

Benchmarking the Protection against Statelessness in Europe

Comparative Findings

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Abstract

This contribution presents the comparative findings of the 'Protection against Statelessness Database', developed by the European Union Democracy Observatory on Citizenship in collaboration with UNHCR. Using the most important international standards as a benchmark, the database provides a normative assessment of the extent to which citizenship laws in 36 European states provide sufficient protection against statelessness. While Section 2 explains the methodology developed by the Observatory in collaboration with UNHCR, and in particular the 17 'modes of protection against statelessness' that have been devised, Section 3 draws some comparative conclusions. This is based on a fourfold distinction – that is, whether the countries provide more protection than required by the standards; act in line with the standards; provide a limited safeguard against statelessness; or provide no safeguard at all. Concluding that a serious attempt is generally made to avoid cases of statelessness from arising, the contribution also feels there is room for improvement.

Keywords

comparative nationality law – statelessness – international law – EUDO citizenship – UNHCR

1 Introduction to the EUDO Citizenship-UNHCR Collaboration on Statelessness in Europe

Considerable progress has been made in recent years in mapping the problem of statelessness in Europe.¹ But where many studies take a broad approach that looks at this phenomenon from different perspectives, including migration law, non-removability, and detention, it often remains unclear if and how the nationality laws of different European countries offer protection against statelessness.² A timely contribution to this field of research, therefore, is an online database – developed by the European Union Democracy Observatory on Citizenship (EUDO Citizenship) in collaboration with the United Nations High Commissioner for Refugees (UNHCR) – that contains information on the extent to which citizenship laws in 36 European states provide sufficient protection against statelessness, in light of the most important international standards.³ While the purpose of the database is to offer concise and easily accessible analyses of national legislation so as to make possible cross-country comparisons, a complementary EUDO Citizenship comparative report elaborates in greater detail on the issues raised by the database.⁴ The aim of this short contribution is to present the key findings of this EUDO-UNHCR collaboration on statelessness in Europe. Before doing so, however, we first pay attention to the comparative methodology used in creating the database.

1 UNHCR mapping studies were published in recent years in the UK and the Netherlands (2011) as well as in Belgium (2013).

2 The terms nationality and citizenship are used interchangeably in this article.

3 O Vonk, M Vink and GR de Groot (2013). EUDO CITIZENSHIP/UNHCR Database on Protection against Statelessness in Europe. San Domenico di Fiesole: Robert Schuman Centre for Advanced Studies, European University Institute, available at <http://eudo-citizenship.eu/databases/protection-against-statelessness> (last accessed on 3 November 2013).

4 O Vonk, M Vink and GR de Groot (2013). Protection against Statelessness: Trends and Regulations in Europe. EUDO Citizenship comparative report, available at http://eudo-citizenship.eu/images/docs/eudocit_vink_degroot_statelessness_final.pdf (last accessed on 3 November 2013).

2 Comparative Methodology: A Typology of Modes of Protection against Statelessness

Individuals can be protected against statelessness in two ways. They can be facilitated in the acquisition of a nationality and thereby become a national of a particular country, and they can be protected by not losing a nationality that is already held. Hence, in order to assess the extent to which states provide sufficient protection against statelessness, we need to analyze the rules on both acquisition and loss of citizenship. However, citizenship laws often use different terms for similar rules. Comparing legal provisions on acquisition and loss of citizenship therefore requires a standardization of terms and definitions. The typology of ‘modes of protection against statelessness’ is an analytical grid that outlines, in a systematic way, categories of persons that are at risk of being or becoming stateless and outlines, with reference to the most important international standards, the obligation of states under national law on the acquisition and loss of citizenship.

The typology of modes of protection against statelessness follows the logic of a more general typology on ‘modes of acquisition of citizenship’⁵ and ‘modes of loss of citizenship’⁶ as previously developed by EUDO Citizenship.⁷ For each mode of protection against statelessness, the typology defines a precise target group of persons at risk of being or becoming stateless (see Table 1 below). By defining standardized target groups, the typology allows us to compare rules applicable to similar at-risk groups across countries.

5 M Vink, O Vonk and I Honohan (2013). EUDO CITIZENSHIP Database on Modes of Acquisition of Citizenship in Europe. San Domenico di Fiesole: Robert Schuman Centre for Advanced Studies, European University Institute, available at <http://www.eudo-citizenship.eu/databases/modes-of-acquisition> (last accessed on 3 November 2013).

6 M Vink, O Vonk and I Honohan (2013). EUDO CITIZENSHIP Database on Modes of Loss of Citizenship in Europe. San Domenico di Fiesole: Robert Schuman Centre for Advanced Studies, European University Institute, available at <http://www.eudo-citizenship.eu/databases/modes-of-loss> (last accessed on 3 November 2013).

7 The databases on acquisition and loss of citizenship have also been complemented by different comparative studies. See in particular the comparative EUDO Citizenship reports on birthright citizenship and loss of citizenship by GR de Groot and M Vink, available at <http://eudo-citizenship.eu/publications/comparative-analyses>, as well as De Groot’s ‘Survey on Rules on Loss of Nationality in International Treaties and Case Law’. The latter paper was prepared in the context of the ILEC (Involuntary Loss of European Citizenship) Project and is available at <http://www.ceps.eu/book/survey-rules-loss-nationality-international-treaties-and-case-law> (last accessed on 3 November 2013).

TABLE 1 *Comparative Typology: Persons at Risk of Being or Becoming Stateless*

So1	Children born in a country who would otherwise be stateless
So2	Foundlings found in a country of unknown parentage
So3	Persons born to a citizen of a country (birth in that country)
So4	Persons born to a citizen of a country (birth abroad)
So5	Persons who are recognized refugees
So6	Stateless persons or persons with unclear citizenship who are not covered by any other mode of protection against statelessness
So7	Persons who voluntarily renounce the citizenship of their country
So8	Persons who reside outside the country of which they are a citizen
So9	Persons who render services to a foreign country
S10	Persons who render military service to a foreign country
S11	Persons who are disloyal to the country of which they are a citizen or whose conduct is seriously prejudicial to the vital interests of that country
S12	Persons who commit other (criminal) offences
S13	Persons who have acquired citizenship by fraud
S14	Persons whose descent from a citizen is annulled or who are adopted by a citizen of another country
S15	Persons who change their civil status due to marriage with a citizen of another country or dissolution of a marriage with a person holding the same citizenship
S16	Persons whose spouse or registered partner loses citizenship of a country
S17	Children whose parents lose citizenship of a country

In addition, we define precise international norms, which serve as the benchmark to assess for each mode whether states provide sufficient protection against statelessness.⁸ These norms are listed at the top of each 'overview by mode' in the online database (with hyperlinks to relevant provisions) and also at the beginning of each relevant part in Chapter 4 of the comparative report – the chapter where we analyse all 36 countries by individual mode of protection against statelessness. For example, with regard to children born in a country who would otherwise be stateless (mode So1) we define as relevant norms the 1961 Convention on the Reduction of Statelessness, Articles 1 and 3; the 1997 Convention on Nationality (ECN), Article 6(2); and the 1989 Convention on the Rights of the Child, Article 7(1) in conjunction with Article 3(1).

⁸ These international standards are outlined in Chapter 2 of the EUDO report see (n 4).

3 Comparative Findings on Protection against Statelessness in Europe

As said, the purpose of the EUDO-UNHCR collaboration was, first, to analyse the citizenship legislation of 36 European countries against the backdrop of the special problems raised by statelessness; and second to assess whether the countries provide sufficient protection against statelessness, in light of the most important international standards. It is important to note that this assessment is made for each country irrespective of whether the country is party to the relevant international instrument.

To start with the final conclusion, our cross-country comparison shows that most countries seriously try to avoid cases of statelessness from arising and act in accordance with the international standards. Considerable progress has thus been made from a situation of only a few decades ago, when gender-based discrimination in nationality laws and lack of political priority for the issue of statelessness still left at-risk individuals, such as children born abroad, out of wedlock and/or of mixed nationality parentage, in a much more vulnerable situation.⁹

The database nonetheless identifies a number of violations of international norms relating to statelessness, although we observe that these violations are often caused by the fact that international obligations are not interpreted carefully enough by states in their citizenship laws. In the ensuing pages we will, based on the summary assessment of relevant nationality law provisions as outlined in Table 2, assess the practices of 36 European countries in providing protection against statelessness.

TABLE 2 *Assessment of National Law in Light of International Standards*

	Number of modes which fall in the following assessment categories:			
	More protection than required by standards	In line with standards	Limited safeguard against statelessness	No safeguard against statelessness
Montenegro	2	13	0	0
Serbia	2	13	0	0
Moldova	1	14	0	0
Slovakia	0	15	0	0

9 See e.g. P Weis, *Nationality and Statelessness in International Law* (2nd revised edn, Sijthoff & Noordhoff 1979).

TABLE 2 (Continued)

Number of modes which fall in the following assessment categories:				
	More protection than required by standards	In line with standards	Limited safeguard against statelessness	No safeguard against statelessness
Hungary	0	14	1	0
Luxembourg	1	12	2	0
Norway	1	13	0	1
Portugal	0	14	1	0
Sweden	1	12	2	0
United Kingdom	1	12	2	0
Denmark	1	11	3	0
Poland	0	14	0	1
Spain	0	14	0	1
Belgium	1	12	0	2
Croatia	0	13	1	1
Czech Republic	0	13	1	1
Finland	1	12	0	2
Iceland	0	12	3	0
Macedonia	1	11	2	1
Switzerland	0	13	1	1
Bulgaria	0	13	0	2
Germany	1	11	1	2
Italy	0	13	0	2
Slovenia	1	11	1	2
France	0	12	1	2
Ireland	0	11	2	2
Latvia	0	11	2	2
Malta	0	11	2	2
Netherlands	0	10	4	1
Austria	0	9	4	2
Estonia	0	11	1	3
Lithuania	0	10	1	4
Romania	0	10	0	5
Turkey	1	8	1	5
Greece	0	9	1	5
Cyprus	0	8	2	5

We emphasize that the assessment only covers 15 modes of protection against statelessness. In the absence of hard and concrete international norms on access to facilitated naturalization for refugees and stateless persons – modes So5 and So6 respectively – we have chosen to exclude these categories from the assessment.¹⁰

Table 2 shows that the overwhelming majority of countries act in line with the international standards. Limitations of space, however, do not permit us to deal with this category in greater detail. We will restrict ourselves to some observations on cases where countries only provide a limited safeguard against statelessness or no safeguard at all. Finally, it is interesting to note that a number of countries offer more protection than required by international standards.

If countries only provide limited protection against statelessness, this is often caused by the fact that additional or stricter conditions are imposed that are not permitted under international law. Thus, the safeguard in place in the Netherlands for children born in the country who would otherwise be stateless only applies if the child was lawfully resident in the Netherlands for three years – instead of *habitually* resident as dictated by the 1961 Convention on the Reduction of Statelessness (mode So1).¹¹ Luxembourg requires under modes So3 and So4 that the parent is a citizen at the time of the child's birth instead of at the time of establishment of filiation. As regards the same two modes, Denmark in turn limits protection to children born out of wedlock to a father who is a citizen to cases where the father marries the mother. Since this rule discriminates against men with regard to the transmission of citizenship to their children, we argue that it violates the 2011 ruling of the European Court of Human Rights in *Genovese v. Malta*.¹²

Where countries violate the international standards because they impose additional or stricter requirements than allowed, this can be remedied rather easily through a legislative amendment. Several countries, though, do not offer any protection to particular target groups that are at risk of being or becoming

10 To the extent that this is possible, the EUDO report does contain an analysis of modes So5 and So6 (n 4).

11 See par. 40-43 of the UNHCR Guidelines on Statelessness No. 4: Ensuring Every Child's Right to Acquire a Nationality through Articles 1-4 of the 1961 Convention on the Reduction of Statelessness. Available at <http://www.refworld.org/docid/50d460c72.html> (last accessed on 3 November 2013).

12 *Genovese v. Malta*, Application nr. 53124/09. Available at <http://eudo-citizenship.eu/caselawDB/docs/ECHR%20Genovese%20v%20Malta.pdf> (last accessed on 3 November 2013). See also GR de Groot and O Vonk, 'Nationality, Statelessness and ECHR's Article 8: Comments on *Genovese v. Malta*' (2012) 14 *EJML* 3, 317.

stateless. With regard to modes of protection against statelessness that address loss of citizenship, we see for example that Austria violates the standards by not providing for a safeguard against statelessness for citizens who either render ordinary services or military service to another country (modes S₀₉ and S₁₀). Cyprus, Greece, Turkey and Romania score particularly badly in this respect by not offering a safeguard for five out of fifteen modes of protection against statelessness. The violation we consider most serious is the lack of mode S₀₁ in Cyprus and Romania. Cyprus additionally does not offer protection for foundlings found in the territory (S₀₂) and furthermore discriminates against naturalized citizens (modes S₁₀-S₁₃). Distinguishing between citizens by birth and by naturalization is problematic from the perspective of Article 5(2) of the ECN, which provides that states shall be guided by the principle of non-discrimination between its nationals.

On a more positive note, a number of countries can be identified that offer more protection than required under international law. Several countries, for example, not only make renunciation of citizenship dependent on possession or acquisition of citizenship of another country, but also declare the renunciation null and void if this other citizenship is not acquired within a certain time period (e.g. Moldova). Moreover, while it is accepted by the international standards that persons who acquired citizenship by fraud can be stripped of their citizenship and become stateless, Luxembourg, Montenegro and Serbia do not allow a person to be rendered stateless as a result.

4 Conclusion

The EUDO Citizenship-UNHCR collaboration has for the first time and in a systematic way shed some light on the extent to which citizenship laws in 36 European states provide sufficient protection against statelessness. This assessment was made using as a normative backdrop the relevant international conventions and case law relating to the subject.

It was seen that most European countries act in accordance with the international standards on protection against statelessness, although only Moldova, Montenegro, Serbia and Slovakia either fully comply with the standards or go beyond their obligations under international law. Where countries occasionally only provide limited protection against statelessness, we think that the explanation is that international norms are simply not interpreted carefully enough by states in their citizenship laws. Since our analysis points out the protection gaps, these could be remedied fairly easily. In a majority of

countries, finally, there is at least one mode of protection against statelessness in respect of which no safeguard exists. Although each missing safeguard should be considered problematic on its own merits, we feel that the absence of protection in Cyprus and Romania for children born in the country who would otherwise be stateless is particularly serious.