

UNHCR Observations on the proposed amendments to the “Law on citizenship of the Republic of Belarus” 1 September 2002 No. 136-3

(Закон Республики Беларусь об изменении Закона Республики Беларусь «О гражданстве Республики Беларусь»)

I. Introduction

1. UNHCR offers these observations in its capacity as the Agency entrusted by the United Nations Assembly with a global mandate to provide protection to stateless persons worldwide and to engage in the prevention and reduction of statelessness. The General Assembly has specifically requested UNHCR “to provide technical and advisory services pertaining to the preparation and implementation of nationality legislation to interested States”¹. It has also entrusted UNHCR with the specific role foreseen in Article 11 of the 1961 Convention on the Reduction of Statelessness (1961 Convention).²
2. Furthermore, 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”³. Furthermore, UNHCR’s Executive Committee has requested UNHCR to provide technical advice with respect to citizenship-related legislation and other relevant legislation with a view to ensuring 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 nationality⁴.
3. UNHCR thus has a direct interest in national legislation of countries impacting on the prevention or reduction of statelessness, including implementation of safeguards contained in international human rights treaties. UNHCR’s statelessness mandate also extends to countries which are not parties to the UN Statelessness Conventions.
4. UNHCR’s supervisory responsibility is exercised in part by the issuance of interpretative guidelines on the meaning of provisions and terms contained in international instruments concerning statelessness, in particular the 1954 Convention Relating to the Status of

¹ UNGA resolution A/RES/50/152 of 21 December 1995. The latter endorses UNHCR’s Executive Committee Conclusion No. 78 (XLVI) – 1995, Prevention and Reduction of Statelessness and the Protection of Stateless Persons, at: <http://www.unhcr.org/refworld/docid/3ae68c443f.html>

² UN General Assembly, Convention on the Reduction of Statelessness, 30 August 1961, United Nations, Treaty Series, vol. 989, p. 175, available at: <https://www.refworld.org/docid/3ae6b39620.html>

³ UN High Commissioner for Refugees, Conclusion on International Protection, 05 October 2001, No. 90 (LII) - 2001, para. (q), at: <http://www.unhcr.org/refworld/docid/3bd3e3024.html>; General Conclusion on International Protection, 10 October 2003, No. 95 (LIV) - 2003, para. (y), at: <http://www.unhcr.org/refworld/docid/3f93aede7.html>; General Conclusion on International Protection, 08 October 2004, No. 99 (LV) - 2004, para. (aa), at: <http://www.unhcr.org/refworld/docid/41750ef74.html>; General Conclusion on International Protection, 07 October 2005, No. 102 (LVI) - 2005, para. (y), at: <http://www.unhcr.org/refworld/docid/43575ce3e.html>; Conclusion on Identification, Prevention and Reduction of Statelessness and Protection of Stateless Persons, 06 October 2006, No. 106 (LVII) - 2006, paras. (f), (h), (i), (j) and (t), at: <http://www.unhcr.org/refworld/docid/453497302.html>.

⁴ UNHCR Executive Committee in its Conclusion on Identification, Prevention and Reduction of Statelessness and Protection of Stateless Persons No. 106 (LVII) dated 06.10.2006, paras. (i) and (j).

Stateless Persons (1954 Convention)⁵ and the 1961 Convention. Such guidelines are included, among others, in the UNHCR Handbook on Protection of Stateless Persons (UNHCR Handbook)⁶ and the Guidelines on Statelessness No.5: Loss and Deprivation of Nationality under Articles 5-9 of the 1961 Convention on the Reduction of Statelessness (Guidelines on Statelessness No.5)⁷, which serve as the basis for these observations.

5. UNHCR welcomes the efforts of the Republic of Belarus in addressing statelessness which have resulted in a decrease in the number of stateless persons in Belarus, mostly through naturalization. UNHCR also values its long-standing cooperation on statelessness with the Government of Belarus, including within the framework of legal assistance provided to stateless persons, which supports efforts for their acquisition of the citizenship of Belarus or receipt of permanent residence permits thus facilitating their access to naturalization, as per the amendments to the Law on citizenship adopted in 2020.
6. UNHCR offers the following observations to assist the Government of the Republic of Belarus in ensuring that its citizenship legislation is in line with international law. UNHCR stands ready to discuss these observations with the Government of the Republic of Belarus.

II. Observations to the proposed amendments to the Law on Citizenship

7. In 2020, UNHCR provided comments to the amendments of the Law “On Citizenship of the Republic of Belarus” (Law on Citizenship) in relation to acquisition of citizenship by birth, deprivation of citizenship and cancellation of previous decision on acquisition or termination of citizenship⁸.
8. UNHCR notes that the Law “On the amendments to the Law of the Republic of Belarus “On Citizenship of the Republic of Belarus” was adopted by the House of the Representatives of the National Assembly of the Republic of Belarus of the Republic of Belarus in two readings on 14 December 2022⁹.
9. UNHCR notes that the current legal proposal seeks to further expand the grounds for deprivation of nationality to the citizens of Belarus (by birth) who have been sentenced by a Court of the Republic of Belarus for participation in extremist activities or causing serious harm to the interests of the Republic of Belarus, if such a person is outside the Republic of Belarus. The proposed Article 19 stipulates that the *‘[c]itizenship of the Republic of Belarus of a person who has attained the age of 18, acquired by such a person on the grounds stipulated by Articles 13, 25, 27 of this Law as well as in accordance with Point 1) of Article 2, Articles 9 - 12, 24 and 26 of Law of the Republic of Belarus of 18 October 1991 No. 1181-XII “On citizenship of the Republic of Belarus” may be lost in connection with existing and entered into legal force sentence of a Court of the Republic of Belarus confirming participation of this*

⁵ UN General Assembly, Convention Relating to the Status of Stateless Persons, 28 September 1954, United Nations, Treaty Series, vol. 360, p. 117, available at: <https://www.refworld.org/docid/3ae6b3840.html>

⁶ UN High Commissioner for Refugees (UNHCR), Handbook on Protection of Stateless Persons, 30 June 2014, available at: <https://www.refworld.org/docid/53b676aa4.html>

⁷ UN High Commissioner for Refugees (UNHCR), Guidelines on Statelessness No.5: Loss and Deprivation of Nationality under Articles 5-9 of the 1961 Convention on the Reduction of Statelessness, May 2020, HCR/GS/20/05, available at: <https://www.refworld.org/docid/5ec5640c4.html>

⁸ <https://pravo.by/document/?guid=3941&p0=2022062001>

⁹ News release on the official website of the lower chamber of the Parliament of the Republic of Belarus, 14 December 2022, available at: <http://www.house.gov.by/ru/news-ru/view/14-dekabrija-goda-na-zasedanii-palaty-predstavitelej-deputatskij-korpus-rassmotrel-shest-zakonoproektov-64823-2022>

person in extremist activities or causing serious harm to the interests of the Republic of Belarus, – if such a person is outside the Republic of Belarus’.

10. Additionally, Part One of Article 19 (Loss of citizenship of the Republic of Belarus) is amended with removal of the following provision: *‘unless there are grounds stipulated by Article 20 of this Law’.*
11. Furthermore, the proposed amendments remove the safeguards against loss of citizenship – in case he/she does not have another citizenship or guarantees to acquire it – in relation to the persons mentioned above (Article 20) as follows: *‘Termination of citizenship of the Republic of Belarus is not allowed if a citizen of the Republic of Belarus: is a suspect or defendant in a criminal case concerning a crime committed in the territory of the Republic of Belarus, or is convicted in the Republic of Belarus for commission of a crime, except those convicted without a sentence or convicted with the penalty in the form of deprivation of the right to hold certain positions or engage in certain activities; has tax arrears or other outstanding obligations to the Republic of Belarus, its administrative and territorial units, legal entities and individuals; does not have any other citizenship or guarantee of its acquisition. The provisions of Part One of this Article shall not apply to cases of loss of citizenship of the Republic of Belarus on the grounds stipulated by Part Two and Three of Article 19 of this Law’.*
12. UNHCR is concerned that the implementation of the revised articles of the Law on Citizenship of the Republic of Belarus expanding the legal grounds for deprivation of nationality while excluding certain categories of persons from the safeguard against statelessness provided for in Article 20, may lead to new instances of statelessness.
13. Under Article 8 of the 1961 Convention, deprivation of nationality that would result in statelessness is strictly circumscribed. Article 8(1) of the 1961 Convention provides that “[a] Contracting State shall not deprive a person of its nationality if such deprivation would render him stateless.” As reflected in UNHCR’s Guidelines on Statelessness No. 5, *“this is the general rule. In order to apply this rule, a Contracting State must first determine and understand whether each of its potential acts of deprivation of nationality would result in statelessness. If an act of deprivation would result in statelessness, then the Contracting State may only proceed if one of the exceptions to the general rule set out in Articles 8(2) or 8(3) applies.”*¹⁰ A Contracting State’s fulfilment of its obligations under the 1961 Convention thus necessarily requires an assessment by the Contracting State on the issue of statelessness before a person is deprived of nationality’.¹¹
14. Furthermore, Article 8(3)(a)(ii) of the 1961 Convention allows for the deprivation of citizenship if a person “has conducted himself in a manner seriously prejudicial to the vital interests of the country of his/her citizenship”. This provision establishes a very high threshold for deprivation of citizenship resulting in statelessness. The conduct of a person must threaten the foundations and organization of the state whose citizenship s/he has; s/he should have the capacity to negatively impact the country of his/her citizenship.

¹⁰ UN High Commissioner for Refugees (UNHCR), *Guidelines on Statelessness No. 5: Loss and Deprivation of Nationality under Articles 5-9 of the 1961 Convention on the Reduction of Statelessness*, May 2020, HCR/GS/20/05, available at: <https://www.refworld.org/docid/5ec5640c4.html>.

¹¹ *Ibid*, paras. 44-45.

The term “vital interests” is to be interpreted as imposing a higher threshold than offences against “national interests”.¹²

15. Furthermore, subject to the narrow exceptions to the general prohibition of statelessness as a result of loss or deprivation of nationality outlined in the 1961 Convention, States must ensure that safeguards against statelessness exist in national legislation wherever they provide for withdrawal of nationality. A State’s assessment of whether a person has a second nationality is to be assessed at the time of the State’s decision to deprive that person of its nationality¹³.

III. Concluding recommendations

16. In order to reflect the general principle of avoidance of statelessness stipulated in Article 8 of the 1961 Convention, UNHCR recommends that Part Three of Article 19 of the Law on Citizenship be amended in a way so that it explicitly emphasizes the very high threshold to be applied for deprivation of citizenship of Belarus, in line with Article 8(3)(a)(ii) of the 1961 Convention.
17. Furthermore, UNHCR recommends that Part One of Article 19 remains unchanged, whereby basic safeguards against statelessness (stipulated in Paragraph Four of Part One of Article 20) are preserved for persons who do not possess any other citizenship or guarantees of acquiring one. For the same reason, UNHCR also recommends refraining from amendments to Part Two of Article 20 which does not allow individuals falling under provisions of Part Three of Article 19 to benefit from safeguards against statelessness prescribed in Paragraph Four of Part One of Article 20.
18. UNHCR remains available to discuss these observations with the Government of the Republic of Belarus.

*UNHCR Representation in the Republic of Belarus
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¹² Ibid, paras. 61-62.