



UNHCR

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

Comments by the United Nations High Commissioner for Refugees (UNHCR) to the Legislative Proposal amending the Citizenship Law (Nr.52/ Lp11)

Introduction

UNHCR appreciates the opportunity to present its comments to the legislative proposal amending the Citizenship Act of the Republic of Latvia (*Grozījumi Pilsonības likumā Nr.52/ Lp11*).

UNHCR provides these comments as the agency which has been mandated by the UN General Assembly to prevent and reduce statelessness around the world, as well as to protect the rights of stateless people. UN General Assembly resolutions 3274 (XXIV) and 31/36 designated UNHCR as the body to examine the cases of persons who claim the benefit of the 1961 Convention on the Reduction of Statelessness and to assist such persons in presenting their claims to the appropriate national authorities. In 1994, the UN General Assembly further entrusted UNHCR with a global mandate for the identification, prevention and reduction of statelessness and for the international protection of stateless persons.¹ This mandate has continued to evolve as conclusions of UNHCR's Executive Committee² have been endorsed by the UN General Assembly. Over time, UNHCR has developed a recognized expertise on statelessness issues.³

UNHCR understands that the Latvian Government is proposing a number of amendments to the Citizenship Law of 1994 (*Pilsonības likums*) that will introduce the dual

¹ UNGA resolutions A/RES/49/169 of 23 December 1994 and A/RES/50/152 of 21 December 1995. The latter endorses UNHCR's Executive Committee Conclusion No. 78 (XLVI) – 1995, *Prevention and Reduction of Statelessness and the Protection of Stateless Persons*, at: <http://www.unhcr.org/refworld/docid/3ae68c443f.html>.

² UN High Commissioner for Refugees, *Conclusion on International Protection*, 05 October 2001, No. 90 (LII) - 2001, para. (q), at: <http://www.unhcr.org/refworld/docid/3bd3e3024.html>; *General Conclusion on International Protection*, 10 October 2003, No. 95 (LIV) - 2003, para. (y), at: <http://www.unhcr.org/refworld/docid/3f93aede7.html>; *General Conclusion on International Protection*, 08 October 2004, No. 99 (LV) - 2004, para. (aa), at: <http://www.unhcr.org/refworld/docid/41750ef74.html>; *General Conclusion on International Protection*, 07 October 2005, No. 102 (LVI) - 2005, para. (y), at: <http://www.unhcr.org/refworld/docid/43575ce3e.html>; *Conclusion on Identification, Prevention and Reduction of Statelessness and Protection of Stateless Persons*, 06 October 2006, No. 106 (LVII) - 2006, paras. (f), (h), (i), (j) and (t), at: <http://www.unhcr.org/refworld/docid/453497302.html>.

³ In 2012, UNHCR published Guidelines pursuant to its mandate responsibilities to address statelessness and which are intended to provide interpretive legal guidance for governments, NGOs, legal practitioners, decision-makers and the judiciary.

citizenship⁴ option for Latvians and different possibilities for retention of Latvian citizenship. The amendments shall also revise a procedure for obtaining Latvian citizenship by children born to “non-citizens” and stateless persons.

In line with its mandate responsibility to address statelessness and to assist the Latvian Government in ensuring that its citizenship legislation is in compliance with the 1954 United Nations *Convention Relating to the Status of Stateless Persons* and the 1961 United Nations *Convention on the Reduction of Statelessness*, to which Latvia is a State Party UNHCR provides the below comments which mainly endeavour to clarify UNHCR’s views on certain issues of interest. UNHCR would greatly appreciate the opportunity to continue a dialogue with the Latvian Government and to submit further comments on this important legislation at later stages of the legislative process.

General remarks

UNHCR welcomes efforts made by the Latvian Government to bring the Citizenship Law in line with the 1961 United Nations *Convention on the Reduction of Statelessness* (hereinafter – 1961 Convention) and the 1989 United Nations *Convention on the Rights of the Child* (hereinafter – CRC). In particular, UNHCR welcomes the provisions entitling children born in Latvia after 21 August 1991 to be recognized as Latvian citizens by birth, if their parents are stateless or “non-citizens”.

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

UNHCR notes that the current draft law does not specify a period of application of the amendments. UNHCR considers that the proposed changes in the Citizenship Law shall be applicable retroactively. Such an approach will be in line with the principle of best interests of the child, as described in detail above.

⁴ In this submission, the terms nationality and citizenship are used interchangeably to describe the legal bond between an individual (the national or citizen) and a State. While both terms are frequently used interchangeably in international public law, on the national level these terms are often given distinct meanings.

UNHCR recommends that provisions entitling children born in Latvia after 21 August 1991 to be recognized as Latvian citizens by birth would be applicable retroactively.

Focus on situation of children

UNHCR appreciates the intention of the Latvian Government to focus on the situation of children in the process of elaborating the amendments to the Citizenship Law. The concept “otherwise stateless” requires evaluating the nationality of a child and not simply examining whether a child’s parents are stateless. Children can also be “otherwise stateless” if one or both parents possess a nationality but cannot confer it upon their children when the child is born abroad. The test is whether a child is stateless because he or she acquires neither the nationality of his or her parents nor that of the State of his or her birth; it is not an inquiry into whether a child’s parents are stateless. To restrict the application of the safeguards against statelessness to children of stateless parents is therefore insufficient in light of the different ways in which a child may be rendered stateless and the obligations of States under the 1961 Convention⁵.

Therefore, explicitly granting the Latvian citizenship to otherwise stateless children by birth would be in full conformity with the spirit of international law governing the access to nationality and prevention of statelessness among children.

UNHCR would recommend that the possibility to obtain Latvian citizenship by birth shall explicitly be provided also for children born in Latvia of parents who have another citizenship, but who can not transmit this citizenship to their children, and added as a possibility under Article 2 of the Citizenship Law.

Imposition of additional conditions for stateless parents or parents who are non-citizens for acquisition of nationality by their children.

UNHCR notes that the proposed amendments impose certain obligations on the stateless parents or parents who are non-citizens for their child to acquire nationality. A new proposed text of paragraph 5 of Article 3.1 stipulates that upon submission of an application for recognition of their child as a Latvian citizen in accordance with paragraph 1 of the current Article, the parents shall certify that they will help the child to learn the Latvian language as the state language and will instil in the child the respect for and the loyalty to the Republic of Latvia.

UNHCR opines that neither international law in general nor the 1961 Convention in particular provides a basis for imposition of such requirements when addressing acquisition of nationality if the child is otherwise stateless, whether born to stateless parents or not. While Article 1 of the 1961 Convention does allow for states to establish

⁵ See the UN High Commissioner for Refugees, *Interpreting the 1961 Statelessness Convention and Preventing Statelessness among Children: ("Dakar Conclusions")*, September 2011, para 12, available at: <http://www.unhcr.org/refworld/docid/4e8423a72.html>

application procedures for granting of nationality to otherwise stateless children, its permitted conditions are limited to the ones mentioned under Article 1 (2) of the 1961 Convention and do not include that the child can be required to know a certain language, nor can any requirement be imposed upon the parents in this regard.

In addition, Article 3.1 (1) 1) raises permanent residence as a requirement for the child to be acknowledged as a Latvian citizen. If the child is stateless, then this requirement is not in accordance with Article 1(2) b) of the 1961 Convention, by which States may impose a habitual residence requirement, but not a permanent residence requirement for the acquisition of nationality. “Habitual residence” should be understood as stable, factual residence. The 1961 Convention does not allow Contracting States to make an application for the acquisition of nationality of otherwise stateless individuals conditional on lawful residence⁶.

Finally, Article 3.1 (2) imposes a requirement of residence on the parents of the child, whereas Article 1(2)(b) of the 1961 Convention only allows for a habitual residence requirement on the child, not on the parents. -

UNHCR finds it also very difficult, if possible at all, to ensure implementation of the given conditions in practice, including imposition of potential liability of parents for infringing and/or improper fulfillment of the proposed conditions. However, UNHCR would like to stress that the Office casts no doubts on the necessity and importance of learning the Latvian language and ensuring integration of stateless children into the Latvian society. UNHCR fully supports the efforts of the Latvian Government in promoting cultural diversity and traditions and in strengthening a sense of belonging to the Latvian state and nation among stateless children and their parents.

UNHCR proposes to the Government of Latvia to reconsider and rephrase the conditions for the acquisition of Latvian nationality by children pursuant to Article 3.1 (1) of the Citizenship Law in line with Article 1 of the 1961 Convention.

Facilitation of naturalization of refugees and stateless persons

Access to citizenship for refugees through naturalization is addressed in Article 34 of the 1951 Convention relating to the status of refugees (hereinafter “the 1951 Refugee Convention”). According to Article 34 “the Contracting States shall as far as possible facilitate the assimilation and naturalization of refugees. They shall, in particular, make every effort to expedite naturalization proceedings and to reduce as far as possible the charges and costs of such proceedings”. This is predicated on recognition that a refugee required to remain outside of his or her home country should at some point benefit from a series of privileges, including political rights⁷. A similar provision is found in Article 32 of the 1954 Convention.

⁶ Ibid, para 28.

⁷ United Nations, “*Memorandum by the Secretary-General to the Ad Hoc Committee on Statelessness and Related Problems*,” UN Doc. E/AC.32/2, Jan. 3, 1950.

According both to Article 34 of the 1951 Convention and Article 32 of the 1954 Convention, the word “shall” implies a **qualified duty** on the Contracting States (including the Republic of Latvia) to facilitate “as far as possible” the assimilation and naturalization of refugees and stateless persons, without prejudice to sovereign rights of the state. There are no clear obligation regarding the facilitation, but the articles mention “in particular” costs should be reduced and the naturalization procedures expedited. It is implied in Article 34 of the 1951 Convention and Article 32 of the 1954 Convention that **other measures to facilitate naturalization are also encouraged**, and that those stipulated are not intended to be exclusive. Indeed various other measures may be taken in order to facilitate naturalization, including easing the conditions for naturalization, e.g. by reducing the period of residence required or by not requiring proof of release from a former nationality⁸. The aim of the provisions were expressed by the drafters of the 1951 Refugee Convention that “[t]he position of a *de jure* or *de facto* stateless refugee is abnormal and should not be regarded as permanent”⁹.

The conventions do therefore not confer a right for refugees or stateless persons to be naturalized, but a qualified duty for the States to facilitate naturalization.

In the European Union, a large number of Member States do have special clauses in the nationality acts that explicitly make the acquisition of nationality easier for recognized refugees and stateless persons. Although it does not openly target refugees, the Netherlands also facilitates refugees’ naturalization because the rule that the previous nationality does not have to be renounced if the applicant cannot be expected to contact the authorities of his or her state of nationality is implicitly targeted at refugees. The main facilitation of refugees’ and stateless persons’ acquisition of nationality in the majority of EU Member States is a reduction of the required residence period.

In which other ways do states facilitate the access of refugees and stateless persons to nationality? First of all, all those states that normally require some proof of loss of the previous nationality make exceptions for refugees. In Denmark and Luxembourg, refugees are explicitly excluded from this requirement. The authorities in Germany can make exceptions to the condition that previous nationality is lost in procedures of discretionary naturalization (for which the residence requirement is also reduced). In Austria and the Netherlands, refugees are regularly exempted from this condition on the basis of the general provision that loss does not have to be proved if contacting the authorities in the state of origin cannot reasonably be expected of the applicant¹⁰.

As mentioned earlier, a provision similar to Article 34 of the 1951 Refugee Convention is Article 32 of the 1954 Convention relating to the status of stateless persons. The 1999

⁸ Council of Europe, *Recommendation 564 (1969) on the Acquisition by Refugees of the Nationality of Their Country of Residence*, 30 September 1969, 564 (1969), available at: <http://www.unhcr.org/refworld/docid/3ae6b38178.html>

⁹ See Grahl-Madsen, Atle, *Commentary on the Refugee Convention 1951, Articles 2-11, 13-37*, 1963, republished by UNHCR, Division of International Protection, Geneva, 1997, p 245.

¹⁰ See Rainer Bauböck, Eva Ersboll, Kees Grojenendijk and Harald Waldrauch, *Acquisition and Loss of Nationality. Policies and Trends in 15 European Countries*, Amsterdam University Press, 2010, Chapter 3.

recommendation by the Council of Europe also recommends a reduction of statelessness by allowing stateless persons to become nationals under facilitated conditions¹¹.

UNHCR recommends the Government of Latvia to consider the adoption of new provisions in the current Citizenship Law, which would ease the conditions for naturalization of refugees and stateless persons, e.g. by reducing the period of residence required and by not requiring proof of release from a former nationality of a refugee.

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¹¹ Council of Europe: *Recommendation R (1999) 18 of the Committee of Ministers to Member States on the Avoidance and Reduction of Statelessness*, section IIB.