

20 Aliens Act, Section 76 (2)

formal requirements whatsoever concerning the form of the application and there is no specific guidance on how to "recognise" claims for stateless status. This regulation is identical to that in force with regard to asylum applications in Hungary and is considered an important procedural guarantee. The submission of a claim for stateless status is free of charge.[21]

The OIN **cannot initiate the statelessness determination procedure *ex officio***.[22] However, accepting the eventual difficulty of "recognising" one's statelessness and the authority's interest in clarifying such situations the law-maker stipulated that

> If the possibility that a third-country national is stateless arises in any of the procedures under the scope of this Act, the alien policing authority shall inform the person concerned about the possibility of submitting a request for stateless status, the related proceedings, as well as the rights and obligations attached to stateless status. The foreigner shall be asked to sign a record that she/he has received this information.[23]

This provision constitutes an important procedural guarantee, as it foresees an **active role for immigration authorities in promoting access to protection** for stateless persons. However, there is hardly any information about the practical use of this rule; only one decision refers to a case in which the OIN provided information in an alien policing procedure based on the above provision.[24] It is difficult to imagine a wide-spread use of this procedural guarantee without concentrated efforts to furnish immigration and asylum officers with relevant training on statelessness.

I.4.2 The Condition of Lawful Stay

Section 76 (1) of the Aliens Act makes **only lawfully residing foreigners eligible to apply for stateless status**, hence persons arriving and staying irregularly in Hungary are excluded from protection.

Both the UNHCR and the Hungarian Helsinki Committee expressed grave concerns about this provision, which constitutes the Achilles heel of the entire Hungarian protection framework for stateless persons and it **undermines all other positive achievements**. Furthermore, this provision raises **international law concerns**. It is true that many relevant provisions of the Convention oblige states to ensure certain rights to "stateless persons lawfully present on their territory"; however, the following important factors should be noted:

- The current regulation does not restrict the rights of unlawfully staying stateless persons with regard to certain aspects (e.g. access to education, gainful employment, etc.), but it excludes them *as such* from the recognition of statelessness. The 1954 Statelessness Convention sets forth an exhaustive list of exclusion clauses and unlawful stay does not figure among

21 Aliens Government Decree, Section 159 (1)

22 Aliens Act, Section 76 (1)

23 Aliens Government Decree, Section 160 (1)

24 106-4-603/15/2010-L

them. The current Hungarian legislation can therefore be seen as **creating an additional *de facto* exclusion ground** from identification and protection, raising thus serious concerns about compliance with Hungary's international obligations. This interpretation is endorsed to some extent by the jurisprudence of the Metropolitan Court, which held in judgment 24.K.31.412/2009/6 that

> […] it is the Convention that sets the material conditions of the recognition of stateless status, according to which a stateless person is a person who is not recognised as a citizen by any country under its national law. As compared to the Convention, the Aliens Act only contains the procedural rules of the statelessness determination procedure, it cannot establish further material conditions for the recognition of statelessness.

- The "lawfully present" criterion could (and should) be understood in a way that all stateless persons, **once identified as such** (a process in which only the exclusion clauses of the 1954 Statelessness Convention shall apply) **gain lawful stay** in the host country, and from that point all provisions of the Convention referring to lawfully present persons apply to them equally, regardless whether or not they arrived or stayed in an irregular manner.
- When interpreting the "lawfully present" restrictions of the Convention, the **historical context** should also be considered. The massive presence of uprooted and as a consequence often stateless populations in the post-second-world-war Europe provided the background for the *travaux préparatoires* of this instrument. Six decades later, the actual character and the dimensions of the problem of statelessness in Europe is absolutely different, concerning a much smaller and significantly less visible population, whose statelessness is frequently linked to a pattern of forced migration. In order to use the Convention as a valid protection tool (in line with its Preamble and the numerous relevant conclusions of the UNHCR Executive Committee) states have to interpret its provisions in light of the actual "protection reality" of today and the evolving international human rights standards.[25]

With all these concerns, the question inevitably arises as to why the law-maker deemed such a restriction necessary. According to the Aliens Act's official justification by the Minister of Justice and Law Enforcement, the law-maker intended to ensure that foreigners arriving or staying in Hungary in an unlawful manner would be prevented from submitting a *mala fide* claim for stateless status, with the sole purpose of temporarily avoiding forcible return or expulsion.[26] This argument

[25] This argument can be easily supported with parallel phenomena from other fields of human rights law. The 1951 Refugee Convention gave rise to a flourishing development of refugee law, from which several additional legal concepts (e.g. gender-based persecution, non-state agents of persecution, internal protection alternative, subsidiary or temporary protection, etc.) arose and some originally present concepts gained a significantly enlarged content as compared to what the drafters might have originally envisioned (e.g. membership of a particular social group). The 1950 European Convention on Human Rights (Convention for the Protection of Human Rights and Fundamental Freedoms) has also been continuously interpreted within the practice of the European Court of Human Rights. Consequently, the way certain terms were understood when the Convention was drafted have significantly changed since then in order to reflect real human rights challenges and an evolving reach of human rights law.

[26] See the same argumentation also in Zoltán Lékó (ed.), *A migrációs jog kézikönyve [Handbook of Migration Law]*, Complex Kiadó Jogi és Üzleti Tartalomszolgáltató Kft., Budapest, 2009, p. 344.

is certainly ill-founded for the following practical reasons (in addition to the international legal concerns exposed above):

- The lack of proper identity documents is a **frequent characteristic of statelessness**, as most genuine stateless persons – not recognised by any state as a national – do not carry or have the opportunity to obtain valid travel or identity documents. Exceptions exist (e.g. many Palestinians living in the Occupied Territories do hold a Palestinian passport recognised by Hungary, but without having the effective nationality of a state), but even in such cases, meeting strict material requirements for obtaining visas is usually impossible for those in need of protection for being stateless. Thus, most forced migrants who are stateless are excluded from the protection provided by the current Hungarian legal regime. This argument is **endorsed by the jurisprudence of the Metropolitan Court**, which in two of its judgments[27] held that those persons not recognised as a national by any state and therefore not being able to obtain any country's travel document cannot, basically *per definitionem*, lawfully stay in Hungary.
- Unlawfully arriving or staying foreigners **may submit an asylum claim at any point of their return or expulsion procedure**, which will have an automatic suspensive effect on the latter measures. This means that regardless of the statelessness-specific protection regime, it is anyway possible to delay the enforcement of an expulsion or return measure by submitting an asylum claim. Consequently, allowing unlawfully arriving or staying foreigners to apply for stateless status would not change anything in this respect.
- This requirement is **unique in an international comparison**: none of the other functioning protection mechanisms set forth such a prerequisite.[28]

The lawful stay condition is **a frequently quoted argument** in negative decisions. The following conclusive statements can be formulated with regard to the application of this provision:

- Unlawful stay **does not appear to result in an automatic denial of admission** to the statelessness determination procedure. Unlawfully staying applicants can also file a claim, which will be considered (most probably rejected) on the merit. Unlawful stay in the majority of relevant decisions is one of the grounds for rejection. Nevertheless, in two decisions[29] the OIN refrained from an in-merit consideration of the case (e.g. the assessment of potential nationality ties), based on the mere fact of a previous unlawful entry to Hungary. In addition, there is no data available regarding how many potential applicants may have been verbally discouraged by officers to submit a claim for stateless status with this argument.
- There are **divergent practices regarding whether irregularly arrived asylum-seekers gain lawful stay** by the mere fact of submitting an asylum claim (and whether thus they become entitled to claim stateless status). The OIN constantly argues that a humanitarian residence permit issued on the ground of an on-going asylum procedure does not constitute a proof of lawful stay, if the asylum-seeker previously entered Hungary in an unlawful manner. On the other hand, the Metropolitan Court in two of its judgments[30] held that this interpretation

27 24.K.31.412/2009/6, 15.K.35.063/2008/10

28 There is no requirement of lawful stay in the Spanish, French, Belgian and Mexican regulation; nor is it required in the Italian judicial statelessness determination procedure.

29 106-3-17832/5/2009-Ált, 106-6-10102-4/2007-ált.

30 24.K.31.412/2009/6, 15.K.35.063/2008/10

is erroneous. Both judges argued that persons holding a humanitarian residence permit or temporary residence permit *(ideiglenes tartózkodásra jogosító igazolás)* are lawfully staying in Hungary, even if these documents (not based on the fulfilment of the general conditions of lawful stay) do not entitle them to acquire further rights. The Court's position does not appear to influence the OIN's practices on this matter, resulting in a worrying disregard of higher-instance judicial guidance.

- This requirement is **not always used in practice**: three decisions granted stateless status to applicants who were apparently "unlawfully staying" (according to the interpretation of the OIN).
- **Even genuine stateless persons can be rejected on the sole ground of unlawful stay**. In decision no. 106-1-31152/10/2009-Ht the OIN denied stateless status to an applicant, who was previously proved not to be the national of any relevant state (Croatia and Serbia-Montenegro), whose personal identity was not questioned and whose expulsion has already been suspended two times for reasons of practical impossibility (lack of necessary documents). The denial of protection for the mere reason of not being able to fulfil the usual conditions of lawful stay, to a person whose statelessness is established and perceived by the proceeding authorities, indicates a significant shortcoming in the protection mechanism in place.

The relatively **low number of applicants** for stateless status may also be indicative of the above concerns: between July 2007 and September 2010 only 109 persons submitted such a claim to the OIN.[31]

The restrictive rule in question **needs to be omitted as soon as possible**, in order to ensure compliance with Hungary's international obligations and to enable the entire protection regime for stateless persons to function properly.

I.4.3 Non-legislative Measures

The different legislative norms and procedural guarantees are not necessarily sufficient to ensure the access to protection of those in need. Experience shows that without due diffusion of information any protection regime remains void. Information about the possibility of seeking protection, the main procedural modalities and the status available after a positive decision is necessary not only for those who could potentially benefit from these, but also for the authority's own staff, as well as those lawyers and social workers who are not yet entirely familiar with the legal context. In the present case, the effective provision of information is even more crucial than in other (asylum, immigration) matters:

- The relevant **caseload is very small**; therefore most decision-makers, lawyers and social workers only rarely face cases of stateless persons, not enabling them to accumulate a significant amount of practical experience.
- Statelessness may sometimes be a **hidden characteristic**, where the capacity of those concerned to "recognise" this condition can be limited and therefore easily understandable guidance is indispensable.

[31] Source: OIN

- Unlike in the case of asylum, there is usually **little awareness** about existing protection regimes for stateless persons, both among state officials and those who need protection.[32]
- The entire staff of the alien policing authority has the **obligation to inform** a foreigner in the case of whom the possibility of statelessness arises about the relevant procedure and protection measures. Similarly, if another authority is approached with a claim for stateless status, it has the obligation to forward it to the competent regional directorate of the OIN.[33] The vast majority of these persons are not trained on statelessness and have limited or no knowledge about the relevant provisions in force (as this issue does not constitute a part of their daily work).

Despite all these factors, there is **hardly any information available** on the statelessness determination procedure:

- The OIN (unlike its French, Spanish or Belgian counterpart) **does not publish any information** about this procedure on its website (while there are twenty-one different guidance documents only on alien policing procedures, at least in Hungarian).
- There are **no specific information leaflets** (for comparison: the Hungarian Helsinki Committee's information leaflet on the asylum procedure is available in ten languages at all places where potential asylum-seekers are detained or accommodated, similarly to a number of other information materials).
- Training on statelessness and the relevant procedural framework is **not part of the standard training scheme** of those in touch with potential applicants (e.g. alien policing jail staff, immigration and asylum officers, etc.).

This information gap needs to be addressed as soon as possible.

I.5 Procedural Framework

The Hungarian statelessness determination procedure has been in the international spotlight in recent years, mainly due to the sophisticated and in many aspects protection-oriented legal provisions it is based on.

I.5.1 The Administrative Procedure

The **regional directorate of the OIN**, competent according to the applicant's place of accommodation, stay or residence, is in charge of conducting the statelessness determination procedure. The OIN first holds a **preliminary interview**[34], which includes

[32] This is a common phenomenon in all countries operating a similar mechanism, according to the recent research experience of the author.

[33] For more reference on these two statements see Sub-Chapter I.4.1

[34] Aliens Government Decree, Section 161 (1)

- the provision of information about the applicant's rights and obligations; as well as
- the registration of her/his personal data (name, place and date of birth, marital status, identity and travel documents, educational background, profession, etc.).

The OIN shall register all this information in a written **interview record**, which shall be signed by the applicant and the interpreter (if relevant).[35]

Afterwards, an **in-merit interview** is held, where the applicant shall explain the reasons for applying for stateless status and shall submit the relevant proofs (if not yet done so).[36] The OIN shall pass a decision within **two months**.[37] In practice, when information needs to be acquired from foreign authorities (a frequent necessity), the OIN suspends the procedure, which typically causes the timeframe to exceed the length set by law. Unlike in "standard" alien policing matters, **administrative appeal is not possible** against negative first-instance decisions on statelessness determination.[38] The **national security services** can interview the applicant and shall receive a copy of the decision.[39]

While in most countries with a similar protection regime the task of statelessness determination is delegated to a centralised asylum authority[40], the law-maker opted for a **semi-centralised administrative structure**. The authority in charge is not the asylum, but the **alien policing (immigration) branch** of the OIN, which is divided into seven regional directorates. The low number of cases would make possible the handling of these procedures by one single officer or unit and thus facilitating more uniformity in decision-making. In the current structure, centralisation is only ensured to some extent at the regional level: at each directorate **a limited number of officers** (usually one or two) are in charge of statelessness determination. While this level of specialisation may be considered positive, the **divergence between certain practices** is apparent with regard to issues such as evidentiary assessment or the interpretation of the lawful stay requirement.[41]

It is true that statelessness determination often requires procedural acts alien to (or even prohibited in) asylum procedures, such as contact and exchange of information with the authorities of the country of origin. On the other hand, several evidentiary and procedural characteristics (lower standard of proof, protection-oriented character, international legal obligations, etc.) approximate statelessness determination to the field of asylum. In this respect, it would have probably been more appropriate to delegate this task to the Asylum Directorate of the OIN (note in this respect for example the misunderstanding of the relevant burden and standard of proof in some cases[42]).

35 Aliens Government Decree, Section 161 (2)–(3)

36 Aliens Government Decree, Section 162 (1)–(2)

37 Aliens Government Decree, Section 166 (1)

38 Aliens Act, Section 80 (1)

39 Aliens Government Decree, Sections 165 and 166 (4)

40 For example Spain and France

41 See Sub-Chapters I.4.2, I.6.2 and I.7.2

42 See Sub-Chapters I.6.1 and I.6.2

I.5.2 The Judicial Review Procedure

Unlike administrative appeal, judicial review may be sought against first-instance rejections of stateless status, through an application lodged within fifteen days following the communication of the decision.[43] The Budapest-based **Metropolitan Court** *(Fővárosi Bíróság)* has exclusive competence in such cases and shall bring a judgment within ninety days.[44] A limited group of administrative law judges are in charge of these cases, the infrastructure of judicial review is therefore significantly **centralised**. If the Metropolitan Court deems the OIN's decision unlawful, it can either quash it and order a new administrative procedure, or can decide the case directly and grant stateless status (the latter is an extra element as compared to most alien policing procedures). In specific cases, further extraordinary judicial review may be sought at the **Supreme Court** *(Legfelsőbb Bíróság)*.[45]

I.5.3 Procedural Safeguards

In addition to the flexible (lowered) standard of proof[46] and a possibility to lodge a claim for stateless status through a verbal statement, some other important procedural safeguards apply in these procedures, showing the protection-oriented character thereof and evoking similar provisions in asylum proceedings:

- Both the OIN and the Metropolitan Court are **obliged to interview** the applicant, who has to right to **use her/his mother tongue** in the procedure (and the costs of interpretation will not be charged to her/him).[47]
- The authority has the duty to ensure the applicant's **access to legal assistance**.[48] Applicants for stateless status are **entitled to state-funded legal aid**, without the examination of their financial situation (based on the simple declaration of the person concerned that she/he is in need of this form of support).[49] The applicant's authorised representative is entitled to be present at the interviews and shall be informed about the time of the interview five days in advance.[50] According to the experience of the Hungarian Helsinki Committee, the representative is permitted to make comments or ask questions during the interviews.
- The **UNHCR** is granted **special rights** in the procedure and the alien policing authority shall take the UNHCR's opinion into consideration.[51] Section 81 of the Aliens Act stipulates that

> The representative of the United Nations High Commissioner for Refugees may take part in any stage of the statelessness determination procedure. Accordingly, the representative

43 Aliens Act, Section 80 (1)–(2)

44 Aliens Act, Section 80 (3)

45 Act III of 1952 on Civil Proceedings, Sections 270 and 340 (2)

46 See Sub-Chapter I.6.2

47 Aliens Act, Sections 77 (1)–(2) and 80 (3)

48 Aliens Act, Section 77 (3)

49 Act LXXX of 2003 on Legal Aid, Section 5 (2) (d)

50 Aliens Government Decree, Section 163 (3)

51 Aliens Government Decree, Section 164 (1)

(a) may be present at the applicant's interview;

(b) may give administrative assistance to the applicant;

(c) may gain access to the documents/files of the procedure and may make copies thereof;

(d) shall be provided with the administrative decision and the court's judgement by the alien policing authority.

- The proceeding authorities can accept the **foreign-language documents** submitted by the applicant in support of her/his claim **without a certified translation and an apostil**.[52]

These exemplary procedural safeguards appear to be **duly applied in practice**.

In case of **unaccompanied minor** applicants, an *ex officio* appointed **case guardian** represents the child in the procedure (a provision the application of which is yet impossible to monitor due to a lack of relevant cases).

I.5.4 The Applicant's Status

The current legislative framework **does not foresee any specific provisions** regarding the legal status or entitlements of the applicant for stateless status. This means that the applicant does not benefit from any specific form of financial support or accommodation, and her/his expulsion or extradition is not explicitly prohibited while the procedure is pending. This *lacuna* reflects the unjustifiably restrictive requirement of lawful stay for the submission of a claim for stateless status[53], i.e. as the person already fulfils the general conditions of lawful stay (accommodation, livelihood and health insurance) in Hungary; there is no need for special support or for protection against expulsion.

The non-existence of a proper legal condition and social support mechanism for applicants for stateless status is a **major gap** in the current protection regime, showing a clear difference as compared to the status of asylum-seekers.

I.6 Evidentiary Framework

Proving statelessness is a difficult task, which only partly resembles to the establishment of a well-founded fear in refugee status determination. In lack of procedural norms from the 1954 Statelessness Convention or from soft law on how to establish the fact of statelessness, the law-maker faces a considerable challenge when creating a stateless-specific protection mechanism. In recent years, however, certain norms have crystallised in legislative and judicial practices, and the Hungarian regulation played an important role in this process.

[52] Aliens Government Decree, Section 164 (2)

[53] See more details in Sub-Chapter I.4.2

I.6.1 Burden of Proof

In the Hungarian statelessness determination procedure, the **burden of proof lies principally on the applicant**.[54] In reality, it would be illusory to expect that most foreigners claiming not to be the citizen of any country could present sufficient evidence to prove or substantiate this fact. Practice shows that proceeding authorities or courts often need to contact the consular representations or other state authorities in order to confirm or disprove the existence of a nationality tie. Meanwhile, the applicant may rarely have a similar chance for obtaining this information from the same sources, as individual requests (mostly if submitted by a non-citizen) are more frequently neglected than those coming from another state. Reflecting this, the Aliens Act stipulates that the **alien policing authority provides administrative assistance** in the establishment of facts through the Hungarian diplomatic representations.[55] In addition, similarly to all administrative authorities and procedures, the OIN has in the statelessness determination process **the obligation to establish all the relevant facts of the case**.[56] Considering all these rules, it can be summarised that in the Hungarian statelessness determination procedure the burden of proof principally lies on the applicant, but in practice the alien policing authority shall also actively contribute to the establishment of facts.

This principle appears to be **duly applied in most examined decisions**, as potential nationality ties are often assessed as a joint or shared effort by the applicant and the OIN, and several decisions mention that the latter approached foreign authorities upon the request of the claimant. Nevertheless, one decision[57] from 2009 exemplifies a serious misunderstanding of the above-described principles. The OIN rejected the claim of a former Soviet citizen, even though his lack of nationality had already been officially proved with respect to all relevant countries[58] in a previous alien policing procedure (in 2005–2006) and no indication whatsoever was referred to about the likelihood of obtaining any of these nationalities since then. To support its rejection, the OIN argued that

> In the statelessness determination procedure the burden of proof lies on the applicant. [The applicant] did not submit any document regarding his nationality in the procedure. Considering that the applicant did not prove his statelessness, I refuse to renew his stateless humanitarian residence permit.

In addition to the concerns about the excessive exigency in proving the facts[59] a misinterpreted burden of proof (according to which the OIN is not supposed to make any effort to establish the facts of the case) can also be observed in this rather exceptional decision.

54 Aliens Act, Section 79 (1)

55 Aliens Act, Section 79 (2)

56 Act CXL of 2004 on the general rules of administrative procedures and services, Section 3 (2) (b)

57 106-1-40670/6/2009-Ht

58 Through official communication by the diplomatic representation of Ukraine, Georgia and the Russian Federation

59 See details in next sub-chapter

I.6.2 Standard of Proof

The Hungarian regulation sets a **flexible (lowered) standard of proof** in statelessness determination, by stipulating that

> In the statelessness determination procedure, the applicant shall **prove or substantiate** her/his statelessness […][60]

The term "substantiate" *(valószínűsít)* was copied from the similar Hungarian provision referring to asylum procedures, and it reflects the UNHCR terminology describing the applicable standard in refugee status determination. By doing so, the law-maker explicitly acknowledged the practical difficulty of establishing statelessness and the protection-oriented objective of the procedure.[61]

Hungary being a civil law jurisdiction, the standard of proof is **not described or debated in details** in administrative or judicial decisions. A significantly lowered standard of proof is apparently **applied in some decisions**, where stateless status is granted without further examination of any "potentially acquirable nationality" or where an expired passport and country information were accepted as sufficient proof of the applicant's statelessness. On the other hand, there are some problematic decisions, in which the OIN set **exaggerated and erroneous requirements as to the proving of statelessness**, sometimes accompanied by the explicit omission of the term "substantiate" in the text of the decision.[62]

I.6.3 Guidance on the Establishment of Facts

Proving statelessness may be a particularly difficult or even impossible endeavour, considering that it means showing that a person is not a citizen of any of the approximately 200 states in the world. Therefore, the guidance provided by Section 79 (1) of the Aliens Act constitutes an exemplary regulation:

> In the statelessness determination procedure, the applicant shall prove or substantiate her/his statelessness in particular with regard to
>
> a) the country where she/he was **born**;
>
> b) the country of her/his former place of stay or **residence**;
>
> c) the country of nationality of her/his **family members and parents**.

In light of the practice it shall be concluded that this provision constitutes particularly useful guidance for decision-makers and it is generally **applied in due manner**. In all decisions examined the circle of the states of interest was determined according to the above rule and thus could be limited to a number of **maximum two or three countries**.

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60 Aliens Act, Section 79 (1)

61 See the Aliens Act's official justification by the Minister of Justice and Law Enforcement

62 Cf. "Claims refused on erroneous legal or evidentiary arguments" in Sub-Chapter I.7.2

All documents that may facilitate the stateless status determination process shall be attached to the application.[63] The OIN shall take its decision with regard to the information concerning the nationality regulation and registers of the states in question (see above), in particular considering

- the opinion of the **UNHCR**;
- the information provided by Hungarian **diplomatic representations** abroad (that the OIN shall contact upon request of the applicant);
- the information provided by **foreign state authorities**; and
- the proofs submitted by the **applicant**.[64]

This provision also seems to be **duly applied in practice**, as all the above methods are considered on a regular basis (as apparent from the decisions examined). The necessity of applying a flexible evidentiary framework (in which information can be obtained from a variety sources) is well demonstrated by the following example. Some decisions refer to a policy according to which Russian authorities refuse to provide information on a person's potential Russian nationality to the OIN, qualifying this as sensitive personal data, which can only be disclosed upon the request of the person concerned. Meanwhile, other decisions mention that the same Russian authorities actually shared this information when approached by the OIN. Such inconsistent policies show how difficult it may be to confirm one's lack of nationality and to identify a generally applicable method for this purpose.

Administrative decisions and judgments do not usually set interpretative principles on evidence assessment or the practical application of the above provisions. Nevertheless, an interesting example could be found in judgment 24.K.31.412/2009/6 of the Metropolitan Court, which held that

> [...] the claimant's previous asylum procedures and his expulsion from the Republic of Hungary as auxiliary punishment in a criminal procedure are irrelevant factors regarding the establishment of statelessness.
>
> […] it is the Convention that sets the material conditions of the recognition of stateless status, according to which a stateless person is a person who is not recognised as a citizen by any country under its national law. As compared to the Convention, the Aliens Act only contains the procedural rules of the statelessness determination procedure, it cannot establish further material conditions for the recognition of statelessness.

This provides important guidance with regard to the principle that statelessness determination is a rather factual, objective analysis, differing from asylum procedures, in which a number of complex subjective and objective elements may be considered when establishing the need for international protection. The judgment (which rejected the claim on other objective grounds) implicitly suggests that **the question whether or not the person is "of good conduct" is irrelevant** regarding her/his eventual statelessness, and such factors should not play a role in this process.[65]

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63 Aliens Government Decree, Section 160 (3)

64 Aliens Government Decree, Section 164 (1)

65 Provided that the exclusion clauses set by Article 1 (2) of the 1954 Statelessness Convention are not applicable.

I.7 Decision-making Practices

I.7.1 Statistics

Since the entry into force of the Aliens Act (which enacted the currently existing statelessness determination procedure) **the number of applicants for stateless status has remained very low, while the recognition rate has constantly been high**.[66]

	Applicants	Recognition	Rejection	Recognition rate[67]
2007 July–December	14	3	2	60%
2008	47	20	5	80%
2009	31	19	10	66%
2010 January–September	17	14	6	70%
SUM	**109**	**56**	**23**	**71%**

Only an extremely **low number of rejected applicants submitted a motion for judicial review** to the Metropolitan Court, but none of these appeals were accommodated on the merit:[68]

	Motions for judicial review	Modified administrative decision	Quashed administrative decision	Rejection
2008	2	0	0	0
2009	1	0	0	2
2010 January–June	2	0	0	2

I.7.2 Decision-making Trends and Policies

This sub-chapter aims to provide a brief (albeit not exhaustive) overview of the actual decision-making practices of the OIN and the Metropolitan Court, in order to highlight how the Hungarian statelessness determination procedure functions in practice and what groups can have access to protection through this mechanism.

The profile of **those granted protection** in the framework of the Hungarian statelessness determination procedure can be described with the following patterns (based on the decisions analysed):

- Nearly all persons granted protection are **Palestinians** or persons originating from the **former Yugoslavia** or **former Soviet Union** (the latter constituting the most numerous group).

66 Source: OIN

67 Recognitions / (Recognitions + Rejections)

68 Source: Metropolitan Court

- The vast majority of these individuals were **lawfully staying** in Hungary (according to the OIN's interpretation of lawful stay) when submitting their claim, with some potential exceptions.[69]
- Many have been living in Hungary **for several years or even decades**, some successful applicants were actually **born in Hungary**.
- **Men, women and children** are equally represented in this group.

Unlike in asylum procedures, **most positive decisions contain detailed justification**. However, five decisions were found not to provide any reasoning. While this is not contrary to the law[70], it represents a not fully consistent policy.

It is noteworthy that some successful applicants (all former Soviet citizens) **seem to fulfil all material requirements to be naturalised in Hungary** (instead of benefiting from stateless status). One applicant, for example, has been living in Hungary since 1984, has had permanent residence permit since 1987 and her mother was of Hungarian ethnic background.[71] Another person granted stateless status has been lawfully staying in Hungary since 1979 and both her husband and child were Hungarian citizens.[72] In a third case, the claimant has been living in Hungary since 1969, and has been married to a Hungarian citizen since 1970 (with a Hungarian national child).[73] Based on the information from the relevant decisions it is not understandable why these persons did not become Hungarian citizens long ago, as they appear to be entitled to it (and even to naturalisation under preferential rules). While the willingness to naturalise depends on the applicant (and such individual factors are not apparent from the decisions examined), this phenomenon may indicate shortcomings in the Hungarian regime for naturalisation and the reduction of statelessness.[74]

The vast majority of recognitions are based on the **correct application of evidentiary provisions** as set forth by the Aliens Act and its executive government decree.[75] In practice, the **confirmation of the lack of a nationality tie** by all relevant countries' authorities is deemed as sufficient evidence of statelessness (see exceptions later). In some cases **documents** (e.g. an expired passport) and **legal provisions** (e.g. nationality legislation of the potential country of nationality) are equally considered as valid evidence.

Rejected applicants constitute a rather heterogeneous group, which can be divided into the following categories:

69 See Sub-Chapter I.4.2

70 Section 72 (4) (a) of Act CXL of 2004 on the General Rules of Administrative Procedures and Services enables administrative authorities to refrain from providing reasoning in their decision, in case the applicant's claim is entirely accommodated.

71 106-1-11727/4/2008-B

72 106-4-4200/7/2009-B

73 106-4-6200/2/2009-B

74 Cf. Sub-Chapter III.2

75 See Sub-Chapter I.6.3

1) **Manifestly unfounded** applications, where the existence of a nationality tie becomes evident during the administrative proceedings (six decisions).
2) Claims refused on the grounds of **unlawful stay and unclear personal identity** (five decisions, among which three concern applicants allegedly originating from Sierra Leone). In all these cases, the OIN declined to accept as reliable evidence of the applicant's statelessness the confirmation of the lack of nationality tie by relevant state authorities. The reasoning was that serious doubts arose regarding the genuineness of the applicant's personal identity and his country of origin, therefore the information provided by the relevant diplomatic representations may easily refer to a fictitious person and nothing proves that the applicant has ever been the citizen or habitant of the alleged country.
3) Claims refused on the **sole ground of unlawful stay** (three decisions).[76]
4) Claims refused for the **failure to submit documents** that would substantiate the applicant's statelessness before the deadline set by the OIN (two decisions).
5) Claims refused on **erroneous legal or evidentiary arguments**. Notwithstanding with the generally correct interpretation of the legal framework, three negative decisions were identified as raising concerns about the validity of the legal arguments used (all of them from the Budapest and Pest County Regional Directorate of the OIN):
   - 106-1-40670/6/2009-Ht: The OIN rejected the claim of a former Soviet citizen, even though his lack of nationality had already been officially proved with respect to all relevant countries[77] in a previous alien policing procedure in 2005–2006 (due to which he was provided with a humanitarian residence permit) and no indication whatsoever was referred to concerning the likelihood of obtaining any of these nationalities since then. To support its rejection, the OIN argued that the burden of proof lies on the applicant, who did not fulfil his obligation to prove his statelessness. This constitutes a misunderstanding of the evidentiary framework of stateless status determination and an apparent disregard of the lowered standard of proof (the word "substantiate" was not even used, as if the applicant had to "prove" the well-foundedness of his claim).
   - 106-1-21359/6/2010-Ht: The applicant has been lawfully staying in Hungary since 1976, with a permanent resident status at the time of submitting her application. The Embassy of Ukraine in Hungary officially confirmed that the applicant (whose personal identity was not in doubt) is not a Ukrainian citizen. No other country was considered as of relevance with regard to a potential nationality. However, the OIN rejected the claim based on the argument that the applicant's Ukrainian citizenship can be substantiated based on the country information provided by the OIN's Documentation Centre (according to which Ukrainian citizenship can be obtained both by the *jus sanguinis* and *jus soli* principle in certain circumstances). As the applicant's parents were born in Ukraine, the OIN concluded that she is entitled to obtain Ukrainian nationality; therefore there is a state which can recognise the applicant as its citizen. This decision is erroneous and is in breach of the 1954 Convention. The latter defines stateless persons

[76] See also Sub-Chapter I.4.2

[77] Through official communication by the diplomatic representation of Ukraine, Georgia and the Russian Federation

as those not considered as a national by any state under the operation of its law and does not enable for the assessment of theoretical possibilities to obtain a certain nationality.[78] In addition, it is a worrisome speculation to conclude that the applicant (who has lived outside of her country of origin for more than three decades) can easily obtain Ukrainian nationality, when the state in question has already confirmed that this is not the case.

– 106-1-3188//2010-HT: The applicant was born in Kazakhstan and had his habitual residence in Uzbekistan (a country not party to the 1954 Convention). He held a special travel and identity document for stateless persons issued by Uzbek authorities, which was accepted as a proof of his statelessness by the OIN. His claim was nevertheless rejected, as the OIN argued that the rights ensured by the Hungarian stateless status do not largely differ from those that the applicant enjoys in Uzbekistan. As he already holds a stateless identity document ensuring a set of rights in another country, the grant of stateless status was deemed unnecessary. While there is undoubtedly some commonsense logic behind this argumentation, it does not have any foundation in the 1954 Convention. Article 1 (1) (ii) of the latter only enables for the exclusion of those recognised by the country in which they have taken residence as having the rights and obligations which are attached to the *possession of the nationality* of that country. The OIN did not question that there are differences between the rights enjoyed by Uzbek nationals and stateless persons in Uzbekistan. The 1954 Convention does not refer to any refugee law-like concept of "protection elsewhere" or "safe third country", therefore the OIN's argumentation is not in line with the relevant international obligations and domestic law.

A certain **divergence can be noted between regional practices**. For example, some claims similar to that of the above-referred (rejected) Ukrainian applicant were accommodated by other regional directorates of the OIN.

Given the extremely low number of cases it is difficult to draw any general conclusion regarding the **judicial review** of statelessness-related administrative decisions. All four relevant judgments reject the appeal of the applicant on the merit; however, they also express disagreement with certain positions taken by the OIN (for example regarding the condition of lawful stay or the consideration of previous asylum or criminal procedures in decision-making about stateless status).[79] It must be emphasised that these decisions set forth **important principles** (aiming among others at ensuring the due compliance of international legal obligations), which unfortunately do not seem to have any concrete impact on the administrative practices in observation.

[78] Cf. *Expert Meeting – The Concept of Stateless Persons under International Law (Summary Conclusions)*, UNHCR, May 2010, Para. 16-17

[79] See Sub-chapters I.4.2 and I.6.3

I.8 Protection Status

I.8.1 Length and Renewal of the Authorisation to Reside

Stateless status entails the issuance of a **humanitarian residence permit** *(humanitárius tartózkodási engedély)* for its beneficiaries. According to the regulation in force at the time of writing the present report, the validity of the humanitarian residence permit **cannot exceed one year**.[80] This restrictive approach can be criticised from various aspects:

- Statelessness is usually **a protracted form of a serious human rights violation**, from which usually the only way out is the time-consuming process of acquiring a new nationality.[81] Experience shows that statelessness hardly ever "disappears" from one year to another, for example a nationality once lost is very rarely recovered. In the spirit of the 1954 Statelessness Convention, statelessness should not be looked at as a protection status with a limited temporary character, but rather as a refugee-like situation with similar protection needs.
- The obligation to renew one's residence permit every year is **far more than a simple procedural act**. Residence limited in time may often seriously limit a foreigner's access to the labour market[82] and thus her/his possibility to become self-reliant and integrated into the host society. In addition, it may cause a continuous feeling of insecurity, entailing negative psychological consequences, particularly for persons fleeing serious human rights violations.

In light of these arguments, the law-maker decided to extend the validity of the humanitarian residence permit of stateless persons to **three years** in the framework of a large-scale reform of the migration and asylum legislation in the autumn of 2010 (the new regulation entering into force on 24 December 2010).[83] Nevertheless, an unreasonable restriction remained in place, as stateless persons **can only renew their residence permit for one-year periods** once the first three years have expired. This differentiation between the validity periods at first issuance and upon renewal is rather unprecedented in Hungarian law and raises serious questions about any apparent logic behind. It is true that after three years stateless persons can apply for permanent residence, however in order to do so they need to fulfil a number of difficult material conditions, which is far from being an easy option considering for example the limited access to the labour market the humanitarian residence permit enables for.[84]

I.8.2 Accommodation and Financial Support

The law **does not foresee any accommodation arrangements or housing allowances** for stateless persons. They are therefore treated in this respect in a less favourable manner than

80 Aliens Act, Section 29 (2) (a)-(b)

81 See Sub-chapter III.2

82 See Sub-chapter I.8.3

83 Act CXXXV of 2010 on the Amendment of Certain Acts Related to Migration, Section 41

84 See Sub-chapters I.8.3 and I.8.8

refugees, beneficiaries of subsidiary protection and those granted any other non-EU-harmonised protection status (tolerated stay, victims of trafficking, etc.).[85]

There are **no specific forms of financial support** available for stateless persons, a largely unfavourable treatment as compared to most other protection statuses.

These characteristics indicate that stateless status is probably perceived as a "practical solution" for certain lawfully staying foreigners without a nationality, rather than a true protection status – similar to that granted to refugees – for stateless forced migrants.

I.8.3 Access to the Labour Market

Stateless status ensures **only limited access to the labour market**, as stateless persons need to obtain a **work permit** *(munkavállalási engedély)* prior to their employment. Far from being a mere technical formality, this limitation may render access to employment particularly burdensome, considering the limited validity of the humanitarian residence permit and the usual procedural delays and difficulties in obtaining a work permit.[86]

In addition, a work permit can only be issued for stateless persons if there is no suitable Hungarian or EEA-citizen[87] applicant for the same post.[88] This condition is fulfilled if:

- The employer notified her/his need for labour force to the competent labour affairs authority fifteen to sixty days prior to applying for a work permit for a third-country national (specifying the necessary skills and qualifications);
- No registered job-seeker of Hungarian or EEA nationality (or spouse of a Hungarian or EEA national), having the necessary skills and qualifications, applied for the job between the date of the above notification and the application for a work permit for a third-country national;
- The third-country national applying for the job has the necessary skills and qualifications.

This procedure creates a further bureaucratic obstacle to the successful employment and integration of stateless persons, as most employers would refrain from becoming involved in such a lengthy and cumbersome procedure.[89]

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85 See Gábor Gyulai, *Practices in Hungary Concerning the Granting of Non-EU-Harmonised Protection Statuses*, European Migration Network, August 2009, pp. 39–41. http://helsinki.hu/dokumentum/Non-EU-Harmonised-Protection-Statuses-Hungary%20final.pdf

86 Even according to the best scenario, several months may pass before obtaining a work permit, the validity of which cannot exceed the validity of the residence permit. With a promise of a work permit valid only for a couple of months, most employers are discouraged to employ stateless persons. This situation may improve with the extension of the duration of the humanitarian residence permit to three years upon the first issuance (see Sub-Chapter I.8.1)

87 European Economic Area, including the EU, Norway, Iceland and Liechtenstein

88 Decree 8/1999 (XI. 10.) of the Ministry of Social and Family Affairs on the Employment of Foreigners in Hungary, Section 3 (1)-(2).

89 This conclusion is confirmed by the Menedék Association for Migrants, which has been providing refugees and migrants with free social assistance for several years.

I.8.4 Health Care

Foreigners in need of international protection – such as stateless persons – are often unable to quickly reach a sufficient level of self-reliance (in the form of a decent employment, private accommodation, etc.) in the host country, which could help them to become eligible for benefiting from the general health insurance scheme and/or to pay for private health care insurance or services. Therefore, it is important to analyse to what extent stateless persons who are not otherwise covered by the mainstream public social security system may benefit from public health care services.

According to Section 5 (1) of Act LXXX of 1997 on Social Security Services, the Entitlement to Private Pension and the Funding of These Services, entitlement to social security services (including health care) is usually **linked to gainful employment or other lucrative or productive activities** (employees, private entrepreneurs, corporate entrepreneurs, members of cooperatives, persons following professional education based on an "education contract", church personnel, etc.). A stateless person staying in Hungary without any such entitlement to social security can yet benefit from **basic public health care services** (similarly to any person residing on Hungarian territory).[90] However, the scope of these services is quite limited and covers only:[91]

- Vaccinations, epidemic examinations, mandatory medical examinations, quarantine, transportation of persons suffering from a contagious disease;
- Ambulance services if the person needs immediate help;
- Health care services in emergency cases and afterwards until the stabilisation of the patient's conditions;
- Health care services in case of a disaster.

Some other public health care services (such as pre-natal and maternity care) are only available to those who already have a **place of residence** *(lakóhely)* in Hungary.[92] The granting of stateless status does not automatically mean the right to establish a place of residence in this sense; stateless persons can only do so when they obtain long-term resident status.[93]

Therefore, from the point of view of access to the public health care system, stateless status *per se* provides **limited entitlements** and significantly less favourable conditions than refugee status or subsidiary protection for instance. The following examples show what this difference may mean in practice (the statements all refer to persons who are not covered by the general public social security system – e.g. for not being employed):

- A refugee within two years following the recognition of her/his status has the right to continuous free-of-charge medical care under the scope of a general practitioner's services, while a stateless person has to pay for the same service.

90 Act CLIV of 1997 on Health, Section 142 (2)

91 Act CLIV of 1997 on Health, Section 142 (2)–(3)

92 Act CLIV of 1997 on Health, Section 142 (3)

93 See Sub-Chapter I.8.8

- A refugee within two years following the recognition of her/his status has the right to free emergency dental care, while a stateless person has to pay for this.
- While a pregnant woman with stateless status has the right to give birth to her baby in a hospital free of charge[94], a refugee woman within two years following the recognition of her status can also benefit from free-of-charge pre-natal care and maternity support during her pregnancy.
- Following a medical intervention in case of an emergency, a refugee within two years following the recognition of her/his status is entitled to related health care services free of charge until her/his recovery, a stateless person only until the stabilisation of her/his conditions.

I.8.5 Access to Education

Pursuant to Section 6 of Act LXXIX of 1993 on Public Education children between six and eighteen years of age must to attend primary and secondary school in Hungary. This equally applies to children with refugee status, subsidiary protection or stateless status, after at least one year of stay in Hungary (or earlier, upon the request of the parents).[95] Furthermore, Section 110 (4) of the Act stipulates that non-Hungarian citizens may benefit from public education (including special pedagogical services) under the same conditions as Hungarian nationals. This means that stateless children enjoy **access to free-of-charge primary and secondary education** in Hungary.[96]

As for higher education, stateless persons may only have **access to higher education on a fee-paying basis**[97], while for instance refugees and beneficiaries of subsidiary protection are entitled to enrol in state-funded studies in a higher education institution.[98] This double standard is particularly unreasonable considering that refugees and stateless persons usually have the same need for durable international protection and consequently for meaningful integration opportunities. Stateless persons may usually not have the necessary financial means to enrol in costly fee-paying university courses and may therefore see themselves excluded from an important integration opportunity in the society where they are likely to live a large part of their life. In the light of the low number of recognised stateless persons, there can be no reasonable financial or strategic motivation behind this policy.

94 As a situation considered as "emergency" according to the Annex of Decree 52/2006 (XII. 28.) of the Ministry of Health on Emergency Health Care Services

95 Act LXXIX of 1993 on Public Education, Sections 110 (1) and 110 (3); Act LXXX of 2007 on Asylum, Section 17 (1)

96 Act LXXIX of 1993 on Public Education, Section 114

97 Act CXXXIX of 2005 on Higher Education, Section 39 (2)

98 Act CXXXIX of 2005 on Higher Education, Section 39 (1) (b); Act LXXX of 2007 on Asylum, Section 17 (1)

I.8.6 Travel Document

Stateless persons – in line with the provisions of the 1954 Statelessness Convention – are provided with a **specific, bilingual (English and Hungarian) travel document**.[99] The travel document is machine-readable, ICAO-compliant[100] and valid for **one year** (and can be renewed once for six months), and it cannot extend beyond the validity of the stateless person's residence permit.[101]

The following table shows the number of persons to whom the OIN issued a travel document based on the 1954 Statelessness Convention:[102]

	Persons receiving Convention travel document
2007 July–December	28
2008	80
2009	98
2010 January–September	55

I.8.7 Family Reunification

Sections 2 (d), 13 and 19 of the Aliens Act set the legal framework of family reunification of third-country nationals and stateless persons in Hungary. According to these provisions, beneficiaries of stateless status (as holders of a humanitarian residence permit) are **eligible for family reunification**. The scope of "family members" in this respect covers:

- Spouse;
- Under-age child (including adopted child(ren) and the spouse's child(ren), if the spouse has custody);
- Parents, provided that they are dependant on the foreigner staying in Hungary;
- Other direct-line relatives (e.g. brother or sister), if they cannot care for themselves due to medical reasons.

For a successful application for family reunification, the following **material conditions** should be fulfilled in case of the family member, for the entire period of stay in Hungary:[103]

- Her/his livelihood is ensured (the family has the necessary financial means or regular income to provide for the family member's needs and to ensure her/his return to the country of origin, if necessary);

99 Aliens Act, Section 85 (1); Aliens Government Decree, Section 168 (2)

100 Fulfils the requirements established by the International Civil Aviation Organisation

101 Aliens Act, Section 85 (2); Aliens Government Decree, Section 168 (2)

102 Source: OIN

103 Aliens Act, Section 13 (1); for detailed rules on the practical application of these provisions see Sections 29 and 56 of the Aliens Government Decree. Note that there is no exact threshold to establish that the livelihood of foreigner is ensured in Hungary, and alien policing officers assess this condition on a discretionary basis.

- Her/his accommodation is ensured;
- She/he is entitled to the full range of health care services (as family members are usually not entitled to social security services upon arrival, this typically means a rather costly private insurance, at least for the first period of their stay);
- She/he holds a valid travel document recognised by the Republic of Hungary;[104]
- The family link between the persons in question is verified with documentary evidence or in any other credible manner.

Preferential conditions applicable for refugees (i.e. exemption from material conditions within six months following the recognition of refugee status) do not apply to stateless persons. This means that stateless forced migrants may often see themselves impeded to reunite with their families, as the fulfilment of strict material conditions may set a significant obstacle, particularly with a limited access to the labour market.[105]

It is a cause for concern that Hungary, unlike most EU member states, **does not have any alternative regime** (e.g. one-way *laissez-passer*) in place for those who **do not have a valid travel document** but otherwise fulfil all the necessary conditions of entry. In practice, this means that stateless family members often not holding a valid travel document, or even nationals of failed states (such as Somalia) are unable to apply for family reunification.

I.8.8 Permanent Residence

Currently, Hungary has in place three different regimes for obtaining the right of permanent residence in the country, two of which are of relevance for stateless persons[106]: the **"national permanent residence permit"** *(nemzeti letelepedési engedély)* and the **"EU permanent residence permit"** *(EK letelepedési engedély)*. The existence of these two parallel regimes is due to the fact that Hungary decided to maintain its previous long-term resident status (as a more favourable regime in some aspects) in the course of the **EU Long-term Residence Directive's**[107] **transposition.**

Both regimes foresee a common list of **material conditions.** In both cases, an applicant shall show that[108]

- Her/his livelihood is ensured;
- Her/his accommodation is ensured;

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104 For the list of such travel documents see Government Decree 328/2007 (XII. 11.) on the Recognition of Travel Documents for the Purposes of Entry in Hungary by Third-Country Nationals.

105 See Sub-Chapter I.8.3

106 The third one is available for third-country nationals already obtained the right to long-term residence in another EU member state.

107 Council Directive 2003/109/EC of 25 November 2003 concerning the status of third-country nationals who are long-term residents

108 Aliens Act, Section 33 (1); for detailed rules on the practical application of these provisions see Section 95 of the Aliens Government Decree. Note that there is no exact threshold to establish that the livelihood of foreigner is ensured in Hungary, and alien policing officers assess this condition on a discretionary basis.

- She/he is entitled to the full range of health care services (through her/his entitlement to social security services or is able to pay for them);
- She/he holds a valid travel document recognised by the Republic of Hungary.[109]

The law also stipulates additional **negative conditions**: it is not possible to obtain a permanent residence permit with a criminal record (unless the person has been absolved from its legal consequences), with a ban on entry or if the permanent residence of the person concerned would constitute a risk to national security.[110]

The main differences between the two regimes are the following:

- The national permanent residence permit requires **three years** of continuous and lawful stay, while the EU permanent residence permit requires **five years**.[111]
- Only the EU permanent residence permit entails the wide set of rights attached to long-term residence in another EU member state (including that of settling in another member state and enjoying a status similar to EU-nationals in many aspects).[112]

Stateless persons can apply for both statuses **under the general conditions**.

I.9 Conclusion and Recommendations

While the Hungarian statelessness determination procedure can be praised for the **different exemplary procedural safeguards** it applies (mandatory hearing, access to legal assistance, the role of the UNHCR, the flexible standard of proof and evidentiary framework, etc.), the **condition of lawful stay** when submitting a claim for protection questions the actual usefulness of these positive measures. This unreasonably restrictive condition (unprecedented in other similar protection mechanisms), **may undermine the entire positive protection framework**, as it excludes those most in need from even the possibility of asking for protection. Practice shows that the protection-oriented procedural safeguards set by law are in most cases duly applied, even though some (rare) serious shortcomings can also be witnessed.

The Hungarian stateless status, while not explicitly contradicting the "flexible" rules set by the 1954 Statelessness Convention, **falls short of ensuring a favourable protection status** which would significantly facilitate integration and would reflect the usually durable protection needs

[109] Aliens Government Decree, Section 94 (1). For the list of recognised travel documents see Government Decree 328/2007 (XII. 11.) on the Recognition of Travel Documents for the Purposes of Entry in Hungary by Third-Country Nationals.

[110] Aliens Act, Section 33 (2)

[111] Aliens Act, Sections 35 (1) (a) and 38 (1). In case of the national permanent residence permit, the condition of "continuous" stay is yet fulfilled if the applicant left Hungary for periods not longer than 4 months, and the periods spent outside of the country altogether do not exceed 270 days in the 3 years prior to application (Aliens Act, Section 35 (2)). These periods in case of an EU permanent residence permit are 6 months, 300 days and 5 years respectively (Aliens Act, Section 38 (6)).

[112] See Long-term Residence Directive, Articles 11, 12, 14 and 21

of its beneficiaries (e.g. no support and accommodation measures, limited access to the labour market, only emergency health care, exclusion from state-funded higher education, etc.).

In order to ensure the effectiveness of the Hungarian protection regime for stateless persons the following recommendations are made:

Recommendation 1 – Hungarian law should ensure that persons falling under the scope of Article 1 (1) of the 1954 Statelessness Convention and not excluded under Article 1 (2) of the same instrument shall be granted protection. Section 78 (1) (b) of the Aliens Act needs to be amended to this end.

Recommendation 2 – In order to make the provisions aiming at facilitating the access to procedure (Section 160 (1) of the Aliens Government Decree) effective and functional, asylum, immigration and police officers who do not deal with statelessness as part of their daily work should be duly trained on this issue. A short information note in Hungarian language could facilitate this process.

Recommendation 3 – The OIN should be enabled to initiate statelessness determination procedures *ex officio* if the person concerned is an unaccompanied minor.

Recommendation 4 – Lawful stay should cease to be a pre-condition of submitting an application for stateless status in order to ensure conformity with international law and to enable the Hungarian stateless protection mechanism to become truly functional. Section 76 (1) of the Aliens Act needs to be amended to this end.

Recommendation 5 – The OIN is recommended to post a short multilingual information note on the statelessness determination procedure on its website. The Hungarian Helsinki Committee and the UNHCR should prepare and disseminate further information materials.

Recommendation 6 – A special status for applicants for stateless status should be created. This status should be similar to that of asylum-seekers under Hungarian law, at least with regard to the suspensive effect on expulsion measures and basic housing and support arrangements (for those in need).

Recommendation 7 – The OIN, the Ministry of the Interior, the Metropolitan Court, the Hungarian Helsinki Committee and the UNHCR are recommended to organise a joint training session in 2011 on the evidentiary framework of statelessness determination. The training should touch upon the relevant international developments, including the conclusions of the global expert consultation process on-going at the moment of publishing this report under the auspices of the UNHCR.

Recommendation 8 – Stateless persons should be enabled to renew their humanitarian residence permit for three-year periods even after the expiry of the first such period. Section 29 (2) (a) of the Aliens Act should be amended to this end.

Recommendation 9 – In order to ensure the effectiveness of the protection offered by the Hungarian stateless status it is recommended that stateless persons proved to be in need are provided with accommodation and financial support, as well as health care services under a scheme similar to that of refugees (within a reasonable time period following recognition).

Recommendation 10 – In order to ensure the effectiveness of the protection offered by the Hungarian stateless status and to facilitate the integration and self-reliance of those granted this form of protection stateless persons should have unrestricted access to the labour market (similar to refugees and beneficiaries of subsidiary protection).

Recommendation 11 – In order to ensure the effectiveness of the protection offered by the Hungarian stateless status and to facilitate the integration and self-reliance of those granted this form of protection stateless persons should be granted access to free-of-charge higher education.

II. Prevention of Statelessness

II.1 Relevant International Obligations

International law sets a clear regulatory framework for states with regard to the prevention of statelessness. The 1961 Convention on the Reduction of Statelessness and the 1997 European Convention on Nationality are crucial in this respect. The two instruments set the following main requirements:

- Hungary shall provide for its nationality to be acquired by children born on its territory who do not acquire at birth another nationality, either at birth *ex lege* or subsequently, to children who remained stateless, upon application (with the possibility to require maximum five years of lawful and habitual residence before submitting the application);[113]
- Hungary shall not make possible the renunciation of Hungarian nationality for persons who would become stateless by this act;[114]
- Hungary shall not revoke the Hungarian nationality of any person if thus the person would become stateless (with the exception of the case where nationality was previously acquired by means of fraudulent conduct, false information or concealment of any relevant fact attributable to the applicant).[115]

II.2 The Loss of Nationality

Section 1 (2) of Act LV of 1993 on the Hungarian Citizenship (hereinafter Citizenship Act) explicitly **prohibits the arbitrary deprivation of nationality**. No cases are known from the last two decades in which a person would have become stateless for being arbitrarily deprived of her/his Hungarian nationality.

Deprivation of one's Hungarian nationality is only possible in one case, namely if the person

> […] obtained her/his nationality by a breach of law, in particular by presenting false information, or hiding information or facts and thus misleading the authority. Such withdrawal of nationality can only take place within ten years following the acquisition of Hungarian nationality.[116]

The circumstances giving rise to the application of this provision shall be established by the Office of Immigration and Nationality.[117] The judicial review of such a decision can be sought with the

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

114 European Convention on Nationality, Article 8 (1); 1961 Convention on the Reduction of Statelessness, Article 7 (1)

115 European Convention on Nationality, Article 7 (3)

116 Citizenship Act, Section 9 (1)

117 Citizenship Act, Section 9 (2)

Metropolitan Court *(Fővárosi Bíróság)*. Based on the decision of the OIN, the President of the Republic rules on the deprivation of nationality.[118] The above provision does not include a general rule for the prevention of statelessness in such cases, but this does not constitute a breach of Hungary's relevant international obligations.[119]

Hungarian law only enables for the renunciation of Hungarian nationality if the person concerned

> […] has another state's nationality or can substantiate that she/he will obtain another state's nationality.[120]

The executive regulation specifies that a claim for renunciation of nationality should include

> […] a certificate proving the foreign nationality issued by the authorities of the state concerned, or a certificate that substantiates the acquisition of another nationality.[121]

Based on the above provisions and the relevant international obligations, it can be concluded that Hungarian law provides **sufficient protection against statelessness with regard to the voluntary and involuntary loss of nationality**.

II.3 The Prevention of Statelessness at Birth

Birth registration and the determination of new-born children's nationality is a central issue in the struggle against statelessness. Hungary's international obligations reflect a clear set of requirements in this respect and general provisions are in place in national law to prevent statelessness at birth. Nevertheless, the legislative framework yet fails to provide sufficient protection against not requiring any nationality at birth, or within a short period afterwards.

Based on the **generally applied *jus sanguinis* principle**, a child of a Hungarian citizen automatically acquires Hungarian nationality at birth.[122] Section 3 (3) of the Citizenship Act sets forth the **supplementary application of *jus soli*** in order to prevent statelessness:

> Until the contrary is proved, should be considered as a Hungarian national
>
> a) a child born to stateless parents with a place of residence in Hungary;
>
> b) a foundling born to unknown parents and found in Hungary.

This provision **does not ensure sufficient protection** against not acquiring any nationality at birth. The following categories are not covered by the prevention scheme against statelessness offered by the Hungarian Citizenship Act:

118 Citizenship Act, Section 9 (3)

119 European Convention on Nationality, Article 7 (1) (b); 1961 Convention on the Reduction of Statelessness, Article 8 (2) (b)

120 Citizenship Act, Section 8 (1) (a)

121 Government Decree 125/1993 (IX.22.) on the implementation of Act LV of 1993 on the Hungarian Citizenship, Section 6 (1) (b)

122 Citizenship Act, Section 3 (1)–(2)

1) **Children born to stateless parents not having a place of residence in Hungary.** Several rights and social benefits are linked to the requirement of having a "place of residence" *(lakóhely)* in Hungary.[123] Stateless persons living in the country, however, do not automatically establish a place of residence in its legal sense. Moreover, stateless status does not confer this right either. A person granted stateless status thus becomes entitled to a place of residence **when acquiring a permanent residence permit** *(letelepedési engedély)*, following a minimum three-year permanent stay in the country, provided that some strict material conditions are fulfilled.[124] The situation of stateless persons granted tolerated *(befogadott)* status or holding a residence permit with reference to studies or gainful employment is the same.[125] In summary, a child born to recognised stateless parents already living in Hungary for two years will "inherit" her/his parents' statelessness, and so does the child born to recognised stateless parents living for several years in Hungary, but not being able to fulfil the strict material conditions of becoming permanent residents.
2) **Children born to parents whose nationality cannot be "transmitted" to them.** The above-cited provision of the Citizenship Act appears to be based on the false presumption that all nationalities are equally conferred from parents to their children, disregarding the fact that several states apply the *jus soli* principle and that many *jus sanguinis* regimes foresee discriminatory provisions against women in this respect. While the first issue may not lead to problematic situations on a regular basis, the second one clearly indicates a gap in the prevention system. For example, the child of a stateless father and a Lebanese, Tunisian or Kenyan mother will thus become stateless if born in Hungary, even if both parents are long-term residents.
3) **Children born to persons granted international protection in Hungary.** According to the general practice, the children of refugees, beneficiaries of subsidiary protection and persons granted tolerated status living in Hungary are registered as of **unknown nationality**. As the parents are unable to register their children with their national authorities (such an act could even lead to the cancellation of their protection status), they cannot acquire the parents' nationality, even if the state in question would normally enable for it. This situation does not lead to explicit or evident statelessness, but it forces the children concerned to live for several years with unknown nationality, which may cause statelessness-like conditions in various aspects.[126]
4) **Children born to an unknown father and a known mother and abandoned by the mother after birth.** If a child is born in a Hungarian hospital to a mother of foreign nationality, with the father unknown, she/he is registered as of **unknown nationality**. If the mother disappears after birth, without initiating the procedure aiming at the recognition of the child's nationality, the latter is left without any nationality. This leads to multiple problems: lack of a proper and clear legal status, no possibility to access the necessary child-care services, no possibility to be adopted, an undesirable "repatriation" to the country of nationality several years later, etc.

123 See for example Sub-Chapter I.8.4 on the access to health care.

124 See Sub-Chapter I.8.8

125 Among the foreigners residing in Hungary only refugees, beneficiaries of subsidiary protection, permanent residents and those having the right of free movement (mainly EU-citizens) are entitled to register a "place of residence" (cf. Act LXVI of 1992 on the Register of Personal Data and Addresses, Section 4 (1), together with Act LXXX of 2007 on Asylum, Section 17 (1)).

126 See also Sub-Chapter III.2.2 on the preferential naturalisation conditions for children born in Hungarian territory.

Such cases generated significant media attention in Hungary in 2010. The Parliamentary Commissioner for Civil Rights (hereinafter: Ombudsperson) also reviewed this situation upon the joint request of the Hungarian Helsinki Committee and the SOS Children's Village Foundation and established that the practices in question give rise to serious concerns and are in breach of different provisions of the Hungarian Constitution.[127] A detailed analysis of this complex problem would fall outside the scope of the present study, however, it is useful to recapitulate those findings of the Ombudsperson that have direct relevance to the issue at hand:

- In these cases, the children concerned are **not considered as foundlings**, as their mother is known to the hospital staff where the birth took place. Therefore, these children do not fall under the scope of Section 3 (3) of the Citizenship Act (see earlier).
- Hospitals register the mother's personal identity and nationality on the basis of her documents or her simple declaration (if no identity documents are shown). Therefore there is **no guarantee that the registered personal data are genuine**.
- These children are placed in a childcare institution under a **temporary placement measure** *(ideiglenes hatályú elhelyezés)*.[128] The Budapest 5th District Guardianship Office *(Budapest V. kerületi Gyámhivatal)*, which has exclusive competence in case of non-national unaccompanied minors, shall contact the diplomatic representation of the child's country of nationality in order to arrange the child's return there without delay.[129] The report criticises, however, that the relevant regulatory framework does not contain any provision regarding the situation of unaccompanied children of unknown nationality. In this situation, there is **no rule determining which country's diplomatic representation should be contacted**. In practice, the Guardianship Office contacts the presumed country of nationality of the mother. The report expresses grave concerns regarding the fact that in the examined cases, the Guardianship Office failed to contact the diplomatic representations in question "without delay" (in one case this only happened nine months after birth).
- There are two main reasons for which diplomatic representations respond negatively: either **no person with the data provided exists** (i.e. the data provided by the mother was false) or **only the parents could initiate the procedure** aiming at the establishment of the child's nationality (according to the national regulation of the state in question).
- The Ombudsperson criticised the regular failure of the Guardianship Office to duly notify the Office of Immigration and Nationality (OIN) about negative answers given by the diplomatic representations approached, thus **preventing the competent authority from perceiving the child's presumable statelessness**.
- The regulatory framework does not provide guidance on what rules to follow if the approached diplomatic representation does not react to the request of the Guardianship Office and **what is the reasonable waiting time** after which this fact should be considered as a negative response. In practice, it happens that the representations do not give any answer for several months or even for years, regardless of the various attempts made by the Guardianship Office.

127 Report of the Parliamentary Commissioner for Civil Rights on cases no. AJB 2629/2010 and AJB 4196/2010, September 2010, available in Hungarian at www.obh.hu/allam/jelentes/201002692.rtf

128 Act XXXI of 1997 on Child Protection, Section 72

129 Act XXXI of 1997 on Child Protection, Section 73 (3)

- The report criticises that **unknown nationality does not confer any legal status** in Hungary (unlike recognised statelessness). The OIN treats these **children as if they were nationals of their mother's (presumed) country of nationality**. This means that if the mother is presumed to be a "third-country national"[130], the child is recognised as an unaccompanied minor and is entitled to a one-year humanitarian residence permit.[131] If the mother is presumed to be an EU-national[132], the child (as her/his accommodation and livelihood is ensured in a childcare institution) will receive an official document certifying her/his entitlement to reside in Hungary as a "beneficiary of the right to free movement". The second group will be entitled to a wide range of childcare services, while the first will be excluded from basically all of them (with exception of the temporary placement measure), as a category not falling under the personal scope of the relevant regulation.[133] The Ombudsperson criticised this treatment as being **discriminatory**.
- The Ombudsperson repeatedly referred to the possibility of these children being *de facto* stateless (if the diplomatic representation responds negatively or does not respond at all for a considerable period of time). While the author of this study entirely supports the Ombudsperson's valuable observations and recommendations, he disagrees with this particular statement. A child who is not considered as a national by any state under the operation of its law **is *de jure* and not *de facto* stateless**,[134] regardless of whether this fact is proved by an explicit declaration by the state(s) concerned or substantiated through the constant lack of an affirmative response by the latter and the impossibility to establish the parents' identity.[135] The author wishes to point out that in lack of any international legal regime for the protection of *de facto* stateless persons it is important not to use this term when *de jure* statelessness can be established (the latter falling under various protection measures in international and Hungarian domestic law).

In case of the first two groups the gap in the prevention safety net is evident. As regarding group 3 and 4, the circumstances may not in the majority of cases lead to statelessness, but:

- there is a risk that the children concerned become stateless, at least for some years;
- there is no clear guidance for all the relevant authorities on what procedures to follow and there are discrepancies between different authorities' practices;
- a facilitated access to Hungarian nationality (based on evoking the *jus soli* principle in the general *jus sanguinis* context)[136] can only partially ease these burdens and usually does not offer an immediate solution; and

130 Not a citizen of the European Economic Area

131 On the unaccompanied minor status see Gábor Gyulai, *Practices in Hungary Concerning the Granting of Non-EU-Harmonised Protection Statuses*, European Migration Network, August 2009. http://helsinki.hu/dokumentum/Non-EU-Harmonised-Protection-Statuses-Hungary%20final.pdf

132 In most cases the mother is or presumed to be a Romanian citizen.

133 Act XXXI of 1997 on Child Protection, Section 4

134 Cf. 1954 Statelessness Convention, Article 1 (1)

135 For analogy, see Section 79 (1) of the Aliens Act regarding the flexible (lowered) standard of proof in statelessness determination procedures (see also Sub-Chapter I.6.2).

136 See Sub-Chapter III.2

- because of the gaps in childcare legislation (e.g. the non-existence of the categories of unaccompanied minor or child of unknown nationality in this field of regulation) and the dysfunctions in its operation some children belonging to group 4 suffer particularly harmful consequences and discriminatory treatment.

These worrisome shortcomings in the Hungarian regulation aiming at the prevention of statelessness **raise serious concerns regarding the fulfilment of Hungary's international obligations under Article 1 (1) and (2) of the 1961 Convention on the Reduction of Statelessness**. In addition, these practices – as also established by the Ombudsperson – are **in breach of Article 3 and 7 (1) of the Convention on the Rights of the Child** (primary consideration of the child's best interest and her/his right to acquire a nationality at birth).

II.4 Conclusion and Recommendations

Hungarian law applies sufficient guarantees with regard to the prevention of statelessness in the context of the loss of nationality. Nevertheless, the guarantees aiming at the prevention of statelessness at birth are insufficient, as they leave the possibility of children born in Hungary becoming stateless or remaining for several years with an unknown nationality. In order to close this gap, the following recommendations are made:

Recommendation 12 – Hungarian nationality legislation should be amended in order to ensure that all children born in Hungary who do not acquire any nationality at birth are considered Hungarian citizens until the contrary is proved. This should include the grant of Hungarian nationality to the children of stateless persons staying in Hungary (regardless of their immigration status and with no condition of permanent residence), as well as to the children whose parents cannot "transmit" their nationality to her/him at birth (no or discriminative application of *jus sanguinis* by the country of nationality).

Recommendation 13 – A protocol should be elaborated for the establishment of nationality at birth in case of children born in Hungary to persons granted international protection (refugees, beneficiaries of subsidiary protection and those granted tolerated status). The protocol should be based on international best practices and should aim at the prevention of statelessness as well as minimising the period during which children are registered as of "unknown nationality".

Recommendation 14 – All children born in Hungary to foreign national parents (or to a foreign national mother and an unknown father) and left unaccompanied by their parents after birth should be considered as foundlings and should therefore be granted Hungarian nationality if all efforts to establish their foreign nationality and to repatriate them to their country of nationality has remained unsuccessful until their first birthday.

III. Reduction of Statelessness

III.1 Relevant International Obligations

Nationality and naturalisation have been long considered a core element of national sovereignty, uninfluenced by international legal obligations. Notwithstanding the general truthfulness of this principle, some crucial obligations under international human rights law (such as non-discrimination and the reduction of statelessness) have gradually "infiltrated" this area. While Hungary, like all other states, is free to set its own framework for the naturalisation of foreigners, it has to comply with the following obligations in this regard (with special focus on the reduction of statelessness):

- Hungary shall provide in its internal law for the possibility of naturalisation of persons lawfully and habitually resident on its territory;[137]
- Hungary shall not require more than ten years of residence on its territory before enabling a lawfully and habitually resident foreigner to apply for naturalisation;[138]
- Hungary shall facilitate the naturalisation of stateless persons lawfully and habitually residing on its territory.[139]

It is of interest that when acceding to the 1997 European Convention on Nationality, Hungary made reservations with regard to Article 11 and 12, not accepting that

- decisions on naturalisation should be reasoned in writing; and that
- these decisions should be open to administrative or judicial review.

III.2 Naturalisation and the Reduction of Statelessness

While a fair and effective determination procedure and a meaningful protection status are the cornerstones of a statelessness-specific protection system, naturalisation can also be seen as the only "durable solution" in this context. The current Hungarian framework offers naturalisation possibilities for stateless persons; however, it falls short of ensuring a truly facilitated and rapid access to this durable solution, mainly for its general (non-stateless-specific) shortcomings.

[137] 1997 European Convention on Nationality, Article 6 (3)

[138] 1997 European Convention on Nationality, Article 6 (3)

[139] 1997 European Convention on Nationality, Article 6 (4) (g)

III.2.1 General Framework

Section 4 of the Citizenship Act lays down the general conditions for naturalisation by stipulating that

> A non-Hungarian citizen may be granted Hungarian citizenship upon application, if:
>
> a) prior to her/his application she/he has been continuously residing in Hungary for eight years;
>
> b) she/he has no criminal record according to Hungarian law and there is no pending criminal procedure against her/him before a Hungarian court at the time of the application;
>
> c) her/his livelihood and accommodation in Hungary is guaranteed;
>
> d) her/his naturalisation would not endanger the interests of the Republic of Hungary;
>
> e) she/he certifies to have successfully passed an examination on basic constitutional issues in Hungarian language, or is exempted from this examination based on the provisions of this Act.[140]

As regards the obligatory **"waiting period"** before having the possibility to naturalise, certain groups are granted preferential treatment, being able to apply for Hungarian nationality already after three or five years of residence.[141]

While the Office of Immigration and Nationality is responsible for proceeding claims for naturalisation and proposing a resolution, it is officially the **President of the Republic who makes the final decision**.[142] Therefore, naturalisation is **not considered as an administrative procedure** in Hungarian law and the general rules and guarantees applicable to such procedures do not apply to it.[143] This results in a number of disadvantageous consequences, relevant from the viewpoint of reducing statelessness:

- There are **no procedural deadlines**, and naturalisation procedures are reported to take unreasonably long, approximately one and a half years on an average;[144]
- The President's decision is **not communicated in a formal administrative resolution** *(határozat)*, but in case of a negative outcome, in the form of a simple notification *(értesítés)*, while if a positive decision is taken, in the format of a naturalisation certificate *(honosítási okirat)*;[145]

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140 Exceptions are made for example for the elderly, for those who completed their studies at a Hungarian university in Hungarian, etc.

141 See Sub-Chapter III.2.2 for more information on this issue

142 Citizenship Act, Section 6 (1)

143 Act CXL of 2004 on the General Rules of Administrative Procedures and Services, Section 13 (1) (a)

144 Source: UNHCR Regional Representation for Central Europe

145 Citizenship Act, Section 6 (2); Government Decree 125/1993 (IX.22.) on the implementation of Act LV of 1993 on the Hungarian Citizenship, Sections 4 (2) and 12 (1)

- Decisions are **not reasoned in writing**, the notification does not inform the applicant why her/his claim was rejected;
- There is no possibility to seek administrative or judicial review of negative decisions on naturalisation claims.

In addition, it is not known to what extent the Office of the President of the Republic practices any sort of scrutiny over the decisions proposed by the OIN. However, the decade-long experience of the Hungarian Helsinki Committee in counselling applicants for naturalisation suggests that **no such scrutiny is applied** and the OIN's draft decisions appear to be automatically endorsed by the President of the Republic.

It is a worrisome practice inadequate to democratic societies to enable an important branch of an administrative authority (the Nationality Directorate of the OIN) to **act without any sort of control**, be it by the applicant, by legal counsellors or by any administrative or judicial appeal body. This framework is rather **unique in Europe** and has been widely criticised for being unreasonable, for not respecting even the elementary principles of transparency and accountability and for going against the spirit of the 1997 European Convention on Nationality.[146] While these shortcomings are not specific to stateless applicants, they may particularly negatively impact on this group, whose need for a nationality is especially urgent and is supported by both international and Hungarian domestic law.[147]

III.2.2 Specific Provisions Regarding Stateless Persons

The only preferential provision applying for stateless persons with regard to naturalisation is the **reduction of the obligatory "waiting period" before application from eight to five years**.[148] It is noteworthy, though, that this period in case of refugees – an evident group for comparison – is only three years (similarly to spouses or parents of Hungarian citizens). As non-refugee stateless persons are as much in need of obtaining a new nationality as refugees (if not more), this differentiation appears to be unreasonable.

It is crucial to emphasise at this point that the above-mentioned "waiting periods" **can only be counted from the date when the foreigner establishes a place of residence** *(lakóhely)* in Hungary.[149] Refugees do so right after the recognition of their status. Persons granted stateless or tolerated status, or staying in Hungary with a residence permit for gainful employment or study purposes are not entitled to this until they obtain permanent resident status[150] in Hungary.[151]

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146 A breach of international law cannot be established due to the concordant reservations made by Hungary when acceding to this convention (see Sub-Chapter III.1).

147 1997 European Convention on Nationality, Article 4 and 6 (4) (g); Citizenship Act, Section 1 (1) (3)

148 Citizenship Act, Section 4 (4)

149 A condition emanating from the wording of Section 4 and 4 (4) of the Citizenship Act, i.e. the explicit mentioning of "place of residence" *(lakóhely)* in Section 4 (4) and the use of the word "to reside" *(lakik)* in Section 4 (1) (a) and 4 (2). It is impossible to duly reflect these Hungarian terms in English legal terminology.

150 See Sub-Chapter I.8.8

151 Until then, they only have a place of accommodation *(szálláshely)*

Therefore in such cases, **a minimum of three years have to be added** to the "waiting periods" stipulated by the Citizenship Act. Consequently, while refugees can first apply for Hungarian citizenship three years following the recognition of their status, stateless persons (not having a place of residence in Hungary) have the first chance to do so **in reality eight years**[152] after being recognised as such, even according to the most optimistic scenario. Considering Hungary's legal obligations to reduce statelessness and the preferential framework in place for refugees, as well as the relevant international practices[153], **the "waiting period" before stateless persons can naturalise in Hungary is unreasonably lengthy**.

Even if not related directly to the reduction of statelessness, it must be mentioned that by counting the years of "residence" from the acquisition of a permanent residence permit in case of foreigners falling under the non-preferential eight-year rule, the overall waiting period grows to **eleven years**. This is **in breach of Article 6 (3) of the 1997 European Convention on Nationality**, which stipulates that the maximum period of lawful and habitual residence states can require before naturalisation is ten years. The term "residence", as stipulated by the Convention, does not mean "permanent residence" or "long-term residence";[154] therefore its duration shall be counted from the granting of a residence entitlement, regardless of its non-permanent character.

The dysfunctional character of the Hungarian system for the reduction of statelessness is well-demonstrated by statistics: **in 2008 for example, only three stateless persons obtained Hungarian citizenship**.[155]

III.3 Conclusion and Recommendations

The Hungarian framework for naturalisation is rather unique in Europe, as it **lacks basically any sort of procedural guarantee** that would otherwise be required in other administrative procedures. This unjustified practice and the overall lack of transparency it leads to may negatively affect the naturalisation possibilities of stateless persons. The eight-year actual "waiting period" before the possibility of naturalisation is **unreasonably lengthy**, especially when comparing to other protection statuses, and when considering that among all persons enjoying international protection, the stateless are the most clearly in need of a new nationality. In order to overcome these shortcomings, the following recommendations are formulated:

152 Five plus three

153 The effective "waiting period" for stateless persons is for example two years in Belgium, three years in Slovakia, five years in Poland, France, Italy, etc.

154 The terminology of international legal instruments does not use it as such.

155 Source: UNHCR Regional Representation for Central Europe

Recommendation 15 – Naturalisation should become a standard administrative procedure, with realistic procedural deadlines, mandatory reasoning of negative decisions and possibility of seeking judicial review. Hungary is urged to lift its reservations made to the 1997 European Convention on Nationality and ensure full compliance with the entirety of this key international legal instrument.

Recommendation 16 – In order to ensure compliance with the relevant mandatory provision of the 1997 European Convention on Nationality, the "waiting period" before the possibility to naturalise should be counted from the establishment of lawful stay instead of a place of residence in Hungary.

Recommendation 17 – The minimum "waiting period" before the possibility to naturalise should be reduced from five to three years in case of stateless persons, whom thus should belong to the group benefiting from the most preferential treatment in this respect.

The Hungarian Helsinki Committee

The Hungarian Helsinki Committee (HHC), founded in 1989, monitors the enforcement of human rights enshrined in international human rights instruments, provides legal defence to victims of human rights abuses by state authorities and informs the public about rights violations. The HHC strives to ensure that domestic legislation guarantee the consistent implementation of human rights norms as well as it promotes legal education and training in fields relevant to its activities, both in Hungary and abroad.

The HHC's main areas of activities are centred on protecting the rights of asylum-seekers and foreigners in need of international protection, as well as monitoring the human rights performance of law enforcement agencies and the judicial system. It particularly focuses on the conditions of detention and the effective enforcement of the right to defence and equality before the law.

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- *Expulsion and Human Rights: The Prohibition of Torture, Inhuman or Degrading Treatment or Punishment* – A short guide for judges deciding expulsion and extradition cases, Hungarian Helsinki Committee, November 2009 (in Hungarian)
- *Practices in Hungary Concerning the Granting of Non-EU-Harmonised Protection Statuses*, European Migration Network, August 2009
- *Remember the Forgotten, Protect the Unprotected*, in Forced Migration Review, Issue 32 (special issue on statelessness), April 2009, pp. 48–49.
- *Foreigners in Hungary – A Guide for Journalists*, Hungarian Helsinki Committee, 2009 (in Hungarian)
- *Country Information in Asylum Procedures – Quality as a Legal Requirement in the EU*, Hungarian Helsinki Committee, 2007
- *Forgotten without Reason – Protection of Non-Refugee Stateless Persons in Central Europe*, Hungarian Helsinki Committee, 2007

Statelessness has long been an unjustifiably forgotten issue of international protection and human rights. More than half-a-century after the adoption of the cornerstone 1954 Statelessness Convention, only a handful of countries operate a statelessness-specific protection regime, regulated in law. Hungary took a pioneer step when in 2007 it established a statelessness determination regime, based on sophisticated legislative rules. The Hungarian statelessness-specific protection mechanism has been in the focus of international interest since its inception, yet no empirical research has been conducted so far on its actual functioning. This report aims to fill in this gap, as well as to examine whether effective mechanisms are in place for the prevention and reduction of statelessness in Hungary. The report's conclusions have been drawn from desk research, analysis of administrative and judicial decisions on statelessness and the first-hand experiences of the Hungarian Helsinki Committee.

Hungarian Helsinki Committee