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Moving Statelessness Forward on the International Agenda

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Abstract

This paper aims at shedding more light on the recent re-emergence of the issue of statelessness on the international agenda, from a government perspective. I wish to outline what a government can do in order to address statelessness through foreign policy initiatives and to highlight the issue of protecting stateless persons in different international fora. Hungary is a good example for that, being party to all international conventions on the protection of the stateless and on the reduction and prevention of statelessness. This shows to the outside world Hungary's strong commitment to protecting stateless people and preventing future cases of it as well as reducing their existing number. In 2007, Hungary also established a self-standing statelessness determination procedure. Since then, the government has put more emphasis on the promotion of the protection of stateless people and the reduction of statelessness in her international relations. This article gives some examples on implementing this policy goal and mainstreaming statelessness in international cooperation.

Keywords

statelessness – issue emergence – foreign policy initiatives – Hungary

1 Introduction

This short paper aims at shedding more light on certain aspects of the recent re-emergence of the issue of statelessness on the international agenda.¹ I wish to add another perspective to this discussion on moving statelessness onto the international advocacy agenda ('issue emergence'), notably from a government's point of view: what a government can do in order to address statelessness through foreign policy initiatives and to highlight the issue of protecting the stateless in different international *fora* and in bilateral relations.

Hungary is a good example for that, being party to all relevant international conventions on the protection of the stateless and on the reduction, avoidance and prevention of statelessness. These multilateral instruments are, on the universal level, the 1954 New York Convention on the Status of Stateless Persons,² the 1957 UN Convention on the Nationality of Married Women,³ as well as the 1961 UN Convention on the Reduction of Statelessness;⁴ then on the regional level, the 1997 European Convention on Nationality⁵ and the 2006 Council of Europe Convention on the Avoidance of Statelessness in relation to State Succession.⁶ All these international conventions have become an integral

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- 1 See e.g. Lindsey Kingston, 'Moving Statelessness Forward on the International Human Rights Agenda' <www.statelessness.eu/blog/moving-statelessness-forward-international-human-rights-agenda#sthash.Ml6IGcbe.dpuf> accessed 15 September 2013; Lindsey Kingston, "A Forgotten Human Rights Crisis": Statelessness and Issue (Non)Emergence' (2013) 14 Human Rights Review 73; Lindsey Kingston, 'Statelessness and issue (non-)emergence' (2012) 40 Forced Migration Review 50. On the emergency studies e.g. Charli R. Carpenter, 'Setting the Advocacy Agenda: Theorizing Issue Emergence and Nonemergence in Transnational Advocacy Networks' (2007) 51 International Studies Quarterly 99.
 - 2 Convention relating to the Status of Stateless Persons (adopted 28 September 1954, entered into force 6 June 1960) 5158 UNTS 360, 117. Promulgated (incorporated) in Hungary by Act II of 2002 (entered into force in relation to Hungary on 21 November 2001).
 - 3 Convention on the Nationality of Married Women (adopted 20 February 1957, entered into force 11 August 1958) 4468 UNTS 309, 65. Promulgated (incorporated) in Hungary by Law-Decree No. 2 of 1960 (entered into force in relation to Hungary on 3 December 1959).
 - 4 Convention on the Reduction of Statelessness (adopted 30 August 1961, entered into force 13 December 1975) 14458 UNTS 989, 175. Promulgated (incorporated) in Hungary by Act XV of 2009 (entered into force in relation to Hungary on 12 August 2009).
 - 5 European Convention on Nationality. Promulgated (incorporated) in Hungary by Act III of 2002 (entered into force in relation to Hungary on 1 March 2002).
 - 6 Council of Europe Convention on the Avoidance of Statelessness in relation to State Succession. Promulgated (incorporated) in Hungary by Act XCVIII of 2008 (entered into force in relation to Hungary on 1 May 2009). The Convention entered into force on the international plane with Hungary's ratification.

part of Hungarian law; they have been incorporated in a piece of national legislation into the Hungarian *corpus iuris*, due to the country's dualist-transformation model concerning the relationship between international law (international treaties) and domestic law.⁷

All this relays a firm foreign policy message. It shows to the outside world Hungary's strong commitment to protecting stateless people and preventing or avoiding any future cases, as well as reducing their existing number. Being party to all these international instruments means that Hungary can no longer modify her internal rules unilaterally.

Besides that, Hungary has also improved domestic legislation in order to better implement these international obligations. As an outstanding example, as of 1 July 2007, Hungary established a completely new statelessness determination procedure (SDP)⁸ and it is now only one of a few countries in the European Union (EU)⁹ that has such a self-standing, comprehensive procedure established by law: with guarantees comparable to the refugee status determination procedure, fulfilling the specific needs of this vulnerable group. As the United Nations High Commissioner for Refugees (UNHCR) Guidelines on Statelessness No. 2 emphasizes: 'recognition of statelessness plays an important role in enhancing respect for the human rights of stateless persons, particularly through access to a secure legal status and enjoyment of rights afforded to stateless persons under the 1954 Convention.'¹⁰ Roughly, a dozen states all over the world have procedures in place to identify stateless persons in their territory, which is a first step to protection. The Hungarian statelessness determination procedure, warmly welcomed by UNHCR, has been in the international spotlight in recent years, mainly due to the sophisticated and in many aspects protection-oriented legal regime it established. For more than

7 For more see e.g. Tamás Molnár, 'The Relationship of International Law and the Hungarian Legal System 1985-2005' in András Jakab and others (eds), *Transformation of Hungarian Legal Order 1985-2005* (Kluwer Law International 2007).

8 Chapter VIII of Act II of 2007 on the Entry and Stay of Third-Country Nationals and Chapter VIII of its Implementing Government Decree No. 114/2007 (V.24.) (These legal texts can be accessed free of charge – only in Hungarian though – via www.njt.hu). For a detailed analysis see: Tamás Molnár, 'Statelessness Determination Procedure in Hungary' (2013) 4 *Asiel and Migrantenrecht* 271.

9 Such procedures exist also, for instance, in Belgium, France, Italy, and Spain (source: proceedings of the UNHCR Practitioner Seminar on Statelessness and National Procedures of 5 July 2011, Brussels). Outside the EU, the Philippines or Moldova has just recently put in place such a procedure.

10 UNHCR, 'Guidelines on Statelessness No. 2: Procedures for Determining whether an Individual is a Stateless Person' (5 April 2012, HCR/GS/12/02) <www.refworld.org/docid/4f7dafb52.html> accessed 15 September 2013.

six years, the Hungarian SDP has been functioning smoothly in practice; no misuses have been reported so far and the recognition rate is quite high (around 60-70 percent), despite the number of applicants being relatively small (less than 50 per year; altogether 190 applications until the end of 2012).¹¹

Since the establishment of this procedural framework, Hungary puts more emphasis on the promotion of the protection of stateless people and on the reduction and prevention of statelessness in her international relations. This has also become a clear strategic goal: the Government Strategy of Hungary for Cooperating in the Area of Freedom, Security and Justice of the EU for the Period of 2009-2014 stipulates that 'Hungary – as a signatory to all international conventions in the field of statelessness – wishes to further represent the issue of the protection of stateless persons on the international plane, among others by disseminating the practical experiences gained from the exemplary Hungarian procedure for the recognition of stateless status.'¹² This commitment is also clearly highlighted by the brand new Migration Strategy¹³ the personal scope of which covers stateless people in a systematic manner.¹⁴ Statelessness is mainly dealt with under the chapters on international protection and integration of foreigners¹⁵ and the issue also appears amongst the general principles, where it is stated that one of the main objectives of Hungary's Migration Strategy is to protect the stateless (by providing them with a self-standing legal status with a high protection standard) and to effectively reduce and prevent statelessness.¹⁶

Against this background, below I will give some examples for implementing this policy goal in our bilateral, regional and global cooperation and foreign policy initiatives.

2 Concrete Policy Actions and Initiatives – Bilateral Relations and Regional (EU) Level

I will first start with an overview of the recent government policy actions. In June 2010, Hungary organized a seminar on statelessness in the framework

11 Source of data: website of the Office of Immigration and Nationality (*Bevándorlási és Állampolgársági Hivatal*) <www.bevandorlas.hu> accessed 15 September 2013.

12 Government Decision No. 1057/2009. (IV.24.), Annex.

13 Government Decision No. 1968/2013. (X.4.), Annex.

14 It was also appreciated by UNHCR ('UNHCR Comments on the Government's draft Migration Strategy (2014-2020)' <www.unhcr.org/50e6e009.pdf> accessed 15 September 2013).

15 Chapter V – International Protection and Chapter VI – Integration of the Migration Strategy.

16 Chapter I – Basic principles, point 3.

of the then Söderköping Process (now: EU Eastern Partnership Panel on Migration and Asylum),¹⁷ presenting her experiences and good practices to Moldova, Ukraine and Belarus. Similarly, Hungary shared her experiences gained in relation to statelessness determination in a side event of the 15th session of the UN Human Rights Council (UNHRC) in September 2010 in Geneva.¹⁸

Moreover, Hungary, as Presidency of the Council of the EU in the first semester of 2011, put this issue on the European Union policy agenda as well. On her initiative, Member States discussed the issues of prevention and reduction of statelessness, as well as the protection of stateless people at the informal meeting of the Strategic Committee on Frontiers, Immigration and Asylum (SCIFA) of the EU Council in May 2011 in Budapest.¹⁹ The Hungarian government thus welcomes as a possible follow-up that at the September 2012 UN High Level Rule of Law Meeting during the General Assembly in New York the EU and the Member States pledged that all Member States not yet parties to the 1954 and 1961 Statelessness Conventions would now ratify these international instruments as well as the EU would develop a framework for raising issues of statelessness with third countries by 2014.²⁰ Even if the EU as an entity does not have competence to adopt uniform EU-legislation on statelessness,²¹ it can support Member States', NGOs' and other stakeholders' efforts in various other ways. In order to ensure foreseeable and sustainable financing

17 For more about this regional consultative process, see <<http://eapmigrationpanel.org/>>. The summary of the proceedings of this event can also be downloaded from here.

18 Side event to the 15th Session of the Human Rights Council on Statelessness, Discrimination and Human Rights; co-organised by Equal Rights Trust and The International Commission of Jurists, Geneva, 29 September 2010.

19 For more information on this meeting as well as the discussion paper on the prevention and reduction of statelessness and on the protection of stateless persons, see <<http://www.eu2011.hu/event/informal-scifa-strategic-committee-immigration-frontiers-and-asylum-meeting>> accessed 15 September 2013.

20 'Pledges of the European Union and its Member States to be made on the occasion of the forthcoming High-Level Meeting on the Rule of Law of 24 September 2012' (19 September 2012), Section A. (Strengthening the rule of law at the international level), point 4 and Section B. (Strengthening the rule of law at the national level), point 3.2. See e.g. Lithuania (having acceded to the 1961 Convention symbolically on 1 July 2013, the date when the country took over the rotating Presidency of the EU Council) or Poland (technical preparations are already underway with a view to acceding to the 1954 Convention).

21 The only, tiny legal basis for EU competence in this field can be found in Article 67(2) TFEU in conjunction with Article 352 TFEU. For more on this issue see Tamás Molnár, 'Stateless Persons under International Law and EU Law: a Comparative Analysis concerning their Legal Status, with Particular Attention to the Added Value of the EU Legal Order' (2010) 51 *Acta Juridica Hungarica* 304.

in this domain, it is of utmost importance that activities related to statelessness be eligible for EU funding, so that Member States and NGOs can be in a position to carry out such projects financed by these resources. A positive sign is that the new Regulation establishing the EU Asylum and Migration Fund for the multiannual period of 2014-2020 clearly refers to stateless people as beneficiaries of this financial instrument,²² therefore activities aiming at addressing and improving their situation can be covered by the allocations of the new European Fund.

As for strategic treaty action, it is to be noted that Hungary's accession to the 2006 Council of Europe (CoE) Convention on the Avoidance of Statelessness in relation to State Succession has partly pursued a foreign policy goal, too. Hungary was the third CoE Member State ratifying this Convention, thereby putting it into operation: since the Convention has required three ratifications for its entry into force.²³ The aim of it was to contribute to the emergence of regionally binding treaty rules relating to the obligation of avoiding statelessness when sovereignty changed over certain territory and to indirectly contribute to the gradual formation of such a regional customary international norm. A few important ratifications that followed Hungary's accession shortly may show the success of these efforts (Austria, Germany, Montenegro and the Netherlands as new signatories just within one year).²⁴

Further to that, Hungarian government experts are also regularly invited to UNHCR expert consultations on different topics concerning statelessness²⁵ and also enjoy an excellent cooperation relationship with local NGOs (e.g. Hungarian Helsinki Committee) and the UNHCR Regional Representation in Budapest. Hungary strives to assist UNHCR to improve the situation of stateless people around the world.

During the last few years, more and more states have shown their interest towards the study of our SDP model and the experiences gained from it. Hungary has received different delegations for study visits from various countries, such as the United Kingdom in December 2010; Montenegro in April 2011;

22 Article 2 lit. c), Proposal for a Regulation of the European Parliament and of the Council establishing the Asylum and Migration Fund (doc. no. DS 1696/13 of 10 September 2013).

23 Article 18(2).

24 For a detailed overview of the State parties to the 2006 CoE Convention, see <<http://conventions.coe.int/Treaty/Commun/ListeTraites.asp?CM=8&CL=ENG>> accessed 15 September 2013.

25 Expert Meeting – The Concept of Stateless Persons under International Law (Prato, 27-28 May 2010); Expert Meeting – Statelessness Determination Procedures and the Status of Stateless Persons (Geneva, 6-7 December 2010); or most recently, the Expert Meeting on loss and deprivation of nationality (Tunis, 31 October-1 November 2013).

FYROM, the Philippines and Moldova in autumn 2011, as well as a Central-European delegation of UNHCR in December 2012, including state officials from Bulgaria, Czech Republic, Poland, Romania, Slovakia and Slovenia. Furthermore, within the course of 2011, Hungarian government experts have been invited to expert roundtables in Romania, Turkmenistan, Georgia and the UNHCR's Bureau for Europe in Brussels (and some more invitations are to come to Slovenia and Slovakia in autumn 2013). Tangible results of these study visits and expert consultations can be measured. For instance, the United Kingdom has just recently adopted changes to its Immigration Act, which introduced a statelessness determination procedure as of April 2013; Moldova has acceded to both UN conventions and put in place a statelessness determination procedure; Georgia has become party to the 1954 UN Convention and the Philippines has also established a statelessness determination procedure etc.²⁶

3 Concrete Policy Actions and Initiatives – Universal Level

On the universal level, it is worth mentioning that at the December 2011 UNHCR Ministerial Conference, celebrating the Agency's 60th and the 1961 UN Convention's 50th anniversary, Hungary made some statelessness related pledges. These were threefold: firstly, to continue the promotion of the two UN Conventions relating to the status of stateless persons and on the reduction of statelessness, and since Hungary has gathered significant knowledge and expertise in this field, to share these best practices and experiences with all interested states in the framework of seminars or study visits. Secondly, to withdraw the declaration made to Articles 23 and 24 of the 1954 UN Convention, thus ensuring the full enjoyment of the rights contained in those Articles (access to public relief, labor legislation and social security) to all stateless persons recognized by Hungary. And finally, to develop a quality evaluation and development mechanism in statelessness determination.²⁷

All these pledges have been implemented since then. The declaration to Articles 23 and 24 of the 1954 UN Convention was withdrawn as of 3 July 2012.²⁸

26 UNHCR <www.unhcr.org/pages/4ff2bdf6.htm> accessed 15 September 2013.

27 UNHCR, 'Pledges 2011: Ministerial Intergovernmental Event on Refugees and Stateless Persons (Geneva, Palais des Nations, 7-8 December 2011)' (2012) <www.unhcr.org/commemorations/Pledges2011-preview-compilation-analysis.pdf> accessed 15 September 2013.

28 Convention relating to the Status of Stateless Persons (n 2) <www.treaties.un.org/pages/ViewDetailsII.aspx?&src=TREATY&mtdsg_no=V~3&chapter=5&Temp=mtdsg2&lang=en#12> accessed on 15 September 2013.

The quality evaluation and development mechanism has been set up: a Quality Assurance Manual has been prepared (available in Hungarian and in English), which is a joint product of the Office of Immigration and Nationality (national authority responsible for statelessness determination) and UNHCR's Hungary Unit. This manual, being in use since the end of last year, is specifically designed for eligibility officers working at the Regional Directorates of the immigration authority and it takes into account UNHCR Guidelines on Statelessness No. 1 and 2.²⁹ Finally, promotion of the two UN Conventions and mainstreaming their values, principles and protective rules is an on-going activity in various forms, such as highlighting the importance of these conventions in different international conferences and seminars, receiving study visits from states interested in acceding and advising them, as well as organizing events to mainstream these instruments and explaining their advantages.

4 Outlook to the Future

What does the future hold? The Hungarian government continues to pursue the above mentioned policy line and to promote the issue of protecting the stateless in international cooperation.

To name a few, in December 2013, the Hungarian Ministry of Interior is going to organize a seminar with Moldova, in the framework of the EU Eastern Partnership Panel on Migration and Asylum on implementing international obligations on statelessness. This includes sharing experiences of functioning statelessness determination procedures amongst EU Member States and Eastern Partners (Belarus, Moldova, Ukraine as well as Armenia, Azerbaijan and Georgia). Another important upcoming event is the 2nd UN High-Level Dialogue on Migration and Development to be held in October 2013.³⁰ This high-profile global gathering will also be an excellent occasion for Hungary to red flag her activities and achievements in this field and to advocate for strengthening the efforts and commitments of the international community, so as to better protect the stateless as well as to prevent and reduce statelessness.

29 UNHCR, 'Guidelines on Statelessness No. 1: The definition of 'Stateless Person' in Article 1(1) of the 1954 Convention relating to the Status of Stateless Persons' (20 February 2012, HCR/GS/12/01) <www.refworld.org/docid/4f4371b82.html> accessed 15 September 2013; UNHCR (n 10).

30 The website of this event <www.un.org/esa/population/meetings/HLD2013/mainhld2013.html> accessed 15 September 2013. In its resolution 63/225 of 19 December 2008, the UN General Assembly decided to devote a high-level dialogue to international migration and development during its 68th session in 2013.

Further to that, the year 2014 will mark the 60th anniversary of the 1954 New York Convention. Building on the momentum generated by the 2011 UNHCR Ministerial Conference of States, 2014 presents an excellent opportunity to reinforce awareness and action to address statelessness around the globe. As a champion state on statelessness, Hungary will strive to assist the UNHCR in its endeavor to commemorate the 60th anniversary of the 1954 New York Convention, in order to jointly bring forward the plight of stateless people around the world. The 2014 First Global Forum on Statelessness in The Hague³¹ will be an excellent occasion to reconfirm Hungary's commitments and, hopefully, many states will follow, so as to make the world a better and more livable place for these often invisible and highly vulnerable individuals.

31 The First Global Forum on Statelessness. New Research and Policy Perspectives. 15-17 September 2014, The Hague (preliminary information available at <www.unhcr.org/5141e6a29.html> accessed 15 September 2013).