

THE COMMITTEE ON THE RIGHTS OF THE CHILD

73rd Pre-Sessional Working Group (1 – 5 February 2016)

ESTONIA

Civil Society Submission on the right of every child to acquire a nationality under Article 7 CRC

31 October 2015

Introduction

1. This civil society submission by the *Institute on Statelessness and Inclusion (the Institute)*¹ and the *European Network on Statelessness (ENS)*² highlights problems in the realisation of the right of every child to acquire a nationality and the avoidance of childhood statelessness in Estonia. In light of the Committee's previous recommendations on the issue,³ recommendations issued during the first UPR cycle,⁴ recommendations by the Committee on the Elimination of Racial Discrimination⁵ and the Committee against Torture,⁶ the importance of the eradication of statelessness as expressed by the UN High Commissioner for Refugees #IBelong campaign,⁷ a history of more than two decades of international and domestic concern on the issue,⁸ and the Government's commitment to solving statelessness within its borders,⁹ the Institute and ENS hope the Committee will:

- **Raise the issue of realising the right of every child to acquire a nationality in its List of Issues for Estonia.** In particular by asking what progress has been made in drafting legislation to realise the right of every child to a nationality in those situations which are not addressed by the amendments of 21 January 2015 that will make citizenship available for children born in Estonia to parents who are stateless ("with undetermined citizenship") and who have lived in Estonia at least five years prior to the birth of the child; and

¹ The Institute on Statelessness and Inclusion is an independent non-profit organization committed to promoting the human rights of stateless persons and fostering inclusion to ultimately end statelessness. Addressing childhood statelessness is one of the core thematic priorities of the Institute. See further: www.institutesi.org.

² The European Network on Statelessness is a civil society alliance of NGOs, academic initiatives and individual experts committed to addressing statelessness. With 103 members in 39 European countries, the Network's current thematic priority is ending childhood statelessness in Europe, including through its #StatelessKids campaign. See further www.statelessness.eu.

³ CRC/C/15/Add.196, 17 March 2003, para. 29.

⁴ In March 2011, Estonia accepted the recommendation made by Ecuador, during the first UPR cycle, to "Resolve the problem of persons without citizenship, and prevent such cases from arising in the future".

⁵ CERD/C/EST/CO/10-11, 22 September 2014.

⁶ CAT/C/EST/CO/5, 17 June 2013.

⁷ The UNHCR #IBelong campaign aims to eradicate statelessness by the year 2024, see further: <http://www.unhcr.org/ibelong/>.

⁸ Including numerous recommendations during the 1990s by OSCE High Commissioner on National Minorities, Max van der Stoep and in recent years by Council of Europe Commissioner for Human Rights, Nils Muižnieks.

⁹ Combined second, third and fourth state party reports, CRC/C/EST/2-4, April 2013.

- **Address recommendations to the Government of Estonia to further prevent and reduce the problem of childhood statelessness in the country.** In particular, in its Concluding Observations on the second, third and fourth report of Estonia, by welcoming the considerable steps Estonia has taken in the prevention of new cases and certain measures for the reduction of current cases of childhood statelessness yet urging the Government to ensure that appropriate legislative and other implementing measures are enacted to prevent and reduce statelessness among children in all situations.

The report of Estonia to the Committee

2. In its combined second, third and fourth periodic reports to the Committee, the Government of Estonia states that the naturalisation of persons with undetermined citizenship continues to be one of its priorities.¹⁰ The government indicated a number of measures which have been taken to facilitate access to citizenship for stateless children (under the Estonian legal system “persons with undetermined citizenship”) born in Estonia, including simplifying procedures and conducting information campaigns to encourage applications for citizenship.
3. Since the submission of the state party’s report, an important further step towards guaranteeing children’s right to a nationality has been taken with the passing of a new amendment to the Citizenship Act on 21 January 2015. The Institute and ENS hope that the adoption of the List of Issues and the Committee’s dialogue with the government of Estonia provides an opportunity to consider this most recent progress and to address certain flaws and gaps that nevertheless remain unaddressed, as outlined below.

Statelessness in Estonia

4. Following its independence in 1991, Estonian citizenship was extended only to citizens of pre-war Estonia and their descendants. As a consequence, almost 40% of the population of Estonia became stateless. This particularly disadvantaged the Soviet-era settlers, who are mainly persons of Russian ethnicity, as well as subsequent generations born on Estonian territory. As of 2014, there were still 89,533 stateless persons in Estonia, including 936 stateless children born in the country.¹¹
5. Although persons with “undetermined citizenship” have a stable legal status and a broad range of rights, they remain stateless. As a consequence they are restricted in the enjoyment of their (human) rights. Non-citizens are particularly restricted from political participation and working in public office, as well as other limitations, including in transactions of immovable property.¹² As the Committee has previously noted, the stateless situation of parents, who by virtue of their status are unable to participate fully in Estonian society, also negatively impacts on their children’s integration into Estonian society.¹³
6. Despite international and domestic pressure on Estonia to resolve the problem of statelessness within its borders, policy on citizenship remained conservative following the initial Citizenship Act of 1992. To date, children of parents with undetermined citizenship have been entitled to Estonian citizenship by naturalisation only if the parents have lawfully resided in Estonia for at least five years and only following the completion of an application process through which the parents express their will for the child to acquire nationality. As indicated in the state party’s report, failure to make the procedure fully known to

¹⁰ Ibid, pp. 39.

¹¹ UNHCR, Mid-Year Trends 2014; Explanation note to the amendment to the Citizenship Act (nr737), available at: <http://www.riigikogu.ee/download/ab5f780c-3b11-4bb3-8f5b-d819ec8deaa4/ab5f780c-3b11-4bb3-8f5b-d819ec8deaa4>.

¹² European Network on Statelessness and the Legal Information Centre for Human Rights ‘Ending Childhood Statelessness: A Study on Estonia’ (2014) pp. 6-7.

¹³ Above n3.

the public and parents deciding to not apply on behalf of their child, were identified as reasons for this procedure to be less than optimally effective. This has resulted in the situation faced in Estonia today, where almost a thousand children who were born in the country remain stateless.

7. Estonia is a party to most of the core international human rights treaties, including the ICCPR and the optional protocols, the ICESCR, ICERD, CEDAW, CRPD, CAT and of course the CRC. Estonia, however, is not a party to important international and regional conventions dealing with statelessness: it has not acceded to the 1954 Convention on the Status of Stateless Persons, the 1961 Convention on the Reduction of Statelessness or the European Convention on Nationality.

Positive developments under the 2015 amendment to the Citizenship Act

8. Estonian commitment to solving statelessness led to an amendment to the Citizenship Act being passed on 21 January 2015, which will enter into force on 1 January 2016. This amendment directly relates to children's right to a nationality and is therefore to be welcomed.
9. The most important change that has been brought about through this amendment to the Citizenship Act relates to article 13(4), which now provides as follows:

A child under 15 years of age, who was born in Estonia, will acquire Estonian citizenship by naturalization starting from the time of his or her birth, if his or her parents or a single parent have been legally residing in Estonia for at least five years by the time of birth of the child and they are not considered as citizens by any other State on the basis of any legal act in force.

10. Whereas the previous law required parents to "opt-in" before children could acquire Estonian nationality (through a procedure that parents did not always initiate), the new law provides for automatic acquisition of nationality by children who would otherwise be stateless if the conditions are met. The new law will, however, retain the possibility for parents to "opt-out": they can renounce this citizenship on behalf of their child during the first year after birth.¹⁴
11. It is further encouraging that, when it enters into force on 1 January 2016, the new law will retroactively apply to children under the age of 15. It is unclear, however, whether retroactive application will continue to depend on parental notification.

Enduring problems and suggested questions for the state party's review

12. Despite the 2015 amendment, certain children remain at risk of becoming stateless due to gaps that persist in the Estonian legislation and the possibility of problems arising in the implementation of the new law.
13. The new law does not address the situation of all stateless children born in Estonia because it is limited to those whose: "... parents or a single parent have been legally residing in Estonia for at least five years by the time of birth of the child and they are not considered as citizens by any other State on the basis of any legal act in force." This provision does not provide for access to citizenship for a child whose parent(s) have citizenship of another country, but who is stateless because the parent(s) are unable to transmit this citizenship to the child. Stateless children born in Estonia whose parents do not meet the requirement of at least 5 years lawful residence prior to the birth of the child are similarly left without means to acquire nationality.

¹⁴ Explanatory Note to the amendment.

14. In light of international standards on the right of every child to acquire a nationality, without discrimination,¹⁵ and previous recommendations made the Committee,¹⁶ the acquisition of nationality by stateless children born in the territory of a state should not be contingent on the nationality, legal status or duration of residence status of the parents. It is suggested that the Committee raise the question why certain categories of otherwise stateless children continue to be excluded from the acquisition of Estonian nationality.

15. When the new law comes into force on 1 January 2016, its retroactive application will be limited to children under the age of 15. All persons older and born on the territory, including stateless children aged between 15 and 18 years, will remain excluded from acquiring nationality. Consequently not all 936 children born in Estonia who currently are stateless will benefit. It is furthermore unclear whether the retroactive application will be automatic as of 1 January 2016 or if it requires children to follow a procedure.

16. It is suggested that the Committee raise the question of whether the retroactive application of the law will be automatic and what measures will be taken to ensure its effective implementation so as to provide a remedy for children who are currently stateless - in light of General Comment No. 5 on the general measures of implementation of the Convention on the Rights of the Child and as well as concerns regarding the dissemination of previous information on naturalisation. It is also suggested that the Committee inquire about how many children (and adults) will fall outside the age-related scope of the new law and what further measures the government is planning to provide a remedy for them.

17. In accordance with the new law, the children of stateless parents will continue to acquire “citizenship by naturalisation” which appears to be a distinct category of citizenship under the Estonian Citizenship Act. Children of Estonian nationals receive “citizenship by birth”. According to the state party’s report, “no one may be deprived of Estonian citizenship acquired by birth”, while citizenship by naturalisation may be deprived on a number of grounds.¹⁷

18. With a view to ensuring the avoidance of discrimination between the nationals of a state, it is suggested that the Committee raise the question what are the exact differences in rights and duties attached to these different categories of citizenship as well as whether the Government will reconsider the granting of an apparently more precarious form of citizenship to stateless children born on the territory.

19. The possibility for parents to “opt-out” of Estonian nationality on behalf of their children within the first year of the child’s life may continue to cause statelessness based on the parents’ views on citizenship.

20. Given the principle of non-discrimination enshrined in article 2 (including article 2, paragraph 3) of the Convention on the Rights of the Child, and the principle of the best interests of the child, it is suggested that the Committee ask whether and how the state will protect the child from the consequences of statelessness in situations where the parent decides to opt out.

¹⁵ Including Human Rights Committee, *General Comment 17: Article 24 (Rights of the Child)*, 7 April 1989.

¹⁶ Including CRC/C/CZE/CO/3-4, 4 August 2011; CRC/C/TKM/CO/2-4, January 2015;

¹⁷ Above n8, pp. 44-45.

Recommendations

21. Based on the points identified above and the stated dedication of the Estonian Government to solving statelessness within its territory, the following recommendations are made which we hope the Committee will consider in urging the Government to solve statelessness:

- I. **Enact legislation to guarantee the right to acquire a nationality for all otherwise stateless children born in Estonia, regardless of the parents' nationality or statelessness, or of their residence status.**
- II. **Take further measures to reduce and ultimately eradicate existing cases of statelessness, particularly among children, including through expanding and enforcing the retroactive implementation of safeguards to provide a nationality to stateless children born on the territory.**
- III. **Implement information campaigns and other measures to disseminate information about the 2015 amendments to the Citizenship Act.**
- IV. **Consider the granting of "citizenship by birth" to stateless children born in the country, as opposed to the more precarious status of "citizenship by naturalisation" which is currently provided for, and review legislation which distinguishes between different categories of citizenship to ensure the avoidance of discrimination between nationals.**
- V. **Accede to the 1954 Convention Relating to the Status of Stateless Persons, the 1961 Convention on the Reduction of Statelessness and the European Convention on Nationality.**