



# Facilitated Naturalization of Stateless Persons

*Eva Mrekajová*

Intern at the Statelessness Unit, Department of International Protection, Pillar  
I-Policy and Law, United Nations High Commissioner for Refugees (UNHCR)  
Geneva

*mrekajova1@gmail.com*

## Abstract

Naturalization of stateless persons falls under the broader problem of statelessness, which is recently drawing more and more attention. However, the issue of facilitated naturalization of stateless persons stays grossly overlooked. The present article tries to identify international and European standards and general recommendations related to facilitated access to citizenship for stateless persons. The article focuses in particular on assessment of material requirements (residence, language and other integration requirements, good character, economic resources requirements, loyalty to the State and security) and procedural aspects of naturalization (application, proceedings).

## Keywords

reduction of statelessness – access to citizenship – facilitated naturalization – residence – language tests – integration – good character – economic resources requirements – loyalty – security – application for naturalization – naturalization proceedings

## 1 Introduction

Some international instruments<sup>1</sup> explicitly recommend that States facilitate the acquisition of their nationality for stateless persons and this has been

---

1 See e.g. Convention Relating to the Status of Stateless Persons (adopted 28 September 1954, entered into force 6 June 1960) 360 UNTS 117 (1954 Convention), Art. 32 <<http://www.refworld.org/docid/3ae6b3840.html>> accessed 13 October 2013; European Convention on

proposed as one of the measures to reduce statelessness. Yet, there are still no clear and comprehensive guidelines explaining what actually amounts to facilitated naturalization and what the States should do to comply with this obligation.

This article will therefore try to identify international and European standards for facilitated access to citizenship and to outline some recommendations which could help to eliminate '*unreasonable impediments*'<sup>3</sup> to naturalization for such a particular group of applicants as are the stateless persons. We will focus in particular on the assessment of material requirements and procedural aspects of naturalization. In this light, some standards on facilitated naturalization may be extracted. These will be discussed below.

## 2 Material Requirements

### 2.1 Residence

A very concrete standard relating to naturalization is provided by the 1997 European Convention on Nationality, which determines that States may not demand more than ten years of lawful residence as a pre-condition to naturalization.<sup>2</sup> Recommendation 564 (1969) of the Consultative Assembly of the Council of Europe interpreting the facilitated naturalization of refugees instructs to reduce the minimum period of residence if it exceeds five years. *Per analogiam* this interpretation may be used also for the purposes of facilitated naturalization of stateless persons.

---

Nationality (adopted 6 November 1997, entered into force 1 March 2000) ETS 166, Art. 6 (4) (g) <<http://www.refworld.org/docid/3ae6b36618.html>> accessed 14 October 2013; Explanatory report to the European Convention on Nationality, ETS 166, para. 52 <<http://conventions.coe.int/Treaty/EN/Reports/Html/166.htm>> accessed 14 October 2013; Recommendation No. R (99) 18 of the Committee of Ministers to Member States on the Avoidance and Reduction of Statelessness (adopted on 15 September 1999) No. R (99) 18 <<http://www.refworld.org/docid/510101e02.html>> accessed 14 October 2013 and *per analogiam* Convention Relating to the Status of Refugees (adopted 28 July 1951, entered into force 22 April 1954) 189 UNTS 137 (Refugee Convention) <<http://www.refworld.org/docid/3be01b964.html>> accessed 14 October 2013 and Recommendation 564 (1969) on the Acquisition by Refugees of the Nationality of Their Country of Residence (adopted 30 September 1969) 564 (1969), para. 9(i)(b) <<http://www.refworld.org/docid/3ae6b38178.html>> accessed 14 October 2013.

2 European Convention on Nationality, Art 6(3) as cited by Laura van Waas, *Nationality Matters: Statelessness Under International Law* (Intersentia 2008) 367.

However, it is crucial to ask from which moment the national legislation starts to count towards this waiting period. The general practice is that 'for the stateless, or any non-national, to benefit from a right to (facilitated) naturalization, they must first establish lawful and habitual residence on the territory of the State'.<sup>3</sup> The right of access to lawful and habitual residence for stateless persons is not provided for under the 1954 Convention, nor is it decisively settled in any human rights instruments; therefore it raises several issues, which have to be considered.

Firstly, it is important to realize that even if a waiting period for naturalization as such is relatively short, a stateless person may not be able to meet requirements for (lawful and habitual) residence. This means that this period will never start to count and a stateless person will not practically have access to such a procedure. Even more importantly, it may be the case that States require a certain period of time to lapse before a person is able to establish their lawful and habitual residence. Such a period then has to be added to the waiting period required for naturalization to create an accurate picture of the time within which a person may be naturalized. International law, of course, does not prevent States from offering access to (facilitated) naturalization also to unlawfully present stateless persons on a voluntary basis. The general formulation of article 32 of the 1954 Convention does provide space for such interpretation, but without further guidelines, it is highly unlikely that States would do so.<sup>4</sup>

What makes the determination of the waiting period even more complicated, compared to facilitated naturalization of refugees for example, is the fact that most States have not yet introduced determination procedures for statelessness, while many of them do already have functioning asylum procedures. According to the guidelines issued by the United Nations High Commissioner for Refugees (UNHCR), the standard residence requirement for facilitated naturalization of refugees should be five years, while this period should, where relevant, include also periods spent in the country whilst asylum applications are under consideration.<sup>5</sup> This could be the appropriate standard also in the context of statelessness where a determination procedure for statelessness is in place.

---

3 Ibid 369.

4 Ibid 370.

5 UNHCR, *Borders, Citizenship and Immigration Bill*, Parliamentary Briefing, House of Lords Second Reading (2009), para 6 <[http://www.unhcr.org.uk/fileadmin/user\\_upload/pdf/BCI\\_Bill\\_Lords\\_Second\\_Reading\\_Brief.pdf](http://www.unhcr.org.uk/fileadmin/user_upload/pdf/BCI_Bill_Lords_Second_Reading_Brief.pdf)> accessed 13 October 2013.

## 2.2 *Language or Other Integration Requirements*

In general, differentiation based on language in the specific context of nationality attribution does not amount to discrimination.<sup>6</sup> UNHCR also agrees that language is fundamental to integration and cohesion of communities.<sup>7</sup> But, even though the language and other integration requirements may be considered as legitimate for the purposes of naturalization, they 'should exclusively be used and regarded as [elements] of integrating non-nationals and should not be used as a discriminatory means for a State to select its nationals'.<sup>8</sup>

The State should therefore not 'require more than an adequate knowledge of one of its official languages'.<sup>9</sup> The word adequate deserves some attention here. In practice, it might be very difficult to establish the level of knowledge of grammar and vocabulary necessary to pass the test. According to linguists, the knowledge of 800 words of language is sufficient to conduct a simple conversation<sup>10</sup> (A2 standard). This should be the standard for naturalization tests.

Other integration requirements, usually taking the form of a test, interview or other assessment, also seem legitimate. 'It is in principle desirable that a person who wants to enjoy benefits of citizenship also show their willingness to integrate by acquiring certain knowledge of the official language of the State and of the principles of State structure.'<sup>11</sup> But 'it goes (...) too far to include questions which citizens of many European countries, perhaps also of [the State in question], might find difficult to answer'.<sup>12</sup>

Moreover, even if States comply with the above standards, the language and other knowledge tests might still be problematic to pass for certain categories of applicants due to their age or physical or mental conditions. States should therefore introduce appropriate adjustments to the procedure or consider a

6 European Convention on Nationality and its Explanatory Report lists only 'sex, religion, race, color or national or ethnic origin' (Art. 5), as prohibited discriminatory grounds, clarified further in the Explanatory Report as a choice based on the fact, that the differentiation on the other grounds e.g. language or property in the specific context of nationality attribution is not discriminatory. See Explanatory report to the European Convention on Nationality, ETS 166, para 40.

7 UNHCR (n 5) para 11.

8 Council of Europe, Committee of Experts on Nationality, *Report on Conditions for the Acquisition and Loss of Nationality* (Strasbourg: 14 January 2003), para 36.

9 Explanatory report to the European Convention on Nationality, ETS 166, para 52.

10 Vadim Poleshchuk, *Advice not welcomed: Recommendations of the OSCE High Commissioner to Estonia and Latvia and the Response* (LIT Verlag 2001) 56.

11 Ibid 60.

12 Ibid 60.

waiver in relation to certain requirements where it is unreasonable to expect the language or other integration requirements to be fulfilled.<sup>13</sup>

### 2.3 *Good Character*

Nationality law often requires the applicant for naturalization to be of *good character*, which implies especially the consideration of any criminal convictions or proceedings pending against the applicant.<sup>14</sup> In this context the Council of Europe's Committee of Ministers advised the States to 'ensure that offences, when they are relevant for the decision concerning the acquisition of nationality, do not unreasonably prevent stateless persons seeking the nationality of a State'.<sup>15</sup> Another limitation has been argued on the basis of Article 15 of the International Covenant on Civil and Political Rights (ICCPR). 'It is suggested that where the conviction for a criminal offence forms a bar for the opportunity to apply for naturalization, this amounts to *ex post facto* punishment to the individual who committed the crime which is outlawed under the aforementioned article'.<sup>16</sup> However, the requirement is accepted to serve the protection of national security as confirmed by the United Nations (UN) Human Rights Committee, which accepted that 'considerations related to national security may serve a legitimate aim in the exercise of a State party's sovereignty in the granting of its citizenship'.<sup>17</sup>

Several guarantees can be put in place, which may prevent this requirement from becoming an *unreasonable impediment* to naturalization. Firstly, it is important that nationality law provides for the definition of *good character*. A broad formulation without further definition is too vague and may be easily abused. Secondly, minor offences should not bar the naturalization of the applicant. A threshold should be set, preferably on crimes with sentences of

---

13 See *per analogiam* UNHCR (n 5) para 13.

14 'In general terms the requirements regarding character (...) are intended to ensure that a successful applicant has not been engaged in undermining public safety, public order, health or morality, rights and freedoms or another person's honor or reputation.' See Council of Europe, Committee of Experts on Nationality, *Report on Conditions for the Acquisition and Loss of Nationality* (Strasbourg: 14 January 2003 2003), para. 32.

15 Recommendation No. R (99) 18 of the Committee of Ministers to Member States on the Avoidance and Reduction of Statelessness (adopted on 15 September 1999) No. R (99) 18.

16 Human Rights Watch, 'Roma in the Czech Republic. Foreigners in Their Own Land' (1996) D811 <<http://www.refworld.org/docid/3ae6a7eao.html>> accessed 13 October 2013.

17 *Vjatseslav Borzov v Estonia* (1994) Communication No.1136/2002, UN Doc CCPR/C/81/D/1136/2002, para. 7.3.

imprisonment of more than five years.<sup>18</sup> It could be questioned whether even these crimes should constitute a permanent barrier to naturalization in the case of stateless persons. Qualifying periods after which a person would be again eligible for naturalization or the possibility to decide favorably with regard to the circumstances of the case seem more suitable practices, especially in case of stateless persons.

#### 2.4 *Economic Resources Requirements*

Nationality law also often expects the applicants for naturalization to meet certain economic requirements, e.g. to have a home and/or sufficient legal income to support themselves and their families or not to be in need of support from the State or local authority.<sup>19</sup> The requirements serve first and foremost to protect the social system of the particular State. In this context, it should be noted that the 1997 European Convention on Nationality does not list property under forbidden discriminatory grounds in the context of the attribution of nationality. But this requirement could still be particularly problematic to meet for stateless persons, especially if it is difficult for them to obtain a work permit or for other reasons such as disability, discrimination or simply economic recession.<sup>20</sup> Therefore, the requirement, while generally jus-

18 MIPEX, 'MIPEX 2010 indicators', para 102, see also Appendix 3 <<http://www.mipex.eu/methodology>> accessed 16 October 2013.

19 Council of Europe, Committee of Experts on Nationality, *Report on Conditions for the Acquisition and Loss of Nationality* (Strasbourg: 14 January 2003 2003), para 31.

20 There is scattered case law e.g. from German jurisdiction dealing with the application of economic resources requirement. The German Federal Supreme Administrative Court held that homeless foreigners (the group includes also stateless people) applying for naturalization have to show that they are capable of supporting themselves and their family (BVerwGE 207/58 Nr.58 as cited by the Refugee Convention; the *travaux préparatoires* analyzed with a commentary by Dr Paul Weis, Art. 34 Naturalization). The Bavarian High Administrative Court held that there exists a public interest in the naturalization of refugees and that their applications have to be examined with sympathy (D.Oe.V.1975 p. 578, likewise Fed. Supr. Adm. Court BVerwGE 49,49(48) as cited by the Refugee Convention; the *travaux préparatoires* analyzed with a commentary by Dr Paul Weis, Art. 34 Naturalization). Finally, the German Federal Administrative Court has lately interpreted the economic requirement for naturalization as follows: 'the purpose of [of such requirement] is to ask applicants for German nationality to economically integrate themselves which can be proved by their ability to financially support themselves. However, even if there is a need for social benefits, the right to acquire German nationality can only be rejected if the applicant is not responsible for this need. On the one hand, responsibility can be assessed in respect of the amount of social benefits needed. If the applicant is not responsible for the need of social benefits as such but if he increased the need for social benefits through his or her own behavior in the past, he or she (...) cannot acquire German nationality'

tifiable, should allow for some exceptions in specified circumstances. The applications by stateless persons should be examined with sympathy and the extent to which they increased the need for social benefits through their own behavior in the past should be taken into account.<sup>21</sup>

### 2.5 *Loyalty to the State and Security*

Loyalty to the country whose nationality the applicant is seeking in combination with the oath of allegiance<sup>22</sup> and considerations of national security are other requirements generally accepted as legitimate ones for naturalization.<sup>23</sup> However, their application may, in certain cases, bar stateless persons from being naturalized, especially if applied in a discriminatory way. It is therefore desirable for the law to give clear guidelines on how such requirements should operate. Transparency may be secured also by guaranteeing due process, including the possibility to appeal the decision.

The same applies for the national security requirement. One may even argue that a stateless person should be considered for preferential treatment, due to grave consequences of refusal of the application. In any case, the application for naturalization should be refused only if there are reasonable assumptions that the applicant is engaged in activity endangering the core principles of the State.<sup>24</sup>

---

(BVerwG 5 C 22.08, summary <<http://eudo-citizenship.eu/citizenship-case-law/?search=1&name=&year=&country=Germany&national=1>> accessed 16 October 2013).

- 21 Council of Europe, Committee of Experts on Nationality, *Report on Conditions for the Acquisition and Loss of Nationality* (Strasbourg: 14 January 2003 2003), para. 31.
- 22 Ibid para. 33, see also Inter-American Court of Human Rights, *Castillo-Petruzzi et al v. Peru* (1999) IACHR [ser. C] No. 52, where the nationality is defined as ‘the political and legal bond that links a person to a given State and binds him to it with ties of loyalty and fidelity, entitling him to diplomatic protection from that State.’
- 23 This may be included under the consideration of the good character requirement, or states may further specify ‘that acceptance as a national should not affect security and defense of the nation or that an applicant should not have been involved in any activities undermining national security’. See Council of Europe, Committee of Experts on Nationality, *Report on Conditions for the Acquisition and Loss of Nationality* (Strasbourg: 14 January 2003 2003), para 38.
- 24 In this context the German Federal Administrative Court for example held that ‘the application to acquire German nationality cannot be rejected because of the signing of a declaration to be a member of the Kurdish labor party (...) Such a declaration is not sufficient to conclude that the applicant supports a movement that works counter to the core principles of the German state based on freedom and democracy’ (BVerwG 5 C 20.05), summary available via <<http://eudo-citizenship.eu/citizenship-case-law/?search=1&name=&year=&country=Germany&national=1>> accessed 16 October 2013.

### 3 Procedural Aspects

The main problem arising in the context of statelessness is the fact that stateless persons applying for naturalization might not always be in possession of the documents required and it may be a very difficult and lengthy process to obtain them, especially if they have to seek recourse to authorities of the country of their previous residence. It is also possible that some documents had never been issued and therefore can never be presented (e.g. birth certificate), or their submission is illogical in the context of statelessness (e.g. if the proof of renunciation of previous nationality is required). In this light, insisting that a person has to present the full range of documentation may raise an *unreasonable impediment* for naturalization. It is therefore more reasonable if the law explicitly allows alternative forms of evidence to be utilized where certain documents cannot be delivered,<sup>25</sup> or if the burden of proof shifts to the State if a person objectively cannot provide some documents.

Regarding the naturalization proceedings, the State should put in place legal guarantees (e.g. reasoned decision, right to appeal, representation before an independent administrative authority and/or a court).<sup>26</sup> These guarantees, the possibility of appeal in particular, ‘provide an opportunity [to overturn] unlawful, unreasonable or discriminatory decisions, but also [to reconsider] the position of the individual in view of the threat of statelessness. Moreover, a review mechanism is an aid in the fight against corruption and where the decision-making authority on nationality attribution has been decentralized it furthermore enables such powers to be kept in check – helping to secure compliance with standards of domestic and international law.’<sup>27</sup> This basically means that the law in line with the principles concerned may also enhance the chances for a stateless person to successfully naturalize.

25 Van Waas (n 3) 368.

26 See e.g. the European Convention on Nationality, which requires the States ‘to ensure that applications or decisions relating to the attribution of nationality will:

- “be processed within a reasonable time” (article 10)
- “contain reasons in writing” (article 11)
- “be subject to reasonable fees” (article 13, paragraph 1)
- “be open to an administrative or judicial review” (article 12), the fee for which may not be an obstacle for applicants’ (Art. 13, para. 2) via Van Waas (n 3) 117.

27 Van Waas (n 3) 113-114.



#### 4 Concluding Observations

The above-mentioned standards are obviously not exhaustive. Their main aim is to illustrate the possible difficulties that stateless persons may face, in order to encourage States to realize a more meaningful facilitation of naturalization procedures. While doing so, they should bear in mind the underlying principle of their duty to facilitate naturalization and ‘to dispense with as many formalities in their naturalization process as possible so that [stateless persons] are positioned to acquire citizenship with the absolute minimum of difficulty’.<sup>28</sup> Policy measures, which introduce facilitated access to citizenship and are designed in line with these standards may truly become an effective measure against statelessness.

#### 5 Acknowledgements

This article is based on the LLM dissertation entitled ‘Naturalization of Stateless Persons: Solution of Statelessness?’ which was written by the author as part of her studies at Tilburg University and was honoured with the 2013 UNHCR Statelessness Research Award Joint Best Paper in the Graduate Category. Details of this Award can be found at <http://www.tilburguniversity.edu/research/institutes-and-research-groups/statelessness/unhcr-award/>.

Any views or opinions presented in this article are solely those of the author and do not necessarily represent the vision of the organization.

---

<sup>28</sup> J.C. Hathaway, *The rights of refugees under International law* (Cambridge University Press 2005), 985-986, *per analogiam*.