



Summary of the technical meeting co-organised by EMN Luxembourg and EMN Estonia

“Children’s right to nationality”

7 December 2022, Tallinn, Estonia

EMN Luxembourg and EMN Estonia organized a technical meeting on 7 December 2022 on “**Children’s right to nationality**”. The hybrid event was held within the scope of the EMN Platform of Statelessness, which was established in 2016 on the basis of the [Justice and Home Affairs Council conclusions of 3 and 4 December 2015](#). The Platform enables the exchange of information and good practices, raises awareness with regards to statelessness, brings together all relevant stakeholders in the field and organizes trainings to state officials. The technical meeting explored the complex concept of statelessness and more specifically ways how EU Member States and EMN Observer Countries have tackled issues related to children without nationality, the risk of children becoming stateless and different procedures for acquiring citizenship.

Janek Mägi (*Head of the Border Guard and Migration Policy Department of the Estonian Ministry of Interior*) opened the event by elaborating on the complex history of Estonia in terms of Soviet Union and its dissolution as well as the logic behind how Estonian citizenship policy was developed. **Adolfo Sommarribas** (*Chair of the EMN Platform of Statelessness*) introduced the EMN Platform of Statelessness and encouraged stakeholders to share practical experiences and difficulties encountered while addressing children at risk of becoming or being stateless. Mr. Sommarribas introduced statelessness as a legal anomaly that often prevents people from accessing fundamental civil, political, economic, cultural and social rights¹. Main causes may involve state succession, ill-defined or discriminatory laws, arbitrary deprivation of nationality and/or displacement and forced migration.

The first panel of the meeting focused on the institutional level. **Livia Stoica** (*Head of Division for Legal Co-operation, Council of Europe*) pointed out the key legal documents on statelessness as the European Convention on Human Rights and the European Convention on Nationality noting that the latter is considered relatively new (since 1997) and has not received as much attention as it should have. The Convention lists measures on how to avoid statelessness and acts as a legal basis for Member States. However, rise of populism has not made it the most popular convention, but there has been progress and necessary legal developments in several Member States. Ms Stoica emphasized that even though it is difficult to start a dialogue, as national legislation differs from country to country, when it comes to children, everyone is more eager to make amendments. Council of Europe is also preparing guidelines on how to overcome issues such as registering children after birth, how to avoid discriminatory and/or lengthy proceedings and overbearing bureaucracy.

In addition to conventions mentioned above, **Delphine Drapeau** (*Legal Officer, Asylum Unit, DG Home*) stressed the importance of 1954 Convention Relating to the Status of Stateless Persons which contributed with a definition of a “stateless person” and 1961 UN Convention on the Reduction of Statelessness. Ms Drapeau explained that Member States are still being encouraged to ratify these conventions and, in some cases, guided to implement them correctly. In general terms, the complex

¹ Children who are non-citizens/ with undetermined citizenship, are an exception as they have all the above-mentioned rights (e.g. as in Latvia and Estonia).

issue of statelessness is addressed via current asylum *acquis* and Member States have an obligation to report developments annually. Regarding children in particular, European Commission released a communication on the protection of children in migration (2017) and EU strategy on the rights of the child (2021-2024). In terms of Russian invasion of Ukraine, we can see that the concept of statelessness is already included in the Temporary Protection Directive. However, how to prove legal residence whilst being stateless in the context of war and when institutions cannot be expected to function normally, remains a very complicated question with no clear and easy solution.

Marije Bouma (*policymaker at the Directorate for Migration Policy, Dutch Ministry of Justice and Security*) gave a presentation on **two new developments on statelessness in the Netherlands**. In 2011 UNHCR report found that statelessness is not enough acknowledged in the Netherlands (law does not protect stateless persons, especially children). As a response, Dutch government introduced a procedure for determining statelessness and a possibility for stateless children to obtain Dutch citizenship under strict terms. Ms Bouma explained that under general conditions, statelessness does not lead to legal residence in the Netherlands meaning that same rules apply to stateless persons regarding residence permits as to other foreigners. Procedure for non-legally residing stateless children is applicable when a child cannot obtain another nationality because of the parents and sets at least 5-year continuous and stable residence in the Netherlands as a prerequisite. The presentation showed how this approach has made children dependant on the actions of their parents and has thus been the subject of criticism.

Second and third panel focused on national approaches for identification and determination of nationality for undocumented or stateless children (both challenges and good practices). **Ada Tabatadze** (*Senior Specialist, Citizenship and Migration Division of Public Service Development Agency, Georgian Ministry of Justice*) **explained how Georgian citizenship is acquired by birth and by naturalization**. In terms of statelessness, a person born on the territory of Georgia, one of whose parents has status of a stateless person in Georgia and the other parent is unknown, still acquires Georgian citizenship by birth. If both parents are of unknown citizenship, a minor who is living in Georgia is deemed to be a Georgian citizen unless proved otherwise. Under regular procedure, Georgian citizenship is acquired to a minor when he/she has not acquired Georgian citizenship by birth and one of his/her parents is a Georgian citizen, if he/she has been adopted by a Georgian citizen, and/or to a minor born in the territory of Georgia who has a refugee status or a status of a stateless person and has been living in Georgia for 5 years. A minor, who along with Georgian citizenship, has acquired another citizenship by birth, will retain Georgian citizenship from his/her birth until reaching 18-years of age. If an application for retaining citizenship of the minor is not submitted within this time, his/her Georgian citizenship is terminated.

Tuukka Lampi (*Senior Specialist, EMN Finland*) **gave an overview on how Finland implements both principles – *Ius Soli* and *Ius Sanguinis***. According to *Ius Soli*, no children are born without citizenship meaning that a child born in Finland acquires Finnish citizenship based on the place of birth. A foundling child or a child of unknown parents is considered a Finnish citizen as long as he/she has not been found to be a citizen of a foreign country. Citizenship is acquired by *Ius Sanguinis* principle if either the mother or the father is a Finnish citizen or if the father is dead but was a Finnish citizen at the time of his death, and was married to the child's mother or the man's paternity of the child is established. Mr. Lampi also addressed the citizenship determination procedure carried out by the Finnish Immigration Service. Its Nationality Unit makes decisions on current and previous citizenship, statelessness and whether

the citizenship is unknown. Request of determination is necessary when the mother of a child born out of wedlock is not a Finnish citizen and a paternity has not been established, neither the parents of a child born in marriage is a Finnish citizen and they do not have citizenship of the same foreign country and if neither of the parents of a child born in wedlock is a Finnish citizen and they have citizenship of the same country, but according to the legislation of their country, citizenship is not transferred from the parents directly. The Digital and Population Data Services Agency uses the country list which lists the countries where citizenship is transferred by law from the mother. List is prepared by the Finnish Immigration Service and updated annually.

The meeting continued with the presentation from Siiri Leskov (*advisor of the Border Guard and Migration Policy Department, Estonian Ministry of the Interior*) who **gave an overview of the Estonian Citizenship Act (1938 and 1995), how Estonian citizenship can be acquired by birth as well as by naturalization and the concept of persons with undetermined citizenship.** Ms Leskov explained the importance of the legislative amendments that were made in 2015 in order to prevent the reproduction of persons with undetermined citizenship. A minor under 15 years of age who was born in Estonia or who immediately after birth takes up permanent residence in Estonia together with his or her parent(s) is granted Estonian citizenship by naturalization as of the moment of his or her birth, provided his or her parents whom no state recognizes under valid laws as its citizen have or has lawfully resided in Estonia for at least five years by the moment of the child's birth. In order to renounce the Estonian citizenship granted to these children, before the child attains the age of one year, the parents have the right to submit the corresponding application to the Police and Border Guard Board. Anyone who has lost his or her Estonian citizenship as a minor is entitled to its restoration. In terms of statelessness where a person has almost no legal protection and rights, persons with undetermined citizenship live in Estonia on the basis of a residence permit. They all have identity documents issued by Estonia, have the right to work, access to education as well as social benefits and right to vote in Local Government elections. Thus, it is important to acknowledge the difference between being stateless and being a person with undetermined citizenship in the context of Estonia.

Anne Sheridan (*EMN Ireland*) had kindly agreed to replace **Catherine Cosgrave** (*Immigrant Council of Ireland*) who was not able to deliver her presentation due to health concerns. The presentation **introduced principles regarding the access to Irish citizenship** which can be acquired at birth, by descent (including foreign birth registration) or by naturalization. While there are birth registration requirements for children in Ireland, nationality is not assigned at birth. A person born in Ireland will not be entitled to be an Irish citizen unless a parent of that person has been a resident in Ireland for no less than 3 years. This does not apply to children where one parent is an Irish or British citizen, or a person entitled to reside in Northern Ireland or the State without any restrictions on his or her period of residence. Any person who claims to be an Irish citizen, other than a naturalized Irish citizen, may apply for a certificate of nationality stating that the applicant is an Irish citizen. However, there is no guidance regarding application procedure or data regarding how many certificates have been issued. As there is no automatic or proactive initiative by the State to establish/resolve nationality of children, challenges continue to exist regarding the lack of stateless determination, lengthy administrative procedures, lack of legal aid and relatively high application fees.

Kristien Sacré (*Immigration and Foreigners Law, the Flemish Agency for Integration and Civic Integration*) **explained how protection against statelessness for children born in Belgium emanates mainly from article 10 of the Belgian Nationality Code.** Belgian citizenship is acquired automatically - Belgian is the child born in Belgium and that, on any given moment before the age of 18, would be stateless if he/she did not possess that nationality. Local civil registrar of municipality examines

nationality at the time of preparing the birth certificate (burden of proof is on the applicant but registrar tells which proof is necessary). No recognition as a stateless person is necessary and no residence or period of residence asked for parents or child. According to the second paragraph of article 10, the first paragraph will not apply if the child can obtain another nationality, if its legal

representative carries out administrative actions at the diplomatic or consular authorities of the parents or one of them. According to the last paragraph of the article, the child to whom Belgian nationality has been granted under article 10 shall retain that nationality if it has been shown, before he has reached the age of 18, that he possesses a foreign nationality. Even though article 10 is deemed to be a good example of a balanced law which is effective against statelessness, there are still challenges such as the practice differing from one municipality to another and the fact that stateless persons are quite easily registered as “undetermined”.

Closing remarks were delivered by **Adolfo Sommarribas** (*Chair of the EMN Platform of Statelessness*). Mr. Sommarribas thanked the speakers and participants of the meeting as well as invited everyone to reflect on information needs with regards to the topic of statelessness and to share them with the Platform, this would allow to better plan future activities and events.

In 2023 it is planned to update the EMN Inform [“Statelessness in the European Union”](#) which was last time published in 2020.

Depending on the information that collected for the inform it will be decided what could be the topic for the next technical meeting of the Platform in 2023.



Group photo of the participants that attended the technical meeting “Children’s right to nationality” which took place on 7 December 2022 in Tallinn, Estonia.