

UNHCR Comments on the Draft Law on Citizenship of Albania, Key Issues

A. Introduction

1. The United Nations High Commissioner for Refugees (UNHCR) is grateful for the opportunity to comment on the draft Law on Citizenship, No. [...] /2019.

2. UNHCR offers the following comments in its capacity as the agency entrusted by the United Nations (UN) General Assembly with a global mandate to provide protection to stateless persons worldwide and to engage in prevention and reduction of statelessness.¹ UNHCR's Executive Committee has requested UNHCR to undertake 'targeted activities to support the identification, prevention and reduction of statelessness and to further the protection of stateless persons'.² The Executive Committee has also requested the Office 'to provide technical advice to States Parties on the implementation of the 1954 Convention [relating to the Status of Stateless Persons] so as to ensure consistent implementation of its provisions'.³ Furthermore, UNHCR's Executive Committee has requested UNHCR to provide technical advice with respect to nationality legislation and other relevant legislation with a view to ensuring the adoption and implementation of safeguards, consistent with fundamental principles of international law, to prevent the occurrence of statelessness which results from arbitrary denial or deprivation of nationality.⁴ UNHCR thus has a direct interest in national legislation that regulates the protection of stateless persons, including the implementation of the 1954 Convention relating to the Status of Stateless Persons ('the 1954 Convention'). UNHCR also has a direct interest in national legislation of countries impacting on the prevention or reduction of statelessness, including the implementation of safeguards contained in international human rights treaties, as well as those set out in the 1961 Convention on the Reduction of Statelessness ('the 1961 Convention'). Albania has acceded to both Conventions,⁵ which hence form part of its internal legal order, with a superseding effect in respect of laws of the country that are incompatible with their dispositions.⁶

3. UNHCR also offers some comments on this draft citizenship legislation in its capacity as the agency entrusted by the UN General Assembly with the responsibility of providing international protection to

¹ UN General Assembly Resolution A/RES/50/152, 9 February 1996, available at: <https://www.refworld.org/docid/3b00f31d24.html>. Reiterated in subsequent resolutions, *inter alia*, A/RES/61/137 of 25 January 2007, available at: <https://www.refworld.org/docid/45fa902d2.html>, A/RES/62/124 of 24 January 2008, available at: <https://www.refworld.org/docid/47b2fa642.html>, and A/RES/63/148 of 27 January 2009, available at: <https://www.refworld.org/publisher.UNGA...4989619e2.0.html>.

² ExCom, Conclusion on Identification, Prevention and Reduction of Statelessness and Protection of Stateless Persons, No. 106, (LVII) – 2006, 6 October 2006, para. (a), available at: <https://www.unhcr.org/excom/exconc/453497302/conclusion-identification-prevention-reduction-statelessness-protection.html>.

³ *Ibid.*, para. (x); see also para. (i).

⁴ *Ibid.*, paras. (i) and (j).

⁵ Law No. 9057, dated 24.4.2003, on the accession of the Republic of Albania to the [1954] Convention relating to the Status of Stateless Persons, available at: <http://qbz.gov.al/eli/ligj/2003/04/24/9057>, and Law No. 9059, dated 8.5.2003, on the accession of the Republic of Albania to the [1961] Convention on the Reduction of Statelessness, available at: <http://qbz.gov.al/eli/ligj/2003/05/08/9059>

⁶ Constitution of the Republic of Albania, 1998, Articles 116, 121, 122.

refugees and assisting governments in seeking permanent solutions to the problems of refugees.⁷ Under its Statute, UNHCR fulfils its international protection mandate by, *inter alia*, ‘[p]romoting the conclusion and ratification of international conventions for the protection of refugees, supervising their application and proposing amendments thereto’.⁸ UNHCR’s supervisory responsibility under its Statute is reiterated in Article 35 of the 1951 Convention relating to the Status of Refugees (‘the 1951 Convention’)⁹, according to which State parties undertake to ‘co-operate with [UNHCR] [...] in the exercise of its functions, and shall in particular facilitate its duty of supervising the application of the provisions of the Convention’.

4. UNHCR welcomes the efforts made by Albania to bring the Citizenship Law in line with the 1954 and 1961 UN Statelessness Conventions, including the fact that one of the key principles guiding the enforcement of the provisions of this law (according to Article 3) is the ‘avoidance of statelessness’. Moreover, UNHCR welcomes the inclusion of a progressive provision on safeguards against statelessness of adopted children in Albania enshrined in Article 10 of the draft law. UNHCR also notes with appreciation the inclusion of a safeguard against statelessness in cases of revocation of citizenship as prescribed in Article 15(3) of the draft law.

5. The following comments are proposed to the Albanian Parliament for the purposes of clarification and strengthening of certain key provisions of the draft law in line with international standards.

B. The definition of a stateless person

6. Article 2(1)(b) of the draft citizenship law of Albania states that for the purposes of the present law, the term ‘stateless person’ shall apply to any person ‘who does not enjoy the citizenship of any State due to the lack of a stable legal relationship between him and a State’.

7. Article 1(1) of the 1954 Convention sets out the definition of a stateless person as follows: ‘A person who is not considered as a national by any State under the operation of its law’.¹⁰ The 1954 Convention does not permit reservations to Article 1(1) and thus this definition is binding on all State Parties to the treaty. Therefore, UNHCR recommends that the definition of a stateless person in the draft citizenship law of Albania includes all elements contained in Article 1(1) of the 1954 Convention to ensure the proper identification of a stateless person on the territory of Albania in accordance with international law, and the provision of the core protection that the 1954 Convention offers to stateless persons. While ultimately only the acquisition of a nationality will end statelessness, in situations where this is not yet possible, it is necessary to protect stateless persons in accordance with Albania’s obligations under the 1954 Convention.

C. Appropriate safeguards against childhood statelessness¹¹

8. Article 7(1) of the draft Law on Citizenship reads that, ‘[a] child born or found within the territory of the Republic of Albania, in the event he/she was born of unknown parents and who would otherwise remain stateless, shall acquire Albanian citizenship’.

⁷ Statute of the Office of the United Nations High Commissioner for Refugees, UN General Assembly Resolution 428(V), Annex, UN Doc. A/1775, para. 1 (1950).

⁸ *Ibid.*, para. 8(a).

⁹ UN Treaty Series (UNTS) No. 2545, Vol. 189, p. 137.

¹⁰ 1954 Convention relating to the Status of Stateless Persons, available at: https://www.unhcr.org/ibelong/wp-content/uploads/1954-Convention-relating-to-the-Status-of-Stateless-Persons_ENG.pdf

¹¹ UNHCR has included the elimination of statelessness at birth as one of the key actions in its Global Action Plan to End Statelessness (‘UNHCR Global Action Plan’), 4 November 2014, available at: <https://www.refworld.org/docid/545b47d64.html>

9. UNHCR welcomes the inclusion of a provision on foundlings through the proposed Article 7(1) of the draft law, which establishes in line with Article 2 of the 1961 Convention that children found abandoned on the territory of Albania and whose parents are unknown, hence a profile that is of particular risk of statelessness, will acquire the nationality of Albania.¹² The nationality acquired by foundlings may only be lost if it is proven that the concerned child possesses another State's nationality.¹³ Moreover, this safeguard should, at a minimum, apply to all young children who are not yet able to communicate accurately information pertaining to the identity of their parents or their place of birth.¹⁴ Due to the specific protection granted by international law to this group, UNHCR recommends that it be dealt with in the citizenship law of Albania in a separate article referring to children 'who would otherwise be stateless' as opposed to children 'who would otherwise remain stateless'.

10. On the other hand, Article 1(1) of the 1961 Convention states that, '[a] Contracting State shall grant its nationality to a person born in its territory who would otherwise be stateless'.¹⁵ This represents one of the most important safeguards against statelessness, while States are not required to grant nationality to all children born in their territories, but only to those who cannot acquire any other nationality,¹⁶ for instance because their parents are unknown, are stateless themselves or where the mother cannot confer her nationality to the child due to gender discrimination in the nationality laws of her country of origin.

11. The rules for preventing statelessness among children contained in Articles 1 to 4 of the 1961 Convention must be read in light of human rights treaties that were since adopted, which recognize every child's right to acquire a nationality, in particular where they would otherwise be stateless. Notably, Article 7 of the Convention on the Rights of the Child (CRC)¹⁷ provides that 'States Parties shall ensure the implementation of these rights [rights to a name, nationality, and to know and be cared for by parents] in accordance with their national law and their obligations under the relevant international instruments in this field, in particular where the child would otherwise be stateless'. Article 3 of the CRC further requires that all actions concerning children, including in the area of nationality, must be undertaken with the best interests of the child as a primary consideration. The right of every child to acquire a nationality (Article 7 CRC) and the principle of the best interests of the child (Article 3 CRC) together create a presumption that States need to provide for the automatic acquisition of their nationality at birth by an otherwise stateless child born in their territory, in accordance with Article 1(1)(a) of the 1961 Convention.¹⁸

12. Following from the above, the condition in the proposed Article 7(1) of the draft law for the child to be born of unknown parents in order for this child to be able to acquire Albanian citizenship is not in line with Article 1(1) of the 1961 Convention. If this requirement were to be upheld, not all children born in the territory who would otherwise be stateless would be protected against statelessness, as set out by the 1961 Convention, and would thus be at risk of statelessness.

¹² See UNHCR, Good Practices Paper – Action 2: Ensuring that no child is born stateless, 20 March 2017, available at: <https://www.refworld.org/docid/58cfab014.html>

¹³ Article 2 of the 1961 Convention restates the long-standing principle that: 'A foundling found in the territory of a Contracting State shall, in the absence of proof to the contrary, be considered to have been born within that territory of parents possessing the nationality of that State'. UNHCR, Guidelines on Statelessness No. 4: Ensuring Every Child's Right to Acquire a Nationality through Articles 1-4 of the 1961 Convention on the Reduction of Statelessness, 21 December 2012, HCR/GS/12/04, ('UNHCR Guidelines on Statelessness No. 4'), paras. 57-61, available at: <https://www.refworld.org/docid/50d460c72.html>

¹⁴ UNHCR Guidelines on Statelessness No. 4, note 13 above, para. 58.

¹⁵ 1961 Convention on the Reduction of Statelessness, available at: https://www.unhcr.org/ibelong/wp-content/uploads/1961-Convention-on-the-reduction-of-Statelessness_ENG.pdf

¹⁶ UNHCR Global Action Plan, note 11 above, p. 10.

¹⁷ 1989 Convention on the Rights of the Child, available at: <https://www.ohchr.org/en/professionalinterest/pages/crc.aspx>

¹⁸ UNHCR, Interpreting the 1961 Statelessness Convention and Preventing Statelessness among Children: ("Dakar Conclusions"), September 2011, available at: <https://www.refworld.org/docid/4e8423a72.html>

13. In order to better reflect the wording of Article 1(1) of the 1961 Convention in Article 7(1) of the draft law, UNHCR recommends that Article 7(1) be amended to read as follows: ‘A child born within the territory of the Republic of Albania, and who would otherwise be stateless, shall acquire the Albanian citizenship’.

D. Naturalization of refugees and stateless persons

14. Article 11(1)(c) of the draft citizenship law stipulates that refugees and persons with complementary protection status may acquire Albanian citizenship after legally residing in the country for ten years. At the same time, draft Article 8(2) regulates the acquisition of citizenship by stateless persons without clearly stipulating the required number of years of residence. It also limits its application to stateless persons who were ‘born in the territory of the Republic of Albania’.

15. Article 34 of the 1951 Convention relating to the Status of Refugees stipulates that ‘States shall as far as possible facilitate the assimilation and naturalization of refugees. They shall in particular make every effort to expedite naturalization proceedings and to reduce as far as possible the charges and costs of such proceedings’. UNHCR is concerned that the ten-year timeframe applicable to the naturalization of persons granted international protection in Albania in draft Article 11(1)(c) far exceeds the period of required residency applicable to other foreigners, who may apply for naturalization after five years of legal residence as established in Article 8(1)(c) of the draft law, and as such disadvantages refugees contrary to the obligations of Article 34 of the 1951 Convention. UNHCR also notes that in the current Law on Citizenship (1998), there is a general rule of five years equally applied to all foreigners including refugees. UNHCR therefore recommends to keep the same residence requirement for all naturalization procedures. This would also be in line with Article 7 of the 1951 Convention, which stipulates that, ‘[e]xcept where this Convention contains more favourable provisions, a Contracting State shall accord to refugees the same treatment as is accorded to aliens generally’.

16. Similarly, under Article 32 of the 1954 Convention relating to the Status of Stateless Persons, State Parties are obliged to ‘facilitate the assimilation and naturalization of stateless persons’ to the greatest extent possible.¹⁹ Echoing this provision, the European Convention on Nationality also encourages all State Parties to ‘facilitate in its internal law the acquisition of its nationality for [...] stateless persons and refugees lawfully and habitually resident on its territory’.²⁰

17. In light of the above, UNHCR recommends that a facilitated naturalization of stateless persons is provided in the draft citizenship law by stipulating a reduced period of five years of residence for stateless persons similar to the recommendation above in relation to refugees and persons granted complementary protection. It is also recommended to remove in draft Article 8(2) the current limitation of its application to stateless persons who are born in Albania in order to make the provision applicable to any stateless person with a legal residence in the country.

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¹⁹ Article 32 of the 1954 Convention furthermore states that: ‘[States] shall in particular make every effort to expedite naturalization proceedings and to reduce as far as possible the charges and costs of such proceedings’. UNHCR has included the establishment of statelessness determination procedures to protect stateless persons, in addition to facilitated naturalization as one of the key actions in its Global Action Plan, UNHCR Global Action Plan, note 11 above, p. 16. See also UNHCR, Good Practices Paper – Action 6: Establishing statelessness determination procedures to protect stateless persons, 11 July 2016, available at: <https://www.refworld.org/docid/57836cff4.html>

²⁰ Article 6(4) of the European Convention on Nationality.