UNHCR Comments on the draft Amendments to the Law on Citizenship of Belarus

A. Introduction

In October 2019, at the High-Level Segment on Statelessness convened by the United Nations High Commissioner for Refugees (UNHCR) as part of its 70th Executive Committee meeting, Belarus pledged to accede to the two UN Statelessness Conventions – the 1954 Convention relating to the Status of Stateless Persons (hereinafter referred to as '1954 Convention') and the 1961 Convention on the Reduction of Statelessness (hereinafter referred to as '1961 Convention') – by the end of 2020 after completion of all necessary internal procedures. UNHCR very much welcomes this commitment by the Government of the Republic of Belarus.

In July 2020, the Department on Citizenship and Migration of the Ministry of Interior of the Republic of Belarus, the central authority in charge of citizenship and statelessness issues, reaffirmed Belarus' intention to ratify the 1954 and 1961 Conventions by the end of 2020. UNHCR was also informed that before the ratification of both UN Statelessness Conventions, amendments would be made to the Law of the Republic of Belarus dated 01.09.2002 No. 136-3 "On citizenship of the Republic of Belarus" (edition dated 20.07.2016 No. 414-3) (hereinafter referred to as 'Law on Citizenship'). In July 2020, the House of Representatives of the National Assembly of the Republic of Belarus (hereinafter referred to as 'House of Representatives') informed the UNHCR Representation in Belarus that on 4 June 2020 it has adopted, in the first hearing, the draft Law of the Republic of Belarus "On amendments to the Law on the Republic of Belarus "On citizenship of the Republic of Belarus". The House of Representatives will review this draft law in the course of the second hearing during the autumn session in 2020. In relation to this, the House of Representatives shared the proposed amendments to the Law on Citizenship with UNHCR for comments.

UNHCR is grateful for the opportunity to comment on the draft amendments to the Law on Citizenship.

The UN General Assembly has entrusted UNHCR with a global mandate to provide protection to stateless persons worldwide and for preventing and reducing statelessness.[1] It has specifically requested UNHCR "*to provide technical and advisory services pertaining to the preparation and implementation of nationality legislation to interested States*".[2] The General Assembly has also entrusted UNHCR with the specific role foreseen in Article 11 of the 1961 Convention.[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 arbitrary denial or deprivation of nationality.[4]

[1] 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://www.unhcr.org/refworld/docid/45fa902d2.html, A/RES/62/124 of 24 January 2008, available at: http://www.unhcr.org/refworld/docid/47b2fa642.html, and A/RES/63/148 of 27 January 2009, available at: http://www.unhcr.org/refworld/docid/4989619e2.html

[2] UN General Assembly Resolution A/RES/50/152, para. 15.

[3] Article 11 of the 1961 Convention provides for the creation of a "*body to which a person claiming the benefit of this Convention may apply for the examination of his claim and for assistance in presenting it to the appropriate authority".*

[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).

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 yet parties to the UN Statelessness Conventions.

UNHCR welcomes the efforts made by Belarus to bring the Law on Citizenship in line with the UN Statelessness Conventions. UNHCR notes with appreciation the following proposed amendments:

- The decrease of the duration of permanent residence needed for an application for citizenship from 7 to 5 years (Article 14).
- The possibility for a foreign citizen or a stateless person who has been residing permanently in Belarus for at least 3 years uninterruptedly, is married to a citizen of Belarus and has a common underage child with Belarusian citizenship, to apply for citizenship after 3, instead of 5 years of permanent residence in the country (Article 14).
- The possibility to acquire citizenship by registration for individuals who obtained their higher education in Belarus and have been working in the country for at least 3 years (Article 15).
- The possibility to obtain citizenship by registration for a stateless child who was born outside Belarus by joint application of his/her parents who are foreign citizens and/or stateless persons permanently residing in Belarus, or by application of one of the parents, who is a foreign citizen or stateless person in case the whereabouts of another parent who is a foreign citizen or stateless person are unknown, or by application of the only parent who is a foreign citizen or stateless person (Article 15).
- The introduction of a new provision on restoration of citizenship of Belarus (Articles 12 and 15)[5].

B. Comments to the proposed amendments to the Law on Citizenship

The following comments are proposed to the House of Representatives for the purposes of clarifying and strengthening certain key provisions of the draft Law on Citizenship in line with international law and standards.

1. Acquisition of citizenship by birth (Article 13)

Article 13 of the Law on Citizenship reads that "*[a] child acquires citizenship of the Republic of Belarus by birth if at the date of a child's birth: at least one of the child's parents possesses citizenship of the Republic of Belarus, irrespective of the place of the child's birth; the parents (the only parent) of a child, temporarily or permanently residing in the Republic of Belarus, are stateless persons, provided that the child was born on the territory of the Republic of Belarus; the parents (the only parent) of a child, permanently residing in the Republic of Belarus, are foreign citizens, provided that the child was born on the territory of the Republic of Belarus and the countries whose citizens his/her parents are do not provide him/her with their citizenship. A child who is situated on the territory of the Republic of Belarus and whose parents are unknown becomes a citizen of the Republic of Belarus*".

UNHCR welcomes the solid safeguards in the Law on Citizenship to avoid new instances of statelessness among children. However, Article 13 does not cover the situation of a child who was born in the territory of Belarus and whose parent(s) are stateless persons staying irregularly in Belarus.

[5] This provision is applicable to a person who (1) attained the age of 18; (2) permanently resides in Belarus or arrived in Belarus for permanent residence; (3) observes and respects Belarusian legislation; (4) knows one of the State languages within the limits required for communication; (5) possessed the citizenship of Belarus in the past, but lost it either upon application of his/her parents (in case s/he obtained Belarusian citizenship by birth along with citizenship of a foreign country) or on the grounds envisaged by international treaties to which Belarus is a signatory or on similar grounds provided for by the former Law on Citizenship dated 18.10.1991.

Article 1(1) the 1961 Convention states that "*[a] Contracting State shall grant its nationality to a person born in its territory who would otherwise be stateless*".[6] This represents one of the most important safeguards against statelessness at birth, while States are not required to grant citizenship to all children born in their territories, but only to those who cannot acquire any other citizenship, for instance because their parents are unknown, stateless themselves or where the mother cannot confer her citizenship to the child born in wedlock due to gender discrimination in the citizenship laws of her country of origin.

A child would be considered "*otherwise stateless*" if s/he acquires neither the citizenship of his/her parents nor that of the State of his/her birth. The rules for preventing statelessness among children contained in Articles 1 to 4 of the 1961 Convention should be read in light of human rights treaties that were since adopted, which recognize every child's right to acquire a citizenship, in particular where they would otherwise be stateless.[7] Notably, Article 7 of the Convention on the Rights of the Child (CRC) 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 citizenship, must be undertaken with the best interests of the child as a primary consideration. The right of every child to acquire a citizenship (Article 7 of the CRC) and the principle of the best interests of the child (Article 3 of the CRC) together create a presumption that States need to provide for the automatic acquisition of their citizenship at birth by an otherwise stateless child born in their territory, in accordance with Article 1(1)(a) of the 1961 Convention.

Based on the above, Article 13 of the Law on Citizenship, which includes a legal residency requirement, is not fully in line with Article 1(1) of the 1961 Convention. If this requirement was to be upheld, not all children born in Belarusian territory who would otherwise be stateless, would be protected against statelessness, as set out by the 1961 Convention.

In order to better reflect the wording of Article 1(1) of the 1961 Convention in Article 13 of the Law on Citizenship, UNHCR recommends that Article 13 be amended to read as follows: "*regardless of the legal and residence status of parents (the only parent) of a child who was born in the territory of Belarus, such child becomes a citizen of Belarus if s/he is unable to acquire the citizenship of/through his/her parents (the only parent) and will otherwise become stateless*".

2. Deprivation of citizenship (Article 19, Part 2)

The proposed amended Article 19 (Part 2) of the Law on Citizenship stipulates that the "*[c]itizenship of the Republic of Belarus of a person who attained the age of 18, which* [citizenship] *was acquired by this person as a result of granting of citizenship, by registration, as a result of restoration of citizenship based on the grounds envisaged in international treaties of the Republic of Belarus, may be lost following a decision of a court of the Republic of Belarus that came into force, court decision of a foreign country on a criminal case, verdict or other decision of international tribunal (court), hybrid tribunal (court), which confirms participation of this person in extremist activities or infliction of serious damage to the interests of the Republic of Belarus*".

Article 19 (Part 2) stipulates that this regulation prevails over Article 20 (Part 1, para. 4) which does not allow for the termination of Belarusian citizenship if a person "*does not possess any other citizenship or guarantees of its acquisition*".

[6] 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

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

UNHCR is concerned that the implementation of the revised Article 19 (Part 2), in combination with other relevant articles of the law, may lead to new instances of statelessness.

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.*".[8]

UNHCR's Guidelines on Statelessness No. 5 also refer to the provisions of Articles 5 to 8 of the 1961 Convention [which] distinguish between mono and dual nationals such that different standards apply depending on whether a person is in possession of or can acquire another nationality. This is relevant to determining whether loss or deprivation of the nationality of a Contracting State would result in a person becoming stateless at the time of deprivation. Any inequality of treatment between nationals by birth and naturalized citizens should, as a matter of good practice, be minimized through ensuring that there is a defined and limited period during which naturalized citizens may be subjected to loss or deprivation of nationality on an unequal basis with nationals by birth. For example, a naturalized citizen should not be subject to a different set of rules on withdrawal of nationality to. a national who acquired nationality by birth after a limited and defined period (e.g. one year) from the date of their acquisition of nationality by naturalization.[9]

In order to reflect the general principle of avoidance of statelessness stipulated in Article 8 of the 1961 Convention, UNHCR recommends that Article 19 (Part 2) of the Law on Citizenship be amended to emphasize the very high threshold to be applied for the deprivation of citizenship.

UNHCR also advises that any inequality of treatment between nationals by birth and naturalized citizens be minimized through ensuring that there is a defined and limited period during which naturalized citizens may be subjected to loss or deprivation of nationality on an unequal basis with nationals by birth.

3. Cancellation of previous decision on acquisition or termination of citizenship (Article 21)

Article 21 of the Law on Citizenship provides for the cancellation of a previous decision on acquisition or termination of citizenship if such a decision was made on the basis of "*knowingly false information or counterfeit, forged or invalid documents*".

Article 8(2)(b) of the 1961 Convention enumerates some exceptions to the general prohibition of deprivation of nationality where the nationality has been obtained by misrepresentation or fraud. This provision employs a restrictive language and, as exceptions to a general rule, it is to be interpreted narrowly. This provision should also be read in line with States' international human rights obligations. UNHCR's Guidelines No. 5 provide detailed guidance on the interpretation of Article 8(2)(b) of the 1961 Convention.

Firstly, the misrepresentation or fraud must have been a key causal factor in the person concerned acquiring citizenship in the first place. Secondly, deprivation of citizenship is not permissible if citizenship would have been acquired regardless of the misrepresentations or concealment. Thirdly, fraud or misrepresentation in the acquisition of citizenship should be distinguished from fraudulent acquisition of documents that may be submitted as part of the process to acquire citizenship.

[8] 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

[9] Ibid, para 112.

Fraudulent documents are not in themselves evidence of fraudulent acquisition of citizenship, as a person may in certain situations be forced to obtain documents by irregular means even if s/he has a legal entitlement to citizenship. Lastly, the nature or gravity of the fraud or misrepresentation should be weighed against the consequences of withdrawal of citizenship (including any resulting statelessness). The length of time elapsed between the acquisition of citizenship and the discovery of fraud should also be taken into account.

In light of the above, UNHCR would welcome clarifications on whether the word "*knowingly*" applies to "*false information*" only or to the whole phrase "*false information or counterfeit, forged or invalid documents*".

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