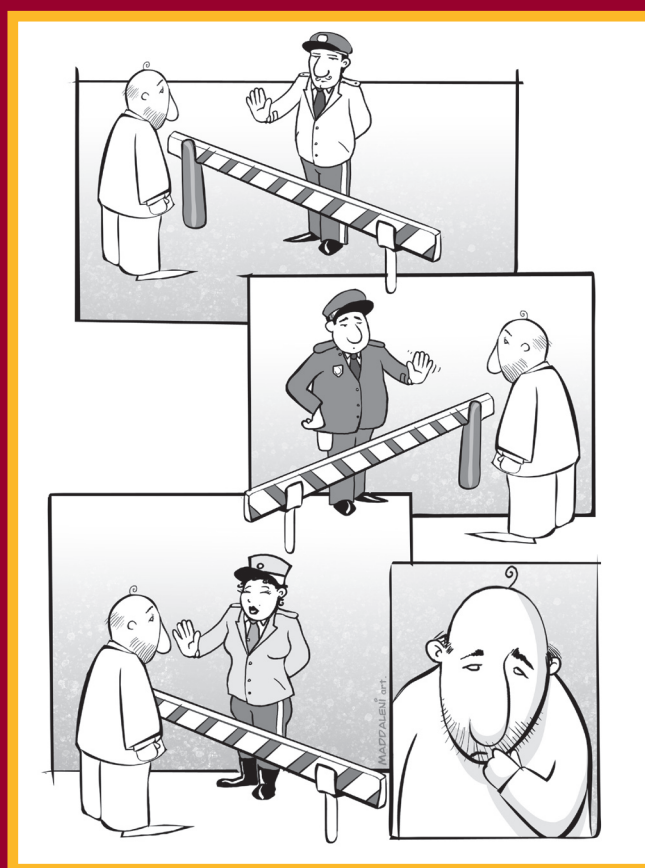


H U N G A R I A N H E L S I N K I C O M M I T T E E

FORGOTTEN WITHOUT REASON

by
Gábor Gyulai



**Protection of
Non-Refugee
Stateless Persons
in Central Europe**



Hungarian Helsinki Committee

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Executive Summary

Despite the recent creation of a protection regime for refugees in Central Europe, a group with very similar needs and characteristics has been unjustifiably overlooked. Current protection regimes available for non-refugee stateless persons in Hungary, Poland, Slovakia and Slovenia are characterised by serious gaps and an attitude which considers this issue to be of secondary importance and associates it, at best, with subsidiary and temporary forms of protection. On the other hand, good practice examples are also present in the four countries in some particular aspects, and recently positive developments have also been witnessed.

Before presenting the results of its analysis of individual country practices, this report provides an overview of the relevant international legal context, pointing out both binding provisions and non-binding recommendations applicable for the four countries in question.

Firstly, the analysis deals with the existing mechanisms through which non-refugee stateless persons are identified by states and may be given access to a protection status. With a recent amendment, Hungary is the first country in the region to adopt separate and detailed legislation on statelessness determination, which not only elaborates procedural criteria, but also creates – as a highly progressive measure – a separate legal identity and protection status for stateless persons. Non-refugee stateless persons may have access to subsidiary forms of protection in Poland and Slovakia, without any specific procedural provision or guidance relating to them. Access to protection status has been found to be extremely difficult in Poland and is practically non-existent in Slovenia.

Secondly, the study analyses the protection status and social rights granted to non-refugee stateless persons. Among the three countries offering protection for this group, Poland is interestingly the closest to meeting the standards set by the 1954 Statelessness Convention, to which it is not party. It is of particular concern that non-refugee stateless persons are excluded from the labour market and are practically precluded from obtaining a passport and long term residence in Slovakia. The low standard of treatment of stateless persons in Hungary, with respect to social benefits and public relief, is also worrisome.

At last, the report touches upon the issue of “durable solution”, i.e. the facilitated access to a new nationality. While Slovakia sets the most preferable standards in this respect, the cumulative effect of very strict conditions and a complete lack of any appeal or review mechanism in Hungary gives rise to particular concerns.

Based on these findings, the author offers a set of recommendations for the government of Hungary, Poland, Slovakia and Slovenia, with a particular emphasis on relevant international legal obligations, as well as practical aspects and feasibility.

Summary of Recommendations

Recommendation 1 – International legal instruments

Poland is urged to accede to the 1954 Statelessness Convention. Hungary and Slovakia are encouraged to lift their respective reservations to the 1954 Statelessness Convention. Hungary, Poland and Slovenia are urged to accede to the 1961 Statelessness Convention. Slovenia should consider acceding to the 1997 European Convention on Nationality.

Recommendation 2 – Statelessness legislation

Poland, Slovakia and Slovenia should consider adopting legislation establishing a specific stateless status determination mechanism, as well as an effective protection system for those recognised as stateless (hereinafter statelessness legislation).

Recommendation 3 – *De facto* statelessness

Hungary, Poland, Slovakia and Slovenia are encouraged to include *de facto* stateless persons in their stateless definition, and treat them similarly to the *de jure* stateless in their statelessness and alien policing legislation.

Recommendation 4 – Decision-making bodies

Hungary, Poland, Slovakia and Slovenia should consider establishing a specialised unit of dedicated, professional and trained decision-makers with an exclusive right to decide claims for stateless status.

Recommendation 5 – Stateless status determination initiated *ex officio*

Poland, Slovakia and Slovenia are encouraged to adopt provisions in their statelessness legislation that enable a stateless status determination procedure to be initiated *ex officio*. Hungary should consider amending its statelessness legislation accordingly.

Recommendation 6 – Evidentiary assessment

Poland, Slovakia and Slovenia are encouraged to include provisions in their statelessness legislation that facilitate and set clear and preferential rules for evidentiary assessment in stateless status determination.

Recommendation 7 – Burden of proof

Poland, Slovakia and Slovenia are urged to include provisions in their statelessness legislation that provides for the sharing of the burden of proof among the applicant for stateless status and the processing authority. Hungary is encouraged to consider amending its statelessness legislation accordingly.

Recommendation 8

– The circle of countries involved in stateless status determination

Poland, Slovakia and Slovenia are encouraged to include concrete guidelines in their statelessness legislation determining the group of countries with respect to which the nationality of an applicant for stateless status should be examined.

Recommendation 9 – Judicial review of statelessness determination

Poland, Slovakia and Slovenia are urged to ensure an effective judicial review mechanism for rejected applicants for stateless status, either by including specific provisions in their statelessness legislation, or extending already existing mechanisms (such as administrative appeal systems) to this area.

Recommendation 10 – Residence

Hungary, Slovakia and Slovenia are urged to provide for legal residence for stateless persons not limited in time, or at least to apply the same standard in this respect as in the case of refugees.

Recommendation 11 – Access to the labour market

Hungary, Slovakia and Slovenia are urged to grant full access to the labour market for stateless persons.

Recommendation 12 – Access to education

Hungary, Poland, Slovakia and Slovenia are encouraged to facilitate the access of stateless persons to primary, secondary and higher education under the scheme applied to nationals.

Recommendation 13 – Public relief and assistance

Hungary and Slovenia are encouraged to accord to stateless persons the same treatment with respect to public relief and assistance as is accorded to their nationals.

Recommendation 14 – Travel document

Poland is to adopt legislation that enables the competent state authority to issue a travel document for stateless persons in conformity with Article 28 and the Annex of the 1954 Statelessness Convention. Slovakia is urged to discontinue its current practice of precluding most stateless persons from obtaining a permanent residence permit and thus a Slovak alien travel document.

Recommendation 15 – Facilitating access to citizenship

Hungary, Poland, Slovakia and Slovenia are urged to amend their citizenship legislation in order to facilitate the access to citizenship of stateless persons residing permanently on their territory, with particular attention to those in a vulnerable position (such as the elderly or sick).

Recommendation 16

– Access to citizenship: exemption from examinations

Hungary and Slovenia should consider amending their legislation on citizenship in order to facilitate access to citizenship of those stateless persons residing on their territory on a long-term basis, notably by exempting stateless applicants from the obligation of passing any sort of examination (either of constitutional studies or language skills).

Recommendation 17 – Review of naturalisation procedures

Hungary is urged to amend its citizenship legislation in order to allow for an effective administrative and judicial review system in case of rejected applications for citizenship, at least in case of stateless applicants, as a minimum standard.

Recommendation 18 – Statistics

Hungary, Poland, Slovakia and Slovenia are encouraged to make efforts to collect and publish comparable and transparent statistics on stateless persons coming to their sight in the framework of asylum, alien policing and statelessness determination procedures.

Recommendation 19 – Training

Hungary, Poland, Slovakia and Slovenia are urged to make efforts (in cooperation with the UNHCR and non-governmental organisations) to effectively train the personnel of administrative and judicial bodies dealing with statelessness determination on the legal and procedural issues related thereto.

Recommendation 20 – Access to legal assistance and the UNHCR

Poland, Slovakia and Slovenia should consider including provisions in their statelessness legislation that guarantee access, to applicants for stateless status, to professional legal assistance and stipulate the UNHCR's role in such procedures, specifying its access to files and documents, as well as the strong consideration given to its expert's opinions.

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I. Introduction

In accordance with to the Universal Declaration of Human Rights, everyone has the right to a nationality.¹ The rationale behind this strong commitment to the right to a nationality is that it constitutes a genuine and effective link between an individual and a state. The concept of nationality serves to ensure that the state fulfils its obligation to “protect” its citizens and provides them with certain services. Refugees cannot avail themselves of the protection of their state against persecution and their right to enjoy asylum in another country is widely recognised under international law. However refugees are not the only ones deprived of this “protective tie”.

Throughout the nineties, Central Europe was the focus of international refugee affairs, mainly due to the devastating wars in the Former Yugoslavia. As a result of significant efforts and investments by governments, international and non-governmental organisations, the infrastructure of refugee protection was created, including reception facilities, mechanisms for refugee status determination and its judicial review, as well as developed systems of legal and social counselling to those in need of international protection.

Meanwhile, a group with needs very similar to those of refugees has been overlooked. Stateless persons are also denied protection by the state in which they were born or live. Stateless persons are also protected by various international legal instruments. Stateless persons are also numerous among the victims of forced displacement. The United Nations High Commissioner for Refugees (UNHCR) considers both refugees and stateless persons as groups falling under its mandate and scope of activities.² And yet, none of the four countries covered by the present research have developed any sort of functioning and specialised protection mechanism for stateless persons.

This study is the result of a regional research process coordinated by the Hungarian Helsinki Committee, with the financial and professional support of the UNHCR Regional Representation for Hungary, Poland, Slovakia and Slovenia. The driving consideration behind this initiative is the conclusion, drawn by non-governmental organisations providing legal aid to asylum-seekers and advocating for refugee rights in these four countries that the time has come to create an effective and humane protection mechanism for stateless persons in Central Europe.³ The main goal of this study is therefore to present a highly practical and feasible alternative to the four governments in the region and to prove that this worrisome protection gap could be closed as soon as possible and without significant financial implications.

¹ 1948 Universal Declaration of Human Rights, Article 15

² Article 11 of the 1961 Convention on the Reduction of Statelessness calls for the establishment “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.” The United Nations General Assembly requested the UNHCR to fulfil this role in its resolutions A/RES/3274 (XXIX) of 10 December 1974 and A/RES/31/36 of 30 November 1976. See also General Assembly resolutions A/RES/49/169 of 24 February 1995 and A/RES/50/152 of 9 February 1996, Resolution E/CN.4/2005/L.58 of the UN Commission on Human Rights, as well as relevant conclusions of the UNHCR Executive Committee

³ The UNHCR articulated similar recommendations in its Final Report Concerning the Questionnaire on Statelessness Pursuant to the Agenda for Protection in March 2004 (<http://www.unhcr.org/protect/PROTECTION/4047002e4.pdf>)

II. Methodology

II.1 Scope of the Research

The objective of the present research is:

- to investigate existing protection systems for non-refugee⁴ stateless persons in Hungary, Poland, Slovakia and Slovenia,
- to identify main gaps therein, and
- to provide practical and feasible recommendations based on these findings.

The above objective was approached from a viewpoint of forced migration, concentrating on stateless persons arriving in the selected four countries in need of protection.

The research therefore did not touch upon the concept of statelessness in general, thus issues such as the root causes of statelessness, visa regulations for stateless persons and the situation of former Czechoslovak citizens becoming stateless following the separation of the Czech and Slovak Republics were not investigated.

II.2 Partner Organisations

The research has been coordinated by the **Hungarian Helsinki Committee** (*Magyar Helsinki Bizottság*), a leading human rights organisation in Hungary since 1989. Its activities cover various areas, with special emphasis on asylum, access to justice, anti-discrimination, detainees' rights and assistance to those whose human rights have been violated by state authorities. The Hungarian Helsinki Committee (HHC) – as implementing partner of the UNHCR since 1998 – coordinates a national network of asylum lawyers who provide free legal assistance to asylum-seekers in Hungary. The organisation regularly visits reception centres for asylum-seekers and refugees, as well as alien policing jails. It also comments on draft legislation in the field of asylum and immigration on a regular basis, and make continuous efforts to lobby for higher standards in international protection. The HHC is particularly active in educational activities both at a national and international level: it has been supporting and coordinating a network of two dozen Central and Eastern European “refugee law clinics” since 2001, it organises and hosts Europe’s only international asylum law moot court competition every year and it publishes *The Refugee Law Reader*, the first-ever on-line curriculum for the study of refugee law. Experts of the HHC regularly train governmental and NGO staff on various human rights-related issues in several European countries. (www.helsinki.hu)

The following non-governmental organisations were partners of the HHC in the present research.

- The **Helsinki Foundation for Human Rights** (*Helsinki Fundacja Praw Człowieka*), established in 1989, is a leading non-governmental human rights organisation in Poland. The Foundation is active in monitoring human rights, advocacy, providing free legal assistance to indigent persons, human

⁴ See definition in Subchapter II.3

rights education and strategic litigation. Lawyers of the Legal Assistance Programme for Refugees and Migrants provide legal assistance to asylum-seekers, recognised refugees and other groups of migrants staying in Poland, participate in legislative processes as *pro-bono* experts and in other projects aimed at the improvement of legal protection of foreigners. The Foundation is an implementing partner of the UNHCR in Poland. (www.bfhrpol.waw.pl)

- The **Human Rights League** (*Liga za ľudské práva*) is a Bratislava-based non-profit organisation, founded in April 2005 by the lawyers previously working for the Slovak Helsinki Committee. The Human Rights League (HRL) – as implementing partner of the UNHCR – regularly visits refugee camps in Gabčíkovo, Liptovské Vlasy and Rohovce, as well as at the alien detention centre in Medveďov and provides free-of-charge legal assistance and representation to asylum-seekers and recognised refugees. The HRL is also responsible for the education of law students of the Refugee Law Clinic at the Trnava University.
- The **Legal-informational Centre for NGOs** (*Pravno-informacijski center nevladnih organizacij*) is a Ljubljana-based non-governmental organisation, established in 1997. Its field of activities covers various areas, such as legal support activities for NGOs, face-to-face and internet-based human rights counselling, alternative dispute resolution and mediation, counselling for mentally challenged persons, as well as human rights and refugee law education (Ljubljana Refugee Law Clinic). The Centre has been an implementing partner of the UNHCR since January 2005, and as such provides free legal assistance for asylum-seekers and refugees in Slovenia. (www.pic.si)

II.3 Definitions

De jure stateless person: “a person who is not considered as a national by any State under the operation of its law.”⁵

De facto stateless person: a person “unable to demonstrate that he/she is *de jure* stateless, yet he/she has no effective nationality and does not enjoy national protection.”⁶

Stateless person: for the purpose of the present research, the term “stateless” includes both *de jure* and *de facto* stateless persons. It is far beyond the scope of this study to analyse differences between the two sorts of statelessness, their roots or legal interpretation. As there is no significant difference between the protection needs of *de jure* and *de facto* stateless persons, a joint approach was considered necessary throughout the entire research process.

Stateless refugee: an either *de jure* or *de facto* stateless person who also falls under the refugee definition of the 1951 Refugee Convention.⁷

⁵ 1954 Convention relating to the Status of Stateless Persons, Article 1 (1)

⁶ Nationality and Statelessness: A Handbook for Parliamentarians, UNHCR-Inter-parliamentary Union, Geneva, 2005, p.11; On the meaning of “effective nationality” see the milestone decision taken by the International Court of Justice in the *Nottebohm (Lichtenstein v. Guatemala)* case on 6 April 1955

⁷ A person “owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it.” – 1951 Convention Relating to the Status of Refugees, Article 1 A (2)

Non-refugee stateless person: an either *de jure* or *de facto* stateless person who does not fall under the refugee definition of the 1951 Refugee Convention, nor has a well-founded fear of suffering a “serious harm” in his/her country of origin (and thus cannot benefit from subsidiary protection). The term “serious harm” covers (a) death penalty or execution, (b) torture or inhuman or degrading treatment or punishment, as well as (c) a serious and individual threat to a civilian’s life or person by reason of indiscriminate violence in situations of international or internal armed conflict.⁸

Stateless status determination procedure: a formalised procedure based on specific legal provisions and having as objective to establish whether or not a person is stateless (either *de jure* or *de facto*). Such a procedure may be conducted either at the request of a foreigner (similarly to a refugee status determination procedure), or *ex officio* (for example in case of illegal aliens, in preparation of their expulsion).

II.4 Research Methodology

A common methodology was elaborated by project partners prior to the commencement of the research process. The research guidelines included among others a list of international legal instruments relevant to the scope of the project (both hard and soft law), as well as guiding principles for data collection. On the basis of the common methodology paper, information was collected separately by four researchers, each of them responsible for one country. A researcher’s main tasks were:

- to identify which of the above-mentioned common list of international legal instruments have a binding or non-binding effect to his/her country,
- to investigate the domestic legal background of statelessness in his/her country, applying the specific and limited research scope described in Subchapter II.1,
- to describe the procedural background of statelessness determination in his/her country, including organisational factors (i.e. whether a formal statelessness determination mechanism is in place and if there is any authority or unit with special competence for these issues),
- or in case of a lack of a formalised procedure, to describe how stateless persons are treated by authorities, whether they are dealt with in the framework of refugee protection mechanisms,
- to describe briefly the protection status (both legal and social) of persons recognised as stateless and eventually compare this status to that of refugees in his/her country,
- to find out the manner in which stateless persons have access to the citizenship of the given country, and whether this access is facilitated compared to foreigners in general.

The present study aims to serve as an **advocacy tool**; therefore its major focus is on producing a set of **positive recommendations** and the presentation of “**good practices**” to the governments of Hungary, Poland, Slovakia and Slovenia, rather than merely articulating criticism or providing a purely academic analysis.

⁸ See Article 15 of 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

III. Overview of International Legal Obligations

States' obligation to ensure the effective protection of stateless persons is based on a set of various international legal instruments, some of them with a binding and others with a non-binding effect. This chapter aims to give an overview of these instruments, highlighting the four states' most relevant obligations originating from them with respect to the issue in focus.⁹

III.1 Binding Instruments Providing for Protection for Stateless Persons

The international community has developed two main universal conventions in order to ensure protection for stateless persons, namely the 1951 Convention Relating to the Status of Refugees (hereinafter the 1951 Refugee Convention) and the 1954 Convention relating to the Status of Stateless Persons (hereinafter the 1954 Statelessness Convention).

The right of *certain* stateless persons to international protection is explicitly provided for by the 1951 Refugee Convention, however, it is limited to stateless refugees. Under the 1951 Convention, stateless persons may have access to effective international protection, but solely as refugees. In this respect, they must be able to substantiate that they have a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, and that being outside the country of their former habitual residence they are unable or, owing to such fear, are unwilling to return to it.¹⁰

In case of stateless refugees, being deprived of effective nationality (and thus from the genuine protection link existing between an individual and a state) may be seen as an element of state persecution or the lack of state protection against non-state agents of persecution. This being often the case, numerous stateless persons falling under the refugee definition can have access to international protection by making use of refugee status determination procedures, already in place in European and other states.

Hungary,¹¹ Poland,¹² Slovakia¹³ and Slovenia¹⁴ are all party to the 1951 Refugee Convention (and its 1967 Protocol) and have incorporated its refugee definition with the relevant references to stateless refugees into their national legislation. As functioning refugee protection mechanisms are in place in all the four countries covered by this report, **for the purposes of the present research it was necessary to concentrate on non-refugee stateless persons.**

⁹ See Subchapter II.1

¹⁰ 1951 Convention Relating to the Status of Refugees, Article 1 A (2)

¹¹ Accession date: 14 March 1989

¹² Accession date: 27 September 1991

¹³ Succession date: 4 February 1993

¹⁴ Succession date: 6 July 1992

Many stateless persons in need of international protection do not qualify for refugee status. The lack of effective nationality does not necessarily mean that a person has well-founded fear of being persecuted on any of the five grounds enumerated in Article 1A of the 1951 Refugee Convention. Moreover, most stateless persons (both *de jure* and *de facto*) requiring assistance from the UNHCR worldwide are not refugees and have no claim to asylum.¹⁵

Recognising this,¹⁶ **the 1954 Statelessness Convention aims to ensure protection for stateless persons regardless of whether they are refugees. The structure and content of the 1954 Convention is very similar to the 1951 Refugee Convention, emphasising the similar protection needs of these two groups.**

The 1954 Statelessness Convention defines:

- the term “stateless person” (limited to *de jure* statelessness);¹⁷
- basic principles determining the application of its provisions (such as non-discrimination, exemption from reciprocity, etc.);¹⁸ as well as
- the juridical status and social rights contracting states shall grant to stateless persons.¹⁹

While the Convention contains a wide range of concrete provisions concerning the protection status to be granted to stateless persons,²⁰ it is completely silent about procedural questions, i.e. about *how* to determine whether a person is indeed stateless.²¹

Hungary,²² Slovakia²³ and Slovenia²⁴ are party to the 1954 Statelessness Convention, but not Poland.²⁵

The 1961 Convention on the Reduction of Statelessness (hereinafter 1961 Statelessness Convention) focuses on how to best avoid the phenomenon of statelessness (e.g. at birth) and offers solutions to nationality problems which might arise between states. As such – while otherwise being of crucial importance in combating statelessness – it does not directly deal with the issue of protection of stateless persons. Therefore, the 1961 Statelessness Convention is not analysed in the framework of the present study.

Slovakia²⁶ is the only country covered by this report that is party to the 1961 Statelessness Convention.

The Council of Europe has recently adopted²⁷ its Convention on the Avoidance of Statelessness in relation to State Succession. This instrument directly addresses the issue of statelessness, but is limited to reducing this phenomenon in a special situation (state succession), and does not directly touch upon the issue of protection of stateless persons, similarly to the 1961 Statelessness Convention.

¹⁵ Nationality and Statelessness: A Handbook for Parliamentarians, UNHCR-Inter-parliamentary Union, Geneva, 2005, p.12

¹⁶ “Considering that only those stateless persons who are also refugees are covered by the Convention relating to the Status of Refugees of 28 July 1951, and that there are many stateless persons who are not covered by that Convention (...)” – 1954 Convention relating to the Status of Stateless Persons, Preamble

¹⁷ Article 1

¹⁸ Articles 1–11

¹⁹ Articles 12–32

²⁰ Detailed analysis in light of national practices in Chapter V

²¹ Similarly to the 1951 Refugee Convention

²² Accession date: 21 November 2001

²³ Accession date: 3 April 2000

²⁴ Succession date: 6 July 1992

²⁵ Among the 27 EU member states, currently only Poland, Estonia, Malta, Portugal, Bulgaria and Austria are not party to the 1954 Statelessness Convention, however, the latter is party to the 1961 Convention.

²⁷ 19 May 2005, Strasbourg

III.2 Binding Instruments Ensuring the Right to a Nationality

A state's obligation to protect stateless persons is not exclusively based on specific legal instruments related to statelessness or international protection. A set of legally binding international instruments echoes 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. In this respect, **the obligation to protect stateless persons (i.e. victims of a serious human rights violation) can be indirectly derived from states' obligation to respect the right to nationality.**

The following list gives an overview of the main legally binding international instruments on the basis of which the four countries covered by this report have committed themselves to respect the right to a nationality.

1965 Convention on the Elimination of All Forms of Racial Discrimination, Article 5 (d) (iii):

In compliance with the fundamental obligations laid down in article 2 of this Convention, States Parties undertake to prohibit and to eliminate racial discrimination in all its forms and to guarantee the right of everyone, without distinction as to race, colour, or national or ethnic origin, to equality before the law, notably in the enjoyment of the following rights: (...)

- (d) (...)
- (iii) The right to nationality;

1966 International Covenant on Civil and Political Rights, Article 24 (3):

3. Every child has the right to acquire a nationality.

1979 Convention on the Elimination of All Forms of Discrimination against Women, Article 9:

1. States Parties shall grant women equal rights with men to acquire, change or retain their nationality. They shall ensure in particular that neither marriage to an alien nor change of nationality by the husband during marriage shall automatically change the nationality of the wife, render her stateless or force upon her the nationality of the husband.
2. States Parties shall grant women equal rights with men with respect to the nationality of their children.

1989 Convention on the Rights of the Child, Article 7:

1. The child shall be registered immediately after birth and shall have the right from birth to a name, the right to acquire a nationality and, as far as possible, the right to know and be cared for by his or her parents.
2. States Parties shall ensure the implementation of these rights 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.

Hungary, Poland, Slovakia and Slovenia are all parties to these conventions, with no relevant reservations concerning the above-mentioned articles.²⁸

²⁸ With respect to Article 7 of the Convention on the Rights of the Child, Poland stipulates that "the right of an adopted child to know its natural parents shall be subject to the limitations imposed by binding legal arrangements that enable adoptive parents to maintain the confidentiality of the child's origin." This reservation, however, is irrelevant from the viewpoint of the present matter.

The **1997 European Convention on Nationality** is a particularly important instrument with respect to the above, as **it sets forth a set of key principles and obligations with respect to the right to a nationality**, at some occasions with special reference to stateless persons.

Article 4 – Principles

The rules on nationality of each State Party shall be based on the following principles:

- a. everyone has the right to a nationality;
- b. statelessness shall be avoided;
- c. no one shall be arbitrarily deprived of his or her nationality; (...)

Article 6 – Acquisition of nationality (...)

4. Each State Party shall facilitate in its internal law the acquisition of its nationality for the following persons: (...)
 - g. stateless persons and recognised refugees lawfully and habitually resident on its territory. (...)

Article 7 – Loss of nationality *ex lege* or at the initiative of a State Party (...)

3. A State Party may not provide in its internal law for the loss of its nationality under paragraphs 1 and 2 of this article if the person concerned would thereby become stateless, with the exception of the cases mentioned in paragraph 1, sub-paragraph b, of this article.

Hungary and Slovakia have ratified the 1997 European Convention on Nationality (with no reservations relevant to the above-mentioned provisions), while Poland has signed, but has not yet ratified it. Slovenia is not party to this convention.

III.3 Soft Law

In addition to legally binding international instruments enumerated in the previous subchapters, a variety of relevant non-binding provisions exist, which may serve as guidance for the four states covered by this report when assessing their obligations concerning the protection of stateless persons. Non-binding provisions may prove to be of special importance with regard to the issue of the *de facto* stateless.

The Final Acts of both the 1954 and 1961 Statelessness Conventions recommend a similar approach towards *de jure* and *de facto* stateless persons.

The Final Act of the 1954 Statelessness Convention recommends

(...) that each Contracting State, when it recognizes as valid the reasons for which a person has renounced the protection of the State of which he is a national, consider sympathetically the possibility of according to that person the treatment which the Convention accords to stateless persons.

Resolution I of the Final Act of the 1961 Stateless Convention recommends

(...) that persons who are stateless *de facto* should as far as possible be treated as stateless *de jure* to enable them to acquire an effective nationality.

In its recently adopted Resolution No. A/RES/61/127 (25 January 2007) the United Nations General Assembly

4. Notes that sixty-two States are now parties to the 1954 Convention relating to the Status of Stateless Persons and that thirty-three States are parties to the 1961 Convention on the Reduction of Statelessness, encourages States that have not done so to give consideration to acceding to these instruments, (...)
7. Emphasizes that prevention and reduction of statelessness are primarily the responsibility of States, in appropriate cooperation with the international community; (...)

Throughout the last decades, the UNHCR Executive Committee (ExCom) has also adopted several conclusions, thus providing guidance to the High Commissioner and states in establishing their strategy vis-à-vis statelessness. The following list gives an overview of the most relevant recommendations made by the UNHCR ExCom to states in this respect.

UNHCR ExCom Conclusion No. 50 (XXXIX) – 1988

The Executive Committee (...)

(l) Noted the close connection between the problems of refugees and of stateless persons and invited States actively to explore and promote measures favourable to stateless persons, including accession to the 1954 Convention relating to the Status of Stateless Persons and the 1961 Convention on the Reduction of Statelessness, as well as the adoption of legislation to protect the basic rights of stateless persons and to eliminate sources of statelessness; (...)

UNHCR ExCom Conclusion No. 65 (XLII) – 1991

The Executive Committee (...)

(r) Reaffirms Conclusion No. 50 (1) (XXXIX), reiterates its call to States actively to explore and promote measures favourable to stateless persons, including accession to the international instruments pertaining to stateless persons, (...)

UNHCR ExCom Conclusion No. 68 (XLIII) – 1992

The Executive Committee (...)

(y) Reiterates its call to States and relevant international agencies actively to explore and promote measures favourable to stateless persons (...)

UNHCR ExCom Conclusion No. 78 (XLVI) – 1995

The Executive Committee (...)

(b) Calls upon States to adopt nationality legislation with a view to reducing statelessness, consistent with fundamental principles of international law, in particular by preventing arbitrary deprivation of nationality, and by eliminating provisions which permit the renunciation of a nationality without the prior possession or acquisition of another nationality; (...)

UNHCR ExCom Conclusion No. 80 (XLVII) – 1996

The Executive Committee (...)

(e) Encourages States, in coordination and cooperation with each other, and with international organizations, if applicable, to consider the adoption of protection-based comprehensive approaches to particular problems of displacement, and identifies, as the principal elements of such approaches:

(i) the protection of all human rights, including (...) the right to a nationality (...)

UNHCR ExCom Conclusion No. 90 (LII) - 2001

The Executive Committee (...)

(o) (...) encourages States to cooperate with UNHCR in identifying measures to reduce statelessness and in devising appropriate solutions for stateless persons who are refugees, as well as for stateless persons who are not;

(p) Reiterates its call for States to consider accession to the 1954 Convention relating to the Status of Stateless Persons and the 1961 Convention on the Reduction of Statelessness (...)

(r) Takes note with particular concern that problems of statelessness can impact disproportionately on women and children, due to the particular operation of nationality and birth registration laws; underlines the importance, notably for women, of identity documentation and proper registration of births and marriages; and calls upon States to adopt all necessary measures in this regard; (...)

UNHCR ExCom Conclusion No. 96 (LIV) – 2003

The Executive Committee (...)

(h) Refers to its Conclusion No. 78 (XLVI) on the prevention and reduction of statelessness and protection of stateless persons, and urges States to take steps to avoid cases of statelessness as well as to adopt measures leading to the grant of a legal status to stateless persons; (...)

UNHCR ExCom Conclusion No. 106 (LVI) – 2006

The Executive Committee (...)

(d) Encourages those States which are in possession of statistics on stateless persons or individuals with undetermined nationality to share those statistics with UNHCR (...)

(p) Encourages States, where appropriate and while taking note of the United Nations General Assembly Resolution 60/129 of 2005, to consider measures to allow the integration of persons in situations of protracted statelessness, through developing programmes in the field of education, housing, access to health and income generation, in partnership with relevant United Nations agencies; (...)

(s) Encourages States to give consideration to acceding to the 1954 Convention relating to the Status of Stateless Persons and, in regard to States Parties, to consider lifting reservations; (...)

(u) Encourages States which are not yet Parties to the 1954 Convention relating to the Status of Stateless Persons to treat stateless persons lawfully residing on their territory in accordance with international human rights law; and to consider, as appropriate, facilitating the naturalization of habitually and lawfully residing stateless persons in accordance with national legislation; (...)

(w) Calls on States not to detain stateless persons on the sole basis of their being stateless and to treat them in accordance with international human rights law and also calls on States Parties to the 1954 Convention relating to the Status of Stateless Persons to fully implement its provisions; (...)

The Parliamentary Assembly of the Council of Europe has also adopted recommendations relevant to the present issue (Hungary, Poland, Slovakia and Slovenia are all members of the Council of Europe).

Council of Europe Parliamentary Assembly Recommendation 87 (1955) on statelessness

The Assembly, (...)

Recommends to the Committee of Ministers that they should invite the Governments of Member States of the Council of Europe:

1. to sign and ratify without delay the Convention relating to the Status of Stateless Persons adopted on 28th September, 1954 by the United Nations Conference held in New York; (...)

Council of Europe Parliamentary Assembly Recommendation 696 (1973) on certain aspects of the acquisition of nationality

The Assembly, (...)

2. Recalling the Universal Declaration of Human Rights according to which every individual has the right to a nationality, and emphasising the importance of an effective nationality for the individual's protection and for the exercise of his personal rights and freedoms; (...)

6. Considering that, in addition to legal provisions concerning *de jure* statelessness, adequate measures require to be taken for those who have no effective nationality, i.e. who are stateless *de facto* (refugees); (...)

11. Recommends that the Committee of Ministers: (...)

- (b) invite those member States which have not yet done so to introduce provisions whereby, in the case of *de facto* statelessness (ineffective nationality), the absence of an authorisation required under the national law of another State would cease to be an obstacle to naturalisation in member States after a given period; (...)

IV. Stateless Status Determination

As shown in Chapter III, all four countries covered by this study have a set of obligations under international law concerning the protection of stateless persons not qualifying as refugees. In order to comply with these obligations, states should

- (1) **establish a statelessness determination mechanism which efficiently identifies stateless persons in need of protection,**
- (2) **guarantee a legal and social status for those identified as stateless in the spirit of the relevant provisions of the 1954 Statelessness Convention, and**
- (3) **ensure access to a durable solution, leading out of statelessness.**

While Hungary, Poland, Slovakia and Slovenia all have in place functioning refugee status determination mechanisms, **none of these countries have so far established specific mechanisms for the identification of non-refugee stateless persons in need of protection.**²⁹ The present chapter aims to briefly present current mechanisms through which stateless persons not qualifying as refugees may have access to some form of protection.

IV.1 Hungary

Act XXXIX of 2001 on the entry and stay of foreigners (hereinafter Hungarian Aliens Act) defines the term “stateless person” in Hungarian law and contains provisions relevant to the issue in question.

According to Section 2 of the Hungarian Aliens Act,

- (b) stateless shall mean any person who is not recognised as the national of any state according to its own laws

Hungarian law currently in force does not contain provisions establishing concrete rules for a separate stateless status determination procedure. In the spirit of the current Hungarian Aliens Act, statelessness is primarily dealt with as **a simple ground for obtaining a humanitarian residence permit** (*humanitárius tartózkodási engedély*) and not as a factor establishing separate identification and protection mechanisms. According to Section 15 of the Act,

- (1) For humanitarian reasons, the Office and the regional alien policing authority issues a permission to stay also when the conditions of stay according to the law are not fulfilled: (...)
 - (d) to the foreigner of whom it was established in the course of this procedure that he or she was stateless; (...)

Neither the Hungarian Aliens Act, nor its executive Government Decree³⁰ provides the alien policing authority with guidance on identifying persons falling within the scope of the above provision. The only relevant rule is set forth by Section 25 (4) of the Government Decree:

²⁹ With a recent amendment, Hungary will be the first country in the region to put in place such a mechanism in mid-2007 (see details in Subchapter IV.1)

³⁰ Government Decree No. 170/2001 (IX.26.) on the implementation of Act XXXIX of 2001 on the entry and stay of foreigners (hereinafter in this chapter Government Decree)

- (4) With respect to foreigners falling within the scope of Section 15 (1) (d) of the Act, prior to the issuing of a permission to stay based on humanitarian concerns, the foreigner shall prove or substantiate his/her statelessness, which upon his/her request shall be given administrative assistance by the alien policing authority through the competent Hungarian foreign representation.

Thus, Hungarian law establishes a **lower standard of proof** in case of applicants for humanitarian residence permit on the ground of statelessness (using the same wording as in the case of refugee status determination).

In line with the above trends, neither Hungarian law nor practice establishes a specialised authority or a separate unit within the Office of Immigration and Nationality (OIN). Therefore, claims for humanitarian residence permit on the grounds of statelessness are dealt with by regional alien policing directorates of the OIN.

It is possible to **appeal administrative decisions** rejecting a claim for a humanitarian residence permit. The second-instance (administrative) review of decisions passed by regional OIN branches is under the auspices of the central Coercive Measures and Repatriation Division of the Alien Policing Directorate of the OIN. The right to appeal is not based on a breach of law, and new evidence and facts can be presented during the appeal. The second-instance authority is not bound to statements made on appeal or during the first-instance procedure.

The second-instance authority may uphold, modify or revoke a first-instance decision (the latter resulting in a new procedure conducted by the first-instance authority, with the obligatory consideration of the principles laid down by the second-instance authority in its decision). As the establishment of facts is rather difficult at the second instance (being a centralised body whose decisions are as a general rule based on the case documentation), the second-instance alien policing authority of the OIN typically does not practice its power to modify administrative decisions, but rather tends to uphold, or less frequently, revoke them.

It is possible to turn to the **Metropolitan Court** (*Fővárosi Bíróság*) for a **judicial review** of second-instance decisions dealing with applications for humanitarian residence permit. This supervisory procedure, however, can only be instigated in the case of a breach of law. As the court bases its decisions on already existing documents and examines them in light of the breach of law, and as a personal interview is not conducted when reviewing alien policing cases, the presentation of new evidence is made almost impossible. And even if new decisive evidence may be considered in some cases, the court may only revoke the administrative decision and oblige the OIN to conduct a new procedure, but cannot grant humanitarian residence permit.

Though both administrative appeal and judicial review are available for rejected applicants for humanitarian residence permit, the legal remedies may not necessarily prove to be effective in case of stateless persons, given the lack of special provisions applicable to them (such as those used in refugee status determination, where the Metropolitan Court is obliged to personally interview the applicant and is enabled to modify decisions and grant refugee status in its own right).

A recent amendment of the Hungarian Aliens Act³¹ creates a separate stateless status determination procedure and thus can be considered a major step forward, not only tackling many of the above-mentioned shortcomings, but also setting a good practice example at an international level.

The main achievements of this new regulation can be summarised as follows (as the executive government decree of the New Hungarian Aliens Act is not yet adopted, there is not enough information at present on the practical implementation of these measures):

³¹ Adopted by the Hungarian Parliament in December 2006, entry into force: 1 July 2007. The current Hungarian Aliens Act will thus be replaced by two separate acts: Act I of 2007 on the entry and stay of persons entitled to free movement and residence and the Act II of 2007 on the entry and stay of third country nationals (hereinafter New Hungarian Aliens Act)

- (1) It becomes possible to apply for stateless status. Thus **statelessness becomes a protection status in its own right**, rather than being a simple ground for obtaining a humanitarian residence permit.³²
- (2) **No strict formal requirements** are applied to the application for stateless status. The claim can be lodged not only by a written application, but also by a verbal statement. The authority shall prepare a written record of the latter.³³
- (3) The authority has the **obligation to interview** the applicant, who can use his/her mother tongue in the procedure.³⁴
- (4) The authority shall ensure the applicant's **access to legal assistance**.³⁵
- (5) **A lower standard of proof** (similar to that applied in refugee status determination) is kept for the statelessness determination:
 - (1) In the stateless status determination procedure, the applicant shall prove or substantiate his/her statelessness, (...) ³⁶
- (6) **Practical guidance** is provided on establishing statelessness, enumerating which countries should be examined in particular:
 - (a) place of birth,
 - (b) former place of stay or residence,
 - (c) country of nationality of the applicant's family members and parents.³⁷
- (7) While there is no possibility of administrative appeal to challenge a decision denying stateless status,³⁸ the rejected applicant can lodge **a claim for judicial review with the Metropolitan Court**, with a **mandatory hearing** before the proceeding judge.³⁹ Delegating this task to a specialised and central judicial body and introducing the mandatory hearing into the review procedure as well, the drafter aims to introduce an **effective judicial review** system, similar to that of refugee status determination.
- (8) **The UNHCR is also granted special rights** in the statelessness determination:

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

 - (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.⁴⁰

³² New Hungarian Aliens Act, Section 76 (1)

³³ Ibid., Section 76 (1)–(2)

³⁴ Ibid., Section 77 (1)–(2)

³⁵ Ibid., Section 77 (3)

³⁶ Ibid., Section 79 (1)

³⁷ Ibid., Section 79 (1)

³⁸ Ibid., Section 80 (1)

³⁹ Ibid., Section 80 (3)

⁴⁰ Ibid., Section 81

In addition to dedicating a whole chapter (Chapter VIII) of the New Hungarian Aliens Act to stateless status determination, the drafter included in the procedure a set of guarantees similar to those used in refugee status determination. Thus, while remaining under the auspices of the alien policing authority, statelessness determination has become **similar to refugee status determination** with regard to such factors as:

- its favourable procedural elements (such as the mandatory interview, the lack of strict formal requirements of the application, the access to legal assistance, etc.) reflecting the drafter's choice to interpret statelessness as a protection issue, rather than a simple matter of alien policing,
- its standard of proof, which was kept lower than in other administrative procedures,
- the characteristics of its judicial review, as well as
- the specific role of the UNHCR therein (reflecting the idea that non-refugee stateless persons also fall within the scope of the mandate of the organisation).

Notwithstanding the fact that the amendment to Hungary's alien policing legislation undoubtedly constitutes a vast improvement to the protection regime for stateless persons, it should be acknowledged that the new regulation still contains some problematic elements:

- (1) The New Hungarian Aliens Act **does not mention *de facto* stateless persons**, maintaining solely the *de jure* definition of the current Aliens Act.⁴¹
- (2) A stateless status determination procedure can only be initiated by a foreigner **residing legally** in the territory of Hungary.⁴² It is unknown why the drafter refrained in this particular case from using an approach similar to that applied vis-à-vis refugees.
- (3) A stateless status determination procedure can only be initiated **via application by the person concerned**; the law does not enable the authority to start the procedure *ex officio*.⁴³ While this approach is fully understandable in case of refugee status determination, it is rather worrisome in the case of statelessness, as the authority – in the framework of an alien policing procedure – may easily find out that a certain foreigner is stateless and therefore cannot be returned to his/her country of origin. In such a case, the authority will not be able to grant the necessary protection status to the foreigner in question, but will have to turn to innovative solutions, such as informally suggesting to the person to lodge a claim for stateless status.
- (4) The **burden of proof** lies principally on the applicant,⁴⁴ despite the fact that due to the specific characteristics of the procedure in question, it is rather unrealistic that a foreigner claiming that he/she is not citizen of any country could present any evidence proving or substantiating this fact. The most efficient and effective way of establishing or disproving the statelessness of a person is for the alien policing authority to contact the national authorities of some selected countries (identified on the basis of a personal hearing and the documentation of eventual former procedures⁴⁵) and requests them to confirm whether or not the person is a national of the country in question. All other procedural ways may prove to be unnecessarily lengthy and costly.⁴⁶

⁴¹ Ibid., Section 2 (b)

⁴² Ibid., Section 76 (1)

⁴³ Ibid., Section 76 (1)

⁴⁴ Ibid., Section 79 (1)

⁴⁵ See also Section 79 (1) (a)–(c)

⁴⁶ Concerning these last two points, see further explanation in connection with the recommendations in Chapter VII

IV.2 Poland

Poland is the only state of the four covered by this study which is **not yet party to the 1954 Statelessness Convention**. Polish law does not define the term “stateless”, nor does it provide for a formalised stateless status determination procedure. Consequently, **it is impossible for a non-refugee stateless person to be recognised as such or to apply for stateless status** in Poland.

Stateless persons not qualifying for refugee status, however, may obtain a **permit for tolerated stay** (*zgoda na pobyt tolerowany*), the current form of subsidiary protection, based on Section 97 of the Act of 13 June 2003 on granting protection to aliens within the territory of the Republic of Poland (hereinafter Polish Asylum Act), which stipulates that

1. An alien shall be granted the permit for tolerated stay on the territory of the Republic of Poland if his/her expulsion: (...)
 - 2) is unenforceable due to reasons beyond the authority executing the decision on expulsion or beyond this alien: (...)

Either *de jure* or *de facto* statelessness may be one of the above-mentioned reasons. The procedure in such cases, however, is quite complicated:⁴⁷

- (1) A foreigner cannot apply for subsidiary protection by him/herself.
- (2) The procedure determining whether to grant a permit for tolerated stay in cases of unenforceability of expulsion can be started only after a foreigner has been issued an expulsion order.
- (3) The procedure can only be initiated by an application of the authority competent to carry out the expulsion (the Police or the Border Guard) to the local *wojewoda* (head of the provincial branch of the central government).

Thus, the only option available to a non-refugee stateless person whose expulsion from Poland is unenforceable and who has not been issued an expulsion order is **to apply to a *wojewoda* for an expulsion order** and then request the authorities competent to carry out the expulsion to apply to the local *wojewoda* to grant him/her tolerated stay on the basis of unenforceability of the expulsion order.

The refusal to grant tolerated stay is made in the form of an administrative decision, which may be appealed to the President of the Office for Repatriation and Aliens.⁴⁸ Decisions of the President of the Office for Repatriation and Aliens may be challenged by filing a request for judicial review to the Provincial Administrative Court (*Wojewódzki Sąd Administracyjny*).

IV.3 Slovakia

While Slovakia is party to both universal statelessness conventions, **it does not have in place any specific regulations on stateless status determination**. The Act no. 48/2002 of 13 December 2001 on the stay of aliens and on the amendments of some acts (hereinafter Slovak Aliens Act) **does not mention statelessness as a ground *per se* for temporary or permanent residence permit**. However, non-refugee stateless persons may legalise their stay in Slovakia by acquiring a **permit for tolerated stay** (*povolenie na tolerovaný pobyt*). Section 43 of the Slovak

⁴⁷ See Section 97 (1) (2) in correlation with Section 104 (1) (1) (b) of the Polish Asylum Act

⁴⁸ Act of 13 June 2003 on aliens (Polish Aliens Act), Section 143 (2)

Aliens Act includes provisions that apply the same logic as the relevant Polish regulation:

- (1) A police department shall grant a permit for tolerated stay to an alien,
 - (a) when there is an impediment to his/her administrative expulsion under Section 58, (...)
 - (b) when his/her departure is not possible and his/her arrest is not purposeful, (...)

From the above-referred Section 58 of the same Act it can be deduced that Subparagraph (a) does not ensure real access to a valid protection status, as it solely applies to stateless persons already granted permanent residence in Slovakia:

- (3) A stateless person who was granted a permanent residence permit, may be administratively expelled only when he/she endangers the security of the State or the public order by his/her conduct and the impediments to the administrative expulsion under Paragraph 1 and 2 do not apply to him/her.

Meanwhile, Subparagraph (b) may be considered a provision offering access to a certain protection status similar to the comparable Polish practice. However, neither explicit procedural guidelines, nor relevant practical experiences are available on the basis of which the above opportunity could be deemed an effective form of protection for non-refugee stateless persons.

It is of additional interest that Act no. 480/2002 of 20 June 2002 on asylum and the amendment of some acts (hereinafter Slovak Asylum Act) includes a provision that could – in theory – serve as a possibility for considering statelessness *per se* as a ground for obtaining durable protection in Slovakia. According to Section 9 of the Slovak Asylum Act,

The Ministry may grant asylum on humanitarian grounds even when no reasons under Section 8 are established in the procedure.⁴⁹

The above provision could only be applied in case of stateless asylum-seekers, but not stateless persons in general. Furthermore, there is no information available about statelessness being referred to as a “humanitarian ground” in this context. In practice, elderly age, pregnancy or certain diseases might be considered humanitarian grounds in some exceptional cases. In this respect, the above provision does not constitute more than a theoretical possibility.

IV.4 Slovenia

Slovenia is party to the 1954 Statelessness Convention, and Section 2 (2) of the Slovene Aliens Act⁵⁰ reiterates the stateless person definition as set forth by the Convention. However, the country **does not have in place any specific regulations on stateless status determination and does not guarantee subsidiary possibilities of legal residence for the non-refugee stateless** (such as the humanitarian residence permit in the pre-amendment Hungarian Aliens Act or the permit for tolerated stay in the Polish or Slovak practice).

Meanwhile, based on Sections 1 and 2 of the General Administrative Procedure Act⁵¹ there exists the possibility of filing a claim for issuing a decision which declares the statelessness of a foreigner, noting that this status has already been gained before issuing the decision in question. But this declaratory act provides solely a statutory definition with an *ex tunc* effect (with reference to the stateless definition of the 1954 Statelessness Convention) and **does not establish any legal benefit**. In this respect, the “recognition” of a person’s statelessness by this way can neither be considered an effective stateless status determination, nor as access to any sort of protection.

⁴⁹ The hereby referred Section 8 of the Slovak Asylum Act reiterates the refugee definition of the 1951 Refugee Convention

⁵⁰ The Official Gazette of the Republic of Slovenia, No. 61/99, 87/02, 96/02, 93/05 and 79/06

⁵¹ The Official Gazette of the Republic of Slovenia, No. 80/99, 70/00, 52/02, 73/04 and 119/05

IV.5 Conclusion

It can be concluded that **at present no effective stateless status determination mechanism exists in the four countries covered by this study. The legal provisions currently in force do not provide for any sort of separate formal statelessness determination, nor do they contain any practical guidance on how to determine whether or not an applicant is *de jure* or *de facto* stateless.** Hungary is currently the only one in the selected group of states that enables non-refugee stateless persons to acquire a legal identity (and thus the right to lawfully reside) on the single ground of not having a nationality. But even in this case, statelessness is dealt with as a side-issue, evoking only a subsidiary form of protection, in contradiction with the spirit of the 1954 Statelessness Convention. Slovene law does not offer any sort of protection for non-refugee stateless persons, while the protection provided by Polish and Slovak law is rather scarce and may be practically unavailable for many of those in need.

The recent amendment of the Hungarian aliens legislation constitutes a major step forward with respect to the above, as it establishes a separate and formal stateless status determination procedure, and ensures access to a legal identity and the right to a protection status on the sole ground of being stateless.

V. Protection Status of Non-Refugee Stateless Persons

Following the analysis of identification mechanisms of non-refugee stateless persons and the access procedure to protection (or the lack of such mechanisms), the present chapter aims to briefly summarise **the protection status granted to recognised non-refugee stateless persons in Hungary, Poland and Slovakia, in light of the relevant provisions of the 1954 Statelessness Convention⁵² and by comparison to the regime applied in the case of refugees.**⁵³ Practices of Slovenia – in lack of a legal status to be analysed – will not be touched upon.

V.1 Standards Set by the 1954 Statelessness Convention

Contrary to the above conclusions regarding stateless status determination, the 1954 Statelessness Convention does include a set of concrete standards as to the rights granted to stateless persons by contracting states. Given the well-defined scope and aim of the present study,⁵⁴ the analysis focuses only on a group of selected issues, identified as being of crucial importance for finding a durable and stable protection status, as well as effective integration opportunities:⁵⁵

(1) Residence and legal identity

Article 27 – Identity papers

The Contracting States shall issue identity papers to any stateless person in their territory who does not possess a valid travel document.

(2) Access to the labour market

Article 17 – Wage-earning employment

1. The Contracting States shall accord to stateless persons lawfully staying in their territory treatment as favourable as possible and, in any event, not less favourable than that accorded to aliens generally in the same circumstances, as regards the right to engage in wage-earning employment.
2. The Contracting States shall give sympathetic consideration to assimilating the rights of all stateless persons with regard to wage-earning employment to those of nationals, and in particular of those stateless persons who have entered their territory pursuant to programmes of labour recruitment or under immigration schemes.

(3) Access to education

Article 22 – Public education

1. The Contracting States shall accord to stateless persons the same treatment as is accorded to nationals with respect to elementary education.

⁵² *Nota bene* that Poland is not yet party to the 1954 Statelessness Convention, therefore the standards in question do not constitute legally binding obligations for this country, but shall be seen as mere basis for comparison and analysis.

⁵³ As the 1951 and the 1954 Convention have a very similar structure and set similar standards in most respects

⁵⁴ See Subchapter II.1

⁵⁵ This selection was deemed necessary for methodological purposes and is based on a long-standing experience in working with persons in need of international protection. Nevertheless, the author remains firmly convinced that all legally binding provisions of the instrument in question are equally important and should equally be respected by contracting states.

2. The Contracting States shall accord to stateless persons treatment as favourable as possible and, in any event, not less favourable than that accorded to aliens generally in the same circumstances, with respect to education other than elementary education and, in particular, as regards access to studies, the recognition of foreign school certificates, diplomas and degrees, the remission of fees and charges and the award of scholarships.

(4) Access to public relief and assistance

Article 23 – Public relief

The Contracting States shall accord to stateless persons lawfully staying in their territory the same treatment with respect to public relief and assistance as is accorded to their nationals.

(5) Travel document

Article 28 – Travel documents

The Contracting States shall issue to stateless persons lawfully staying in their territory travel documents for the purpose of travel outside their territory, unless compelling reasons of national security or public order otherwise require, and the provisions of the schedule to this Convention shall apply with respect to such documents. The Contracting States may issue such a travel document to any other stateless person in their territory; they shall in particular give sympathetic consideration to the issue of such a travel document to stateless persons in their territory who are unable to obtain a travel document from the country of their lawful residence.

It should be noted that the 1951 Refugee Convention contains similar provisions concerning the above-mentioned rights; therefore ideally **there should be no difference between the protection status granted to refugees and non-refugee stateless persons in these respects.**

V.2 Hungary

The **humanitarian residence permit** currently issued for non-refugee stateless persons in Hungary is **valid for a maximum period of two years** and is periodically renewable for a maximum of two years.⁵⁶ The New Hungarian Aliens Act still provides for a humanitarian residence permit for those recognised as stateless,⁵⁷ but **reduces its maximum validity to one year**, which can be periodically renewed for maximum one year.⁵⁸ Contrary to non-refugee stateless persons, recognised refugees do obtain a Hungarian identity card (*személyazonosító igazolvány*) and an entitlement for lawful residence not limited in time.⁵⁹ Given the often protracted character of statelessness, the considerable length of the period usually necessary in order to find a durable solution,⁶⁰ as well as the similar standard set in this respect by the 1951 and the 1954 Convention this strong differentiation between the two categories is incomprehensible. The humanitarian residence permit **certifies the identity** of its holder.

Stateless persons holding a humanitarian residence permit have **limited access to the labour market**, since they **need to obtain a work permit** (*munkavállalási engedély*) as a pre-condition to being employed,⁶¹ Practice shows that this obligation and the procedural complications and delays related thereto may significantly encumber a foreigner's access to employment, mostly in cases where his/her residence permit is only valid for a limited period.⁶²

⁵⁶ Hungarian Aliens Act, Section 13 (3)

⁵⁷ New Hungarian Aliens Act, Section 29 (1) (a)

⁵⁸ Ibid., Section 29 (2) (a)

⁵⁹ Hungarian Asylum Act, Section 17 (1)

⁶⁰ For details see Subchapter VI.1

⁶¹ Act IV of 1991 on the promotion of employment and unemployment subsidies, Section 7 (1)-(2)

⁶² Note the above-mentioned amendment in the Hungarian aliens legislation concerning the validity of the humanitarian residence permit

It can be concluded that the current Hungarian practice is in conformity with the relevant binding provision of Article 17 of the 1954 Convention, but it fails to apply the recommendation for more favourable treatment included therein. Meanwhile, Hungarian labour legislation does transpose the parallel recommendation of the 1951 Refugee Convention and exempts refugees from acquiring a work permit as pre-condition for employment.⁶³ Again, the reason for the drafter's different approach toward stateless persons is unknown, and it is not likely that the recently amended alien legislation would modify the current regime, as it is neither based on the Hungarian Aliens Act, nor on any of its executive decrees.

In possession of a humanitarian residence permit, stateless children have **access to compulsory elementary education free of charge**.⁶⁴ As in the case of employment, the current Hungarian regime is in conformity with the relevant standard set by Article 22 of the 1954 Convention, but it does not apply the recommendation for a favourable treatment to education other than at the elementary level. Consequently, **non-refugee stateless persons can only participate in other forms of education (secondary, bachelor, master, etc.) if they pay the costs related thereto**.⁶⁵ Thus, non-refugee stateless persons may again find themselves in a much less favourable situation than refugees, who have access to all levels of education under the same conditions as Hungarian citizens. Since in order to extend this favourable treatment to stateless persons a set of legal provisions should be amended, it is rather unlikely that the current change in the alien policing legislation would have any related impact.

Different standards are also applied in the context of access to public relief. While refugees are treated similarly to Hungarian citizens in this respect (and are even entitled to some specific subsidies), stateless persons in possession of a humanitarian residence permit do not even fall within the scope of the main legal provisions regulating this area.⁶⁶ In this respect, non-refugee stateless persons are not entitled to social benefits such as allowance for elderly persons, periodic social services aid, housing aid, public health care for indigent persons, family support, financial aid to families, childcare support, aid to mothers caring for children, etc. Stateless persons are however treated similarly to Hungarian citizens with respect to health care and pension (i.e. stateless employees or entrepreneurs can obtain entitlement to these services as Hungarian citizens do).⁶⁷ It can be therefore summarised that **with regard to social security and public relief, non-refugee stateless persons are only entitled to services based on labour relations (health care, pension) and are excluded from services based purely on a certain need or a disadvantageous social situation**. This policy reflects the reservation⁶⁸ made by Hungary upon accession to the 1954 Statelessness Convention with respect to its Article 23, and is unlikely to change in the near future, as it is not based on the recently amended aliens policing legislation but on a set of other different provisions.

Current Hungarian legislation is in conformity with the provision of Article 28 of the 1954 Convention, as it enables **stateless persons to obtain a travel document in line with the relevant standards set by the present Article and the Annex to the Convention**.⁶⁹ The passport of both refugees and stateless persons is valid for a maximum of two years and is renewable.

⁶³ Act IV of 1991 on the promotion of employment and unemployment benefits, Section 7 (2)

⁶⁴ Act LXXIX of 1993 on education, Section 110 (1) and (3)

⁶⁵ Act LXXIX of 1993 on education, Section 110 (3) and Act CXXXIX of 2005 on higher education, Section 39 (2)

⁶⁶ Act III of 1993 on social affairs administration and social services, Act LXXXIV of 1998 on family support and Act XXXI of 1997 on the protection of children and guardianship

⁶⁷ Act LXXX of 1997 on persons entitled to social security provision and to private pensions, and the financial background thereof, Sections 2, 6, 11 and 14; Act LXXXIII of 1997 on compulsory health care services, Section 1; Act CLIV of 1997 on health care, Sections 4, 6 and 7

⁶⁸ "The Republic of Hungary shall apply the provisions contained in Articles 23 and 24 in such a way that it ensures to stateless persons having permanent domestic residence equal treatment with its own citizens."

⁶⁹ Hungarian Aliens Act, Section 74 and Government Decree No. 170/2001 (IX.26.) on the implementation of Act XXXIX of 2001 on the entry and stay of foreigners, Section 37 (6); *Nota bene* Hungary's reservation made to Article 28 of the 1954 Convention: "The Republic of Hungary shall apply the provisions contained in Article 28 by issuing a travel document in both Hungarian and English languages, entitled 'Utazási Igazolvány honatlan személy részére / Travel Document for Stateless Person' and supplied with the indication set out in Paragraph 1, Subparagraph 1 of the Schedule to the Convention."

V.3 Poland

A person holding a **permit for tolerated stay** is entitled to reside in Poland for an **unlimited period of time**. Such persons are granted a **residence card** (*karta pobytu*), which is valid for one year and periodically renewable. In the process of renewing the residence card, the basis for granting a permit for tolerated stay is not re-examined. The card **certifies the identity** of its holder.⁷⁰

Stateless persons granted a permit for tolerated stay are not required to obtain a work permit, which effectively results in **full access to the labour market**.⁷¹

Stateless children holding a permit for tolerated stay are **subject to compulsory free-of-charge primary and secondary education**. However, with regard to higher (bachelor or master) studies, they fall under the same – restrictive – regulation as aliens in general, i.e. they need to pay for their education. At the same time, refugees face the same treatment in this respect as Polish citizens.⁷²

Persons granted a permit for tolerated stay **have access to social security and assistance similarly to Polish citizens**.⁷³

Upon request, a foreigner holding a permit for tolerated stay may obtain an **alien travel document** (*document podróży dla cudzoziemca*), the validity of which may not exceed two years.⁷⁴ Poland – not being party to the 1954 Statelessness Convention – does not issue specific travel documents for stateless persons residing on its territory.

V.4 Slovakia

Contrary to the Polish example, the Slovak permit for tolerated stay does not guarantee a residence unlimited in time. The residence permit issued by police departments in such cases is **valid for the maximum period of 180 days**⁷⁵ and is **periodically renewable** (provided that the police department in charge deems that the reasons for which it was granted still exist, i.e. the foreigner is still unable to leave Slovakia).⁷⁶ The residence permit in question **certifies the identity** of its holder.

Stateless persons granted a permit for tolerated stay **are excluded from the labour market**, as they are neither allowed to enter employment relations, nor permitted to undertake business activities.⁷⁷ While this practice is not clearly in breach of the relevant Article of the 1954 Statelessness Convention (as it applies the same limitation for stateless persons granted a permit for tolerated stay and foreigners generally in the same circumstances), it fails to apply the non-binding recommendation for a more favourable approach. Slovakia's approach in this respect appears to be quite contradictory considering that refugees, asylum-seekers (if no final decision is made within one year after submitting the application),⁷⁸ and foreigners granted subsidiary protection⁷⁹ are exempted from this restrictive

⁷⁰ Polish Asylum Act, Section 99 (1)

⁷¹ Act of 20 April 2004 on the promotion of employment and institutions of the labour market, Section 87 (2b) (3)

⁷² Act of 27 July 2005 on higher education, Section 43

⁷³ Act of 12 March 2004 on social assistance, Section 5 (2)

⁷⁴ Polish Aliens Act, Section 73 (1) and (3)

⁷⁵ Slovak Aliens Act, Section 43 (3)

⁷⁶ Ibid., Section 43 (4)

⁷⁷ Ibid., Section 43 (5), together with the Code of Labour (Act No. 311/2001) and the Commercial Code (Act No. 513/1991)

⁷⁸ Slovak Asylum Act, Section 23 (6)

⁷⁹ Act No. 5/2004 on employment services, Section 22 (5) (f)

treatment, along with other groups of foreigners holding a permit for tolerated stay⁸⁰ – such as those granted temporary protection,⁸¹ or those whose residence is justified by reasons of family unity or an on-going criminal procedure (in case of victims of trafficking in human beings). Given the protracted character of statelessness, as well as its similarity to the plight of refugees, this limiting provision raises serious concerns.

Stateless children holding a permit for tolerated stay **have access to primary and secondary education under the same conditions as Slovak nationals** (i.e. they can study free of charge in state-owned schools).⁸² However, with regard to higher (bachelor or master) studies, they fall under the same – restrictive – regulation as aliens in general, i.e. they need to pay for their education. At the same time, refugees are entitled to the same treatment in this respect as Slovak citizens.⁸³

Persons granted a permit for tolerated stay **have access to social security and assistance similarly to Slovak citizens**.⁸⁴ In addition, foreigners granted a permit for tolerated stay may also apply for aid in material distress (*dávka v hmotnej núdzi*), in a situation when the income of the person concerned and others with whom he/she shares a household does not reach the subsistence minimum.⁸⁵

In the spirit of the declaration⁸⁶ made by Slovakia upon accession to the 1954 Statelessness Convention with regard to its Article 27, **only stateless persons who have obtained a permanent residence permit can be provided with an alien travel document** (*cestovný doklad cudzinca*).⁸⁷ Because a valid travel document is a pre-condition to obtaining a permanent residence permit, claims of foreigners not presenting their travel document at diplomatic representations or police departments will shortly be rejected as inadmissible.⁸⁸ This “vicious cycle” results in a situation where **stateless persons (usually not holding a valid travel document) are practically precluded from obtaining a permanent residence permit and thus a Slovak alien travel document** (with the eventual exception of those losing their citizenship during their long-term stay in Slovakia). As Slovakia did not make any reservation to Article 28 of the Convention, this restrictive approach can be considered a breach of the provisions set forth by the latter.

V.5 Conclusion

The protection status available for non-refugee stateless persons by obtaining a Polish permit for tolerated stay is considerably more favourable than that granted by virtue of holding a similar status in Slovakia or the Hungarian humanitarian residence permit. It is of particular interest that with regard to the selected five main criteria, the practice in Poland appears to comply with the standards set by the 1954 Statelessness Convention, an instrument to which it is not a party. At the same time, the current Hungarian and Slovak legal practices fail to

⁸⁰ Slovak Aliens Act, Section 43 (5)

⁸¹ Slovak law uses the term “temporary shelter” (*dočasné útočisko*), which “shall be granted for the purpose of protecting aliens from war conflicts, impacts of a humanitarian disaster or permanent or mass violation of human rights in the country of alien’s nationality or, in case of a stateless person, in the country of his/her residence” (Slovak Asylum Act, Section 29 (1))

⁸² Act No. 29/1984 on the system of primary and secondary schools, Section 34a (1)-(2)

⁸³ Act No. 131/2002 on higher education, Section 92 (6)

⁸⁴ Act No. 195/1998 on social welfare, Section 4b (1) (d)

⁸⁵ Act No. 599/2003 on aid in material distress, Section 3

⁸⁶ “The Slovak Republic shall not be bound by Article 27 to that effect it shall issue identity papers to any stateless person that is not in possession of a valid travel document. The Slovak Republic shall issue identity papers only to stateless persons present on the territory of the Slovak Republic who have been granted long-term or permanent residence permit.”

⁸⁷ Act No. 381/1997 on travel documents, Section 10 (a)

⁸⁸ Slovak Aliens Act, Section 37 (2)

apply non-binding recommendations for more favourable treatment in various aspects, while they do so in case of refugees and the parallel provisions of the 1951 Refugee Convention. **The lack of proper access to public relief and assistance in Hungary and the exclusion from the labour market in Slovakia, as well as the *de facto* preclusion from obtaining a travel document give rise to particular concerns and seriously undermine the validity of the protection statuses in question.**

Notwithstanding the above positive practice of Poland, it should be repeatedly pointed out that non-refugee stateless persons can have access to a permit for tolerated stay only through a particularly difficult and somehow absurd procedure.⁸⁹

⁸⁹ See Subchapter IV.2

VI. Durable Solution – Facilitated Access to Citizenship

In case of refugees, the UNHCR and other organisations working in the field usually define a set of different “durable solutions” (such as local integration, voluntary return and resettlement).⁹⁰ As for non-refugee stateless persons, **the only long-term solution is obtaining a new nationality, realistically that of the receiving country.** While a high level protection status, based on the relevant provisions of the 1954 Convention, may ensure acceptable living standards for a stateless person, it will not eliminate the fact of statelessness and thus will always keep the person in legal limbo with regards to his/her political, social and cultural rights. Thus, in the long run the only remedy for this predicament⁹¹ is **to ensure facilitated and accelerated access to the host country’s citizenship.**

Article 32 of the 1954 Statelessness Convention also sets forth a binding provision in this respect:

The Contracting States shall as far as possible facilitate the assimilation and naturalisation of stateless persons. They shall in particular make every effort to expedite naturalisation proceedings and to reduce as far as possible the charges and costs of such proceedings.

Based on this and the relevant legal obligations described in Chapter III, states often enable stateless persons residing permanently on their territory to obtain citizenship with more favourable conditions than other foreigners. The present chapter aims to summarise how non-refugee stateless persons can obtain the citizenship in the four countries covered by this study, and the types of favourable factors from which they may benefit.

VI.1 Hungary

Act LV of 1993 on Hungarian Citizenship (hereinafter Hungarian Citizenship Act) basically rests on the principle of *jus sanguinis*. In this sense a child born to a Hungarian citizen becomes a Hungarian citizen from birth regardless of the place of birth.

The general conditions for obtaining Hungarian citizenship are the following:

- (1) A non-Hungarian citizen may be granted Hungarian citizenship upon application, if:
 - (a) prior to his/her application he/she has been continuously living in Hungary for eight years;
 - (b) he/she has no criminal record according to Hungarian law and there is no pending criminal procedure against him/her before a Hungarian court at the time of the application;
 - (c) his/her livelihood and accommodation in Hungary is guaranteed;
 - (d) his/her naturalisation would not endanger the interests of the Republic of Hungary;
 - (e) he/she 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.⁹²

⁹⁰ See for example: Framework for Durable Solutions for Refugees and Persons of Concern, UNHCR Core Group on Durable Solutions, Geneva, May 2003, <http://www.unhcr.org/partners/PARTNERS/3f1408764.pdf>

⁹¹ See binding international legal instruments defining the right to a nationality as a basic human right in Subchapter III.2

⁹² Hungarian Citizenship Act, Section 4 (1)

The principle of *jus soli* may also arise in two cases, aiming at the reduction of statelessness (in the spirit of the 1997 European Convention on Nationality):

- (3) Until counter-proof is presented a persons shall be considered a Hungarian citizen, if he/she
 - (a) was born in Hungary, from stateless parents with residence in Hungary;
 - (b) is a child found in Hungary born from unknown parents.⁹³

As these children acquire Hungarian nationality at the moment of their birth, the provision in question technically speaking does not refer to stateless persons (while it may constitute a durable solution for their children).

Non-refugee stateless persons can apply for Hungarian citizenship with the general conditions as defined in Section 4 (1) of the Hungarian Citizenship Act. However, one preferential rule applies to them: **the mandatory continuous residence in Hungary before application is reduced to five years (instead of eight)** in their case.⁹⁴ If the stateless foreigner is married to a Hungarian citizen for at least three years (or the wedlock ended because of the death of the spouse), if his/her minor child is a Hungarian citizen or if he/she is adopted by a Hungarian citizen, the period of mandatory residence before application is further reduced to three years.⁹⁵ This most preferential treatment is applicable in case of recognised refugees as well.⁹⁶

In Hungary, the President of the Republic makes determinations on applications for citizenship, upon the recommendation of the Minister of Justice and Law Enforcement.⁹⁷ In practice, it is the Nationality Directorate of the Office of Immigration and Nationality that processes such claims. Negative decisions on citizenship claims **do not contain justification and can be challenged neither through administrative appeal nor through judicial review mechanisms.**

VI.2 Poland

Act of 15 February 1962 on Polish Citizenship (hereinafter Polish Citizenship Act), while based on the *jus sanguinis* principle, includes a specific provision evoking *jus soli* in order to prevent statelessness, similarly to the relevant Hungarian regulation:

When both parents are unknown or their citizenships undetermined or they have no citizenship, their child shall acquire Polish citizenship only if he/she is born or was found on Polish territory.⁹⁸

As these children acquire Polish nationality at the moment of their birth, the above provision does not directly affect the status of most stateless persons in need of protection (while it may constitute a durable solution for their children).

The Polish Citizenship Act dedicates a separate section to the issue of stateless persons willing to obtain Polish nationality. According to Section 9 of the Act:

1. A person who has no citizenship or whose citizenship is undetermined can be recognised as a Polish citizen if that person has been residing in Poland for at least five years.

⁹³ Ibid., Section 3 (3)

⁹⁴ Ibid., Section 4 (4) (c)

⁹⁵ Ibid., Section 4 (2) (a)-(c)

⁹⁶ Ibid., Section 4 (2) (d)

⁹⁷ Ibid., Section 6 (1)

⁹⁸ Polish Citizenship Act, Section 5

2. Recognition of a person as a Polish citizen takes place upon a motion submitted by that person.
3. Recognition of a person as a Polish citizen covers the children of the person recognised as a Polish citizen if the children are residing in Poland. (...)

Contrary to the relevant Hungarian regulation, the Polish Citizenship Act does not ensure preferential treatment for stateless persons as for the mandatory period of continuous residence in the country before application for citizenship (the general rule also stipulates five years⁹⁹ with no exception for refugees either). But at the same time, it determines different procedural rules that can be considered preferential:

- (1) The acquisition of nationality by stateless persons may not be conditional on the presentation of an evidence that a person has renounced or been deprived of citizenship of another state.¹⁰⁰
- (2) While in case of foreigners in general Section 8 of the Act uses “granting” (*nadanie*), Section 9 says “recognising” (*uznanie*) Polish citizenship, referring as *lex specialis* to the case of stateless persons or those with an undetermined nationality. The different wording covers different procedures. The first is a discretionary decision of the President of the Republic, without mandatory reasoning and with no possibility of administrative appeal or judicial review. The latter decision is issued by a *wojewoda*, in a procedure regulated by the Polish Code of Administrative Procedure.¹⁰¹ In this case, the *wojewoda*’s “administrative discretion” is limited, according to the well-established jurisprudence of the Supreme Administrative Court (*Naczelny Sąd Administracyjny*), in contrast to the unlimited scope of presidential discretion, taking into account concerns of public interest. **Negative decisions shall contain justification** and may be challenged by an **administrative appeal** to the President of the Office for Repatriation and Aliens (ORA). The decision of the ORA is **subject to judicial review** by a two-tier system of administrative courts.¹⁰²

VI.3 Slovakia

The Law No. 40 of 19 January 1993 on Citizenship of the Slovak Republic (hereinafter Slovak Citizenship Act), similarly to Hungarian and Polish regulation, is based on the *jus sanguinis* principle. Section 7 of the Act determines the general conditions of obtaining citizenship as follows:

- (1) Citizenship of the Slovak Republic can be granted upon request to such a person who is not a citizen of the Slovak Republic and
 - (a) who has permanently resided in the territory of the Slovak Republic for at least 5 years at the time of submission of application for citizenship,
 - (b) who has not been prosecuted for an intentional crime in the last 5 years prior to submitting an application for citizenship,
 - (c) whose expulsion has not been ordered by a court,
 - (d) against whom there is no pending criminal procedure,
 - (e) who does not have a pending extradition procedure, nor any pending procedure entailing a European arrest warrant,
 - (f) who is not in the process of administrative expulsion,

⁹⁹ Ibid., Section 8 (1)

¹⁰⁰ Ibid., Section 9 (4)

¹⁰¹ Act of 14 June 1960

¹⁰² Act 30 August 2002 on procedures before administrative courts, Section 3 (2) (1)

- (g) who is not in the process of withdrawal of asylum,
- (h) who speaks a basic level of the Slovak language, a basic level meaning the ability to understand a question and respond to it;

The Slovak Citizenship Act also evokes the *jus soli* principle (similarly to Hungarian and Polish law), in a way that may reduce statelessness. Although this does not directly affect stateless persons' access to Slovak citizenship, it may provide a durable solution for their children:

- (1) A child acquires Slovak citizenship if (...)
 - (b) the child was born on the territory of the Slovak Republic, his/her parents being without any citizenship,
 - (c) the child was born on the territory of the Slovak Republic to foreigner parents without acquiring any citizenship.
- (2) If a child's citizenship cannot be proved, such a child is considered to be a citizen of the Slovak Republic if
 - (a) he/she was born on the territory of the Slovak Republic, or
 - (b) he/she was found on the territory of the Slovak Republic and his/her parents are not known, until it is not proved that the child acquired citizenship of another country by birth.¹⁰³

Slovak citizenship can be granted by the Ministry of the Interior. The application for Slovak citizenship is lodged at one of the eight Regional Offices (*krajský úrad*) within Slovakia. The latter is in charge of establishing whether the relevant conditions stipulated by the Slovak Citizenship Act are fulfilled. It is possible to submit a **“remonstrance” against a negative decision to the Minister of the Interior**. The Minister has the authority to cancel a negative decision with reference to an infringement of law. The Minister's decision is **subject to further judicial review** by the Regional Court of Bratislava (*Krajský Súd v Bratislave*), whose verdict may be reviewed by the Supreme Court (*Najvyšší Súd*).

Slovak law provides for preferential treatment for stateless applicants for citizenship in two important aspects:¹⁰⁴

- (1) The mandatory period of continuous residence in the country before application is **reduced to three years** in their case.
- (2) These applicants are **exempt from the obligation to prove that they speak the Slovak language**.

VI.4 Slovenia

The Citizenship Act of the Republic of Slovenia¹⁰⁵ (hereinafter Slovene Citizenship Act) also reflects the *jus sanguinis* principle. Section 10 of this Act sets forth general conditions for obtaining Slovene citizenship through naturalisation:

The competent authorities may within their discretion admit the petitioner through naturalisation to the citizenship of the Republic of Slovenia if the State is interested in such an act for national reason. The person shall fulfil the following conditions:

¹⁰³ Slovak Citizenship Act, Section 5

¹⁰⁴ Ibid., Section 7 (2) (h)

¹⁰⁵ The Official Gazette of the Republic of Slovenia, No. 1/91, 30/91, 38/92; also see: Constitutional Court decision in 61/92, Constitutional Court decision in 61/92, 13/94, Constitutional Court decision in 59/99, 96/2002 and 127/06

1. that the person has reached 18 years of age;
2. that the person has a release from current citizenship or can prove that such a release will be granted if he/she acquires citizenship of the Republic of Slovenia¹⁰⁶
3. that the person has been actually living in the Republic of Slovenia for the period of 10 years, of which the last five years prior to the petition for citizenship must be without interruption and has to have a legal alien's status;
4. the person has guaranteed a permanent source of income of an amount that enables him/her and persons who he/she is under the law obliged to maintain material and social welfare;
5. the person must demonstrate active command of the Slovenian language in an obligatory written and oral examination;
6. that the person has not been sentenced to a prison term longer than three months or that has not been sentenced conditionally to a prison term with a test period longer than one year;
7. that there is no ban on the person's residence in the Republic of Slovenia;
8. that the person's admission to citizenship of the Republic of Slovenia poses no threat to public order, the security or defence of the State.
9. the person must discharge his/her tax obligations.
10. the person has given an oath to respect free democratic constitutional order, as set in the Constitution of the Republic of Slovenia

Similarly to the other three countries' citizenship legislation, the Slovene Citizenship Act also contains provisions evoking the *jus soli* principle in order to avoid statelessness, and thus offering a durable solution to stateless persons' children born in the country:

A child born or found on the territory of the Republic of Slovenia of unknown parentage or whose parents are of unknown citizenship or have no citizenship at all shall acquire citizenship of the Republic of Slovenia.¹⁰⁷

Slovene law provides for preferential treatment for stateless applicants for citizenship in two respects:

- (1) They are **exempted from the obligation to prove that they are released from previous citizenship** or that they will be released after acquisition of the Slovene citizenship.¹⁰⁸
- (2) The mandatory period of continuous residence in the country is **reduced to five years** in their case.¹⁰⁹

Claims for Slovene citizenship are decided upon by the Ministry of the Interior. The application has to be filed to the territorial administrative unit where the person permanently or temporarily resides.¹¹⁰ The territorial unit's decisions are reviewed by a central authority of the Ministry of the Interior. Should the Ministry decide negatively, **a judicial review is possible** by filing a lawsuit to the Administrative Court of Slovenia (*Upravno Sodišče*). The latter's decision will be further subject to review by the Supreme Court (*Vrhovno Sodišče*).¹¹¹

¹⁰⁶ According to the explanatory part of the present Section, this condition is fulfilled "if the person has no citizenship at all or if the person can submit the evidence that his/her own citizenship is cancelled through naturalisation by the law of his own State."

¹⁰⁷ Slovene Citizenship Act, Section 9

¹⁰⁸ Ibid., Section 10 (2)

¹⁰⁹ Ibid., Section 12 (8)

¹¹⁰ Ibid., Section 27 (1)-(2)

¹¹¹ See Administrative Dispute Act, Official Gazette of the Republic of Slovenia, No. 105/06

VI.5 Conclusion

All four countries covered by this study enable stateless persons residing permanently on their territory to acquire their nationality, and thus to have access to a durable solution. However, there are significant differences as to the main conditions applied in case of applicants without nationality:

- (1) The mandatory period of continuous residence before submitting a claim for citizenship is **5 years in Poland, Hungary and Slovenia** (the latter two apply preferential treatment in this respect), while it is reduced to **3 years in Slovakia**.
- (2) **The general conditions, as well as the specific ones applicable for stateless persons, vary significantly in the selected states. It may be of interest that the Hungarian and the Slovenian Citizenship Act explicitly stipulate the condition of guaranteeing livelihood**, while the Slovak law only indirectly refers to it (in form of a condition of legal residence states prior to application), and Polish legislation is silent about it. Another key point of comparison may be that while Hungary and Slovenia provide for a thorough **“examination” for applicants for citizenship (on constitutional studies and on language knowledge, respectively)**, **Slovakia exempts stateless applicants from this obligation, while Polish law does not even refer to such a condition.**
- (3) It is of particular concern that Hungarian law does not allow for any sort of administrative or judicial review of decisions on citizenship claims, not even in the highly specific case of applicants without nationality. The other three countries all have a functioning review system in such cases (Slovakia and Slovenia as a generally applied regime, while Poland as a preferential treatment for stateless persons).

Thus, a general conclusion may be drawn that Slovakia applies the most preferential regime with respect to access to citizenship (and thus to durable solution) for non-refugee stateless persons. Meanwhile, Hungarian legislation is particularly worrisome in this respect, compared to the other three countries.

VII. Recommendations and Good Practices

VII.1 General Concerns

The previous three chapters show that while certain elements of protection are already in place in Hungary, Poland, Slovakia and Slovenia, these countries do not yet offer an effective protection mechanism to non-refugee stateless persons, in contradiction with the relevant international legal principles. The main negative effects of this lack of adequate protection mechanisms are the following:

- (1) Stateless persons who do not qualify for refugee status or subsidiary protection may not have access to protection otherwise provided for them by international law.
- (2) The standards of protection and social rights of stateless persons having access to subsidiary forms of protection (such as the humanitarian residence permit in Hungary or the permit for tolerated stay in Poland or Slovakia) are not always in conformity with the norms set by the 1954 Statelessness Convention and other, non-binding legal instruments.
- (3) Many stateless persons without a valid asylum claim are “forced” into refugee status determination procedures, as the only way to obtain some sort of protection. This may result in an unnecessary extra burden on asylum systems, and various “never-ending” refugee status determination procedures (prolonged by repetitive applications).
- (4) Asylum and alien policing authorities lack legal and practical guidance on how to deal with the issue of statelessness. This results in a serious professional gap causing frustration, serious delays and shortcomings in procedures and an unnecessary extra burden on administrative and judicial bodies.

These phenomena show that the identified protection gaps do not only affect stateless persons, but may also cause otherwise avoidable difficulties for state authorities.

VII.2 Basis for Recommendations

Based on research results and taking the above factors into consideration, twenty recommendations have been elaborated with the aim of helping the governments of Hungary, Poland, Slovakia and Slovenia **to establish efficient, cost-effective, rights-based and humane protection regimes for non-refugee stateless persons. In addition to relevant legal obligations and human rights concerns, special consideration was given to practical aspects and feasibility.**

The following three “sources” served as basis for recommendations:

- (1) **The provisions set forth by the 1954 Statelessness Convention**, which constitute binding legal obligations for Hungary, Slovakia and Slovenia (and will do so for Poland upon its eventual accession thereto). The organisations participating in the present project do not see why these provisions should be given less attention than those included in the 1951 Refugee Convention, which are largely observed and implemented by the countries in question.¹¹²

¹¹² See for example the UNHCR ExCom Conclusions referred to in Subchapter III.3

- (2) Existing **“good practices” in the four countries covered by this study**. As Hungary, Poland, Slovakia and Slovenia often face similar migratory trends and patterns and have a set of commonalities in their recent history of establishing protection mechanisms for refugees and other foreigners in need, local good practice models may prove to be especially useful and persuasive.
- (3) **Other “good practices” around Europe**, with special emphasis on the **Spanish protection system for stateless persons**. At present, Spain is the only EU member state that defines concrete rules for statelessness determination and ensures a specific legal identity to stateless persons in a separate sub-legislative act.¹¹³ In addition, this is the European country where the rights granted to stateless persons are the closest to the standards set by the 1954 Statelessness Convention.

It is important to emphasise that **reaching higher protection standards in case of stateless persons and fully recognising the importance of this question will not create a significant “pull” factor for migration or result in a mass influx of stateless persons**, as the Spanish example clearly shows. The following table indicates the number of applicants for stateless status and the number of positive decisions in Spain since the entry into force of the *Real Decreto*:¹¹⁴

Year	Applicants	Recognitions
2001	30	0
2002	62	2
2003	99	10
2004	107	4
2005	44	4
2006	61	3
Total	403	23

The veracity of the above statement is supported by the fact that during these six years only 23 applicants’ claims for stateless status were considered well-founded.

¹¹³ Royal Decree 865/2001 of 20 July approving the Regulation for the Recognition of the Status of Stateless Persons (Real Decreto No 865/2001, de 20 de julio, por el que se aprueba el Reglamento de Reconocimiento del Estatuto de Apátrida, hereinafter *Real Decreto*)

¹¹⁴ Source: Oficina de Asilo y Refugio (Office of Asylum and Refuge), hereinafter OAR

VII.3 Recommendations

Recommendation 1 – International legal instruments

Poland is urged to accede to the 1954 Statelessness Convention. Hungary and Slovakia are encouraged to lift their respective reservations to the 1954 Statelessness Convention. Hungary, Poland and Slovenia are urged to accede to the 1961 Statelessness Convention. Slovenia should consider acceding to the 1997 European Convention on Nationality.

Recommendation 2 – Statelessness legislation

Poland, Slovakia and Slovenia should consider adopting legislation establishing a specific stateless status determination mechanism, as well as an effective protection system for those recognised as stateless (hereinafter statelessness legislation).

Statelessness legislation could take the form of a separate legislative or sub-legislative act (such as the *Real Decreto* in Spain), in order to show the importance of protecting stateless persons and to emphasise that it is not solely a subsidiary issue of alien policing or refugee protection.

Should this alternative eventually prove to be unfeasible, states are urged at least

- to incorporate their statelessness legislation into their asylum legislation, rather than into their aliens/immigration act (to emphasise a protection-based approach instead of an alien policing attitude), and
- to dedicate a specific chapter to this issue, rather than just referring to it in sporadically inserted provisions.

Recommendation 3 – *De facto* statelessness

Hungary, Poland, Slovakia and Slovenia are encouraged to include *de facto* stateless persons in their stateless definition, and treat them similarly to the *de jure* stateless in their statelessness and alien policing legislation.

A set of non-binding recommendations of the UNHCR and the Council of Europe suggest such an approach, as well as the Final Act of both Statelessness Conventions.¹¹⁵ In addition, states may consider this option necessary for various practical reasons. *De facto* stateless persons may easily find themselves in a situation where their expulsion is unenforceable; however, they cannot have access to any protection status or legal residence in the receiving country, not being able to demonstrate any well-founded fear of persecution or serious harm, or prove (substantiate) their *de jure* statelessness. It is in the states' interest to find an efficient and lawful solution for these persons, avoiding thus unnecessary social risks their permanent state of legal limbo may cause.¹¹⁶

¹¹⁵ See Subchapter III.3

¹¹⁶ It shall be noted that the current Polish and Slovak practice may consider *de facto* statelessness as reason for granting a permit for tolerated stay. Meanwhile, this option cannot be deemed as an effective access to the necessary protection status, mainly for the questionable procedural characteristics (Poland, Subchapter IV.2) and the serious shortcomings characterising the legal status accessible this way (Slovakia, Subchapter V.4).

Recommendation 4 – Decision-making bodies

Hungary, Poland, Slovakia and Slovenia should consider establishing a specialised unit of dedicated, professional and trained decision-makers with an exclusive right to decide claims for stateless status.

Deciding on statelessness claims requires very specific knowledge and training, different from the usual skills an asylum or immigration officer might have. In addition, typical statelessness determination procedures involve frequent contact with diplomatic or consular representations. Given these two factors, it is strongly urged to establish a specific and centralised unit with exclusive competence in such cases, rather than delegating this task to asylum or immigration officers with a general profile.

A typical statelessness determination procedure consists of procedural acts closer to alien policing than to refugee status determination, such as establishing contact with authorities of the country of origin, examination of documentary evidence, etc. Notwithstanding this, the legal and psychological approach of an officer deciding on such cases should be similar to that applied in asylum procedures, given the objective of the procedure, i.e. granting protection to a vulnerable group. In this respect, it is desirable that a statelessness unit be administratively part of asylum authorities and not alien policing or immigration authorities, following the model of both Spain¹¹⁷ and France.¹¹⁸

Recommendation 5 – Stateless status determination initiated *ex officio*

Poland, Slovakia and Slovenia are encouraged to adopt provisions in their statelessness legislation that enable a stateless status determination procedure to be initiated *ex officio*. Hungary should consider amending its statelessness legislation accordingly.

A protection regime for stateless persons is seriously weakened when no option exists to initiate a statelessness determination procedure *ex officio*:

- The suspicion of statelessness often arises for proceeding state authorities in the framework of alien policing procedures (e.g. the assessment of returnability prior to pass an expulsion order).
- Some stateless persons (more typically those *de facto*) may not be aware of what statelessness means and may not be sufficiently aware of international or domestic law in order to understand the process for initiating a statelessness determination procedure, within the required time frame. These persons – otherwise entitled to protection – may remain in legal limbo for a lengthy period.
- Unlike the refugee status determination, statelessness does not require any expression of personal fear. It rather requires an assessment of objective facts, completely independent from the personal attitude of the person in need of protection.

It is therefore both in stateless persons' and the proceeding states' interest to have the possibility to *ex officio* initiate stateless status determination procedures, in order to find a rapid and effective solution in such cases. Recognising this principle, the relevant Spanish provision explicitly enables the competent authority to initiate a statelessness procedure *ex officio*.¹¹⁹

¹¹⁷ In Spain the OAR is in charge of deciding on applications for stateless status.

¹¹⁸ In France the Office français de protection des réfugiés et apatrides (French Office for the Protection of Refugees and Stateless Persons), hereinafter OFPRA, decides on applications for stateless status.

¹¹⁹ *Real Decreto*, Section 2 (1)

Recommendation 6 – Evidentiary assessment

Poland, Slovakia and Slovenia are encouraged to include provisions in their statelessness legislation that facilitate and set clear and preferential rules for evidentiary assessment in stateless status determination.

Proving that a person is stateless can often be extremely difficult for a set of reasons:

- In such cases a negative fact is to be proved (i.e. the given person is not citizen of any state of the world).
- Concerned states (e.g. the country of origin or former residence) typically tend to refuse any cooperation with the proceeding authority, by expressing their “lack of interest” in the person in question. Thus the most convenient documentary evidence to prove statelessness becomes unavailable.

The facilitation of evidentiary assessment would in practice mean:

- refraining from using the term “to prove” (if considered necessary, replace with the term “to substantiate”, as in the refugee status determination),
- considering other forms of evidence (if states concerned refuse to formally confirm that the person in question is not their national), and
- the obligation to consider the lack of citizenship confirmed with respect to a country, if the approached state refuses to deliver a response within a reasonable timeframe (e.g. 6 months).

The amended Hungarian alien policing legislation may serve as reference in this respect.¹²⁰

Recommendation 7 – Burden of proof

Poland, Slovakia and Slovenia are urged to include provisions in their statelessness legislation that provides for the sharing of the burden of proof among the applicant for stateless status and the processing authority. Hungary is encouraged to consider amending its statelessness legislation accordingly.

The assessment of statelessness mostly requires actions on behalf of the decision-making authorities. A stateless person usually has very limited means of proving or substantiating his/her statelessness (i.e. a negative affirmation). It is usually the decision-making authority that is in a position to obtain documentary evidence from other states’ competent authorities, or in case of a lack thereof, to consider other pieces of evidence. Therefore, it would be illogical to expect the applicant to deliver all relevant evidence and such a pre-condition would seriously endanger the efficiency and effectiveness of stateless status determination.

Both the Spanish and French practices may be consulted with regard to this issue. The *Real Decreto* stipulates that the procedure is conducted by the Office of Asylum and Refuge,¹²¹ while it only requires full cooperation from the applicant therein, without mentioning the obligation to prove or to substantiate his/her statelessness.¹²² The relevant procedural guidelines of the OFPRA are also based on a similar principle, providing that the aforementioned authority is in charge of determining the relevant circle of countries and establishing to what extent the applicant can benefit from the nationality of these states.¹²³

¹²⁰ New Hungarian Aliens Act, Section 79 (1), see more details in Subchapter IV.1

¹²¹ *Real Decreto*, Section 7 (1)

¹²² *Real Decreto*, Section 7 (2)

¹²³ http://www.ofpra.gouv.fr/index.html?xml_id=186&dtd_id=13

Recommendation 8 – The circle of countries involved in stateless status determination

Poland, Slovakia and Slovenia are encouraged to include concrete guidelines in their statelessness legislation determining the group of countries with respect to which the nationality of an applicant for stateless status should be examined.

Realistically, it is impossible and unnecessary to prove or substantiate that a person is not a citizen of any country of the world in order to establish his/her statelessness. The circle of countries with respect to which this question should be analysed is usually very limited and can be easily explored through a thorough assessment of the person's life story and personal circumstances. This circle may include

- the country where the applicant was born,
- the country or countries of former residence,
- the country or countries of nationality of the applicant's family members.

The relevant provision included in the New Hungarian Aliens Act may serve as model in this respect.¹²⁴

Recommendation 9 – Judicial review of statelessness determination

Poland, Slovakia and Slovenia are urged to ensure an effective judicial review mechanism for rejected applicants for stateless status, either by including specific provisions in their statelessness legislation, or extending already existing mechanisms (such as administrative appeal systems) to this area.

Given the highly specialised character of such cases, the following requirements appear to be of key importance in order to ensure the effectiveness of the judicial review of administrative statelessness determination procedures:

- A specialised (centralised) judicial body should have exclusive competence in these cases, enabling a limited circle of judges to receive specific training and professional experience in this field.
- A mandatory hearing of the applicant before the court should be provided for, ensuring that he/she will have the possibility to share all relevant information with the proceeding judge and to emphasise facts that have not been given due consideration by the administrative authority.

The amended Hungarian alien policing legislation may be referred to in this respect.¹²⁵

Recommendation 10 – Residence

Hungary, Slovakia and Slovenia are urged to provide for legal residence for stateless persons not limited in time, or at least to apply the same standard in this respect as in the case of refugees.

Statelessness is usually a protracted form of a serious human rights violation, from which the only way out is the often time-consuming acquisition of a new nationality. In the spirit of the 1954 Statelessness Convention, statelessness should not be looked at as a protection status with a subsidiary and temporary character, but rather as a refugee-like situation with similar protection needs. Consequently, residence rights limited in time may put an unnecessary burden on stateless persons and seriously encumber their social integration, without providing for any alternative "durable solution".

The current Spanish practice may be considered exemplary in this respect. In Spain, recognised stateless persons' residence is not limited in time, they obtain a plastic identity document (similar to those issued to refugees and Spanish citizens), renewable every five years.

¹²⁴ New Hungarian Aliens Act, Section 79 (1), see more details in Subchapter IV.1

¹²⁵ New Hungarian Aliens Act, Section 80 (3), see more details in Subchapter IV.1

Recommendation 11 – Access to the labour market

Hungary, Slovakia and Slovenia are urged to grant full access to the labour market for stateless persons.

Given the protracted character of statelessness, it is undoubtedly useless to exclude persons – presumably residing in the host country for a long period – from the labour market or to encumber their access thereto. This may result in difficulties in social integration, as well as a dependence on the host country's welfare system.

Interpreting in the most positive manner the provisions of Article 17 of the 1954 Statelessness Convention the current Spanish legislation grants full access to the labour market for recognised stateless persons,¹²⁶ thus it may be referred to as exemplary model. In addition, the Polish practice of not requiring the acquisition of a work permit from foreigners holding a permit for tolerated stay lends further support to this approach.¹²⁷

Recommendation 12 – Access to education

Hungary, Poland, Slovakia and Slovenia are encouraged to facilitate the access of stateless persons to primary, secondary and higher education under the scheme applied to nationals.¹²⁸

Due to the protracted character of statelessness, it is in the host countries' interest to provide stateless children and adults with access to education, in order to facilitate their social integration and to avoid their later dependence on welfare services. States have already recognised the validity of the same principle in case of refugees and applied a liberal approach when interpreting the parallel provision of the 1951 Refugee Convention.

Again, the practice currently applied by Spain may serve as example. Stateless persons in Spain have unrestricted access to education and enjoy the same treatment as Spanish nationals in all aspects.¹²⁹

Recommendation 13 – Public relief and assistance

Hungary and Slovenia are encouraged to accord to stateless persons the same treatment with respect to public relief and assistance as is accorded to their nationals.

Article 23 of the 1954 Statelessness Convention generates a clear-cut obligation in this respect. The current Polish and Slovak practice of granting foreigners, holding a permit for tolerated stay, access to social security and assistance services on the same basis as nationals may also be seen as a progressive model.¹³⁰

Recommendation 14 – Travel document

Poland is to adopt legislation that enables the competent state authority to issue a travel document for stateless persons in conformity with Article 28 and the Annex of the 1954 Statelessness Convention. Slovakia is urged to discontinue its current practice of precluding most stateless persons from obtaining a permanent residence permit and thus a Slovak alien travel document.¹³¹

Both the relevant Hungarian¹³² and Spanish¹³³ legislation may be referred to in this respect.

¹²⁶ *Real Decreto*, Section 13 (1)-(2)

¹²⁷ See more details in Subchapter V.3

¹²⁸ In practice, this would mean the extension of the currently applied favourable treatment to higher education in Poland and Slovakia, and to secondary and higher education in Hungary.

¹²⁹ Act 4/2000 of 11 January on the rights and freedoms of foreigners in Spain and their social integration, Section 9 (1) and (3), stateless persons are considered long-term residents (*extranjeros residentes*) in this respect

¹³⁰ For details see Subchapters V.3 and V.4

¹³¹ See Subchapter V.4

¹³² Hungarian Aliens Act, Section 74 and Government Decree No. 170/2001 (IX.26.) on the implementation of Act XXXIX of 2001 on the entry and stay of foreigners, Section 37 (6), see more details in Subchapter V.2

¹³³ *Real Decreto*, Section 13 (2)

Recommendation 15 – Facilitating access to citizenship

Hungary, Poland, Slovakia and Slovenia are urged to amend their citizenship legislation in order to facilitate the access to citizenship of stateless persons residing permanently on their territory, with particular attention to those in a vulnerable position (such as the elderly or sick).

While it is a generally recognised principle that granting citizenship to foreigners is in a state's discretion, it should be emphasised that reducing statelessness is a recognised interest of the international community, embedded in various legal instruments, such as the 1961 Statelessness Convention and the 1997 European Convention on Nationality.¹³⁴ In this spirit, states are encouraged to apply a permissive approach toward stateless applicants for citizenship. An elderly or sick stateless person may not be able to fulfil all the strict conditions of naturalisation,¹³⁵ but he/she may be a long-term resident in the host country without any viable alternative to establish a new life elsewhere. In such particular cases, states should give a positive consideration to exempt the applicants from conditions relating to income, livelihood or accommodation, in order to ensure a “durable solution” for persons in a vulnerable situation and thus to effectively reduce statelessness.

Recommendation 16 – Access to citizenship: exemption from examinations

Hungary and Slovenia should consider amending their legislation on citizenship in order to facilitate access to citizenship of those stateless persons residing on their territory on a long-term basis, notably by exempting stateless applicants from the obligation of passing any sort of examination (either of constitutional studies or language skills).

The relevant legal provisions in force in Slovakia may serve as exemplary practice in this matter.¹³⁶

Recommendation 17 – Review of naturalisation procedures

Hungary is urged to amend its citizenship legislation in order to allow for an effective administrative and judicial review system in case of rejected applications for citizenship, at least in case of stateless applicants, as a minimum standard.

The current Polish practice shows that even states that maintain naturalisation as a discretionary decision of the head of state may recognise the unique character of applications lodged by stateless persons, and consequently the necessity of justifying negative decisions and an effective administrative and judicial review system in these cases.

Recommendation 18 – Statistics

Hungary, Poland, Slovakia and Slovenia are encouraged to make efforts to collect and publish comparable and transparent statistics on stateless persons coming to their sight in the framework of asylum, alien policing and statelessness determination procedures.

Recommendation 19 – Training

Hungary, Poland, Slovakia and Slovenia are urged to make efforts (in cooperation with the UNHCR and non-governmental organisations) to effectively train the personnel of administrative and judicial bodies dealing with statelessness determination on the legal and procedural issues related thereto.

¹³⁴ For details see Subchapter III.2

¹³⁵ See Chapter VI

¹³⁶ Slovak Citizenship Act, Section 7 (2) (h), see more details in Subchapter VI.3

Recommendation 20 – Access to legal assistance and the UNHCR

Poland, Slovakia and Slovenia should consider including provisions in their statelessness legislation that guarantee access, to applicants for stateless status, to professional legal assistance and stipulate the UNHCR's role in such procedures, specifying its access to files and documents, as well as the strong consideration given to its expert's opinions.

The New Hungarian Aliens Act may serve as exemplary practice in this respect.¹³⁷

¹³⁷ New Hungarian Aliens Act, Sections 77 (3) and 81



Hungarian Helsinki Committee