



UNHCR

United Nations High Commissioner for Refugees
Haut Commissariat des Nations Unies pour les réfugiés

UNHCR's comments on the proposed amendments to the Croatian Citizenship Act

I. INTRODUCTION

1. The United Nations High Commissioner for Refugees Representation in Croatia (hereafter “UNHCR”), is grateful to the Ministry of Interior of the Republic of Croatia for the opportunity to express views on the Proposal for the amendments to the Croatian Citizenship Act (hereafter the “Proposal”)¹ dated 24 October 2018.
2. The UN General Assembly has entrusted UNHCR with a global mandate to identify and protect stateless persons and for preventing and reducing statelessness.² It has specifically requested UNHCR “to provide technical and advisory services pertaining to the preparation and implementation of nationality legislation to interested States”.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 adoption and implementation of safeguards, consistent with fundamental principles of international law, to prevent the occurrence of statelessness which results from, inter alia, arbitrary denial or deprivation of nationality, restrictions applied to parents in passing on nationality to their children or denial of a woman’s ability to pass on nationality to her children.⁴ UNHCR thus has a direct interest in monitoring national legislation of countries impacting on the prevention or reduction of statelessness, including implementation of safeguards contained in international human rights treaties, as well as those set out in the 1961 Convention.⁵
3. The following comments are thus based on international standards on statelessness set out in particular in the 1954 Convention Relating to the Status of Stateless Persons⁶ and

¹ Proposal of the Act on Amendments to the Croatian Citizenship Act, available at: <https://esavjetovanja.gov.hr/ECon/MainScreen?entityId=9171>.

² UN General Assembly Resolution A/RES/50/152, 9 February 1996, available at: <http://www.unhcr.org/refworld/docid/3b00f31d24.html>; Reiterated in subsequent resolutions, inter alia, A/RES/61/137 of 25 January 2007, available at: <http://undocs.org/en/A/RES/61/137>, A/RES/62/124 of 24 January 2008, available at: <http://undocs.org/en/A/RES/62/124> and A/RES/63/148 of 27 January 2009, available at: <http://undocs.org/en/A/RES/63/148>.

³ UN General Assembly Resolution A/RES/50/152, 9 February 1996, available at: <http://www.un.org/documents/ga/res/50/ares50-152.htm>.

⁴ UNHCR’s Executive Committee Conclusion 106, paras. (i) and (j).

⁵ Croatia acceded to the 1961 Convention on 22 September 2011. For more, see Act on Accession of the Convention on the Reduction of Statelessness, Official Gazette 8/2011, available at: https://narodne-novine.nn.hr/clanci/medunarodni/2011_06_8_66.html.

⁶ 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>.

the 1961 Convention,⁷ Conclusions on International Protection of the UNHCR Executive Committee,⁸ UNHCR Handbook on the Protection of Stateless Persons,⁹ UNHCR Handbook for Parliamentarians N° 29 on Good practices in nationality laws for the prevention and reduction of statelessness,¹⁰ and relevant guidelines.¹¹

II. COMMENTS

4. UNHCR welcomes the efforts of the Government of Croatia to further improve the Croatian Citizenship Act (hereinafter the “Act”)¹² in particular in relation to facilitating access to citizenship for children.
5. UNHCR notes that the Proposal primarily aims to facilitate acquisition of Croatian citizenship for Croat emigrants as a measure of demographic revitalization. The Proposal also contains changes relating to acquisition and renunciation of Croatian nationality potentially leading to situations of statelessness. UNHCR comments will solely concentrate on proposing safeguards to prevent instances of statelessness.

A. Acquisition of citizenship

6. According to the Proposal, revised Article 4 of the Act should read as follows:

“A child acquires Croatian citizenship by origin:

1) if one of his or her parents is a Croatian citizen at the time of the child's birth and the child is born in the Republic of Croatia;

2) if he or she has foreign citizenship or has no citizenship and the child is adopted by Croatian citizens. A person acquires Croatian citizenship by origin if born abroad and one of the parents at the moment of the person's birth was a Croatian citizen, provided that

⁷ 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>.

⁸ UNHCR, UNHCR's Executive Committee Conclusions on Statelessness, updated 2010, available at: <http://www.unhcr.org/protection/statelessness/41b4607c4/executive-committee-conclusions-relating-statelessness.html>

⁹ UNHCR, Handbook on Protection of Stateless Persons, 30 June 2014, available at: <http://www.refworld.org/docid/53b676aa4.html>.

¹⁰ Inter-Parliamentary Union and UNHCR, Good practices in nationality laws for the prevention and reduction of statelessness, Handbook for Parliamentarians N° 29, November 2018, available at: <https://www.refworld.org/docid/5be41d524.html>.

¹¹ 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, available at: <http://www.refworld.org/docid/50d460c72.html>.

¹² Act on Croatian Citizenship, Official Gazette 53/91, 70/91, 28/92, 113/93, 4/94, 130/11, 110/15, available at: http://eudocitizenship.eu/NationalDB/docs/CRO%20Law%20on%20Croatian%20Citizenship%20consolidated%2028_10_2011_ENGLISH.pdf.

the child is registered with the registry office in the Republic of Croatia to be entered in the records as a Croatian citizen before he or she turns 21 years of age.”

7. Article 4(1) of the 1961 Convention requires that *“a Contracting State shall grant its nationality to a person, not born in the territory of a Contracting State, who would otherwise be stateless, if the nationality of one of his parents at the time of the person’s birth was that of that State.”* While Article 4(2) permits that this rule may be subject to certain conditions, it explicitly requires that children shall be allowed to file an application for citizenship at least until they reach 23 years of age.¹³
8. Of paramount importance in determining the scope of the 1961 Convention obligations to prevent statelessness among children is the Convention on the Rights of the Child (hereinafter the “CRC”).¹⁴ Since Croatia is party to both the 1961 Convention and the CRC, Articles 1-4 of the 1961 Convention must be interpreted in light of the provisions of the CRC, in particular the principle of child’s best interests and the right of every child to acquire a nationality, as set out in Articles 3 and 7 of the CRC respectively.¹⁵
9. **Based on the aforementioned international norms, UNHCR recommends that a child born abroad to a national of Croatia automatically acquires nationality at birth by operation of law in line with the principle of the best interests of the child and the principle of avoiding statelessness.¹⁶ Alternatively, UNHCR recommends that the time limit for registration of children born abroad to be granted Croatian citizenship be changed from 21 to 23 years in accordance with Article 4(2) of the 1961 Convention.**
10. According to the Proposal, revised Article 5 of the Act should read as follows:

“An adult person born abroad after 8 October 1991 whose both parents at the time of his/her birth were Croatian citizens shall acquire Croatian citizenship by origin.”
11. UNHCR is concerned that the removal of paras 2 and 3¹⁷ of Article 5 of the Act currently in force would affect children born abroad who would otherwise be stateless. This is of

¹³ 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, p.7 (para 31) and p.14, available at: <http://www.refworld.org/docid/50d460c72.html>.

¹⁴ UN General Assembly, Convention on the Rights of the Child, 20 November 1989, United Nations, Treaty Series, vol. 1577, p. 3, available at: <https://www.refworld.org/docid/3ae6b38f0.html>.

¹⁵ 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, pg. 3, available at: <https://www.refworld.org/docid/50d460c72.html>.

¹⁶ The Explanatory report to the European convention on nationality (ECN), which codifies this principle in Article 4(b), refers to the obligation of avoidance of statelessness as a part of customary international law. See ECN, ETS No. 166, 1997, para. 33: <https://rm.coe.int/16800ccde7>.

¹⁷ Article 5(2) of the Croatian Citizenship Act provides that “[a] child born abroad, one of whose parents is a Croatian citizen at the moment of the child’s birth, acquires Croatian citizenship by origin if the child is registered for Croatian citizenship by 18 years of age at a competent authority of the Republic of Croatia abroad or in the Republic of Croatia, or if he or she settles in the Republic of Croatia. A child born abroad, one of whose parents is a Croatian citizen at the moment of the child’s birth, and who does not fulfil any of the requirements under paragraph 1 of this Article, acquires Croatian citizenship if he or she would otherwise remain without citizenship.” Furthermore, Article 5(3)

particular importance for children born in a State which does not apply the *jus soli* principle and whose one or both parents possess a nationality, but neither can confer it upon their children. Paragraph 2 contains an important safeguard against statelessness by granting nationality to any child who does not fulfil any of the requirements set out in paragraph 1 and who would otherwise remain stateless, and paragraph 3 ensures the retroactive application of paras 1 and 2.

12. **UNHCR suggests to reinstate the text of paras 2 and 3 of Article 5 of the Act currently in force to provide safeguards for children who would otherwise be stateless, as required *inter alia* under Articles 1 and 4 of the 1961 Convention and complementary provisions in international human rights law, including Articles 3, 7 and 8 of the Convention on the Rights of the Child.**¹⁸

B. Renunciation resulting in statelessness

13. According to proposed amendments, revised Article 22(2) of the Act should read as follows:

“Croatian citizenship of a child under 18 years of age, adopted by foreign citizens, shall terminate by renunciation upon the request of his or her adoptive parents.”

14. Articles 5-7 of the 1961 Convention limit loss of nationality to situations where the individual concerned possesses another nationality at the time of said loss. Article 7(1) allows renunciation of nationality only on the basis of acquisition of another nationality. According to UNHCR guidance on this matter, States which allow loss of nationality in cases of adoption of a child by a foreigner must restrict these to cases where a child acquires the nationality of the adopting parent(s) by the mere fact of the adoption and must never result in statelessness.¹⁹ UNHCR notes with concern that proposed amendments to Article 22 do not contain sufficient safeguards against statelessness in cases of renunciation of Croatian citizenship on behalf of children, including those who were adopted.
15. **UNHCR suggests that revised Article 22 of the Act incorporates safeguards stipulated in Article 7(1) of the 1961 Convention, which prohibits renunciation of nationality if the individual does not possess another nationality at the moment of loss. In order to ensure**

states that “[a] child who acquires Croatian citizenship pursuant to paragraph 1 or 2 of this Article is considered a Croatian citizen from the moment of his or her birth.”

¹⁸ As stated above, the Convention on the Rights of the Child (CRC) is crucial in construing the scope of the 1961 Convention obligations to prevent statelessness among children. Article 3 of the CRC sets out a general principle and also applies in conjunction with Articles 7 and 8, requiring 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. It follows from Articles 3 and 7 of the CRC that a child must not be left stateless for an extended period of time and must therefore acquire nationality at birth or as soon as possible after birth. Article 8 of the CRC provides that every child has the right to preserve his or her identity, including nationality.

¹⁹ UNHCR, Expert Meeting - Interpreting the 1961 Statelessness Convention and Avoiding Statelessness resulting from Loss and Deprivation of Nationality (“Tunis Conclusions”), March 2014, available at: <https://www.refworld.org/docid/533a754b4.html>.

that the renunciation does not result in statelessness, states can provide for a lapse of the renunciation if the individual concerned fails to acquire the foreign nationality within a fixed period of time.

**UNHCR Croatia
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