

TALLINN UNIVERSITY OF TECHNOLOGY

School of Business and Governance

Department of Law

Polina Glatjonok

Access to Nationality and Legal Instruments on Statelessness

Bachelor's thesis

Program HAJB, specialization EU and International law

Supervisor: Dr. Thomas Hoffmann

Tallinn 2018

I declare that I have compiled the paper independently
and all works, important standpoints and data by other authors
have been properly referenced and the same paper
has not been previously been presented for grading.
The document length is 9717 words from the introduction to the end of summary.

Polina Glatjonok.....

(signature, date)

Student code: 156163HAJB61

Student e-mail address: polina.glatjonok@gmail.com

Supervisor: Thomas Hoffmann, PhD

The paper conforms to requirements in force

.....

(signature, date)

Chairman of the Defence Committee:

Permitted to the defence

.....

(name, signature, date)

TABLE OF CONTENTS

ABSTRACT	4
INTRODUCTION.....	5
1. THE FRAMEWORK.....	7
1.1 What is statelessness and how to regulate it?	7
1.2 Sources of statelessness	9
1.3 Nationality and human rights.....	10
2. INSTRUMENTS ON STATELESSNESS	12
2.1 International instruments on statelessness.....	12
2.1.2 1961 Convention on the Reduction of statelessness	13
2.1.3 2006 Convention on the Avoidance of Statelessness in relation to State Succession	13
2.2 International instruments on right to Nationality.....	14
2.2.1 1948 Universal Declaration of Human Rights	14
2.2.3 The International Covenant on Civil and Political Rights	15
2.2.4 Convention on the Elimination of All Forms of Discrimination against Women	15
2.2.5 Convention on the Rights of the Child (CRC).....	15
3. THE COMPARATIVE STUDY.....	16
3.1 The compared states	16
3.1.1 Estonia.....	16
3.1.2 Latvia.....	17
3.1.3 Slovakia.....	17
3.1.4 Hungary	17
3.2 The material requirements.....	18
3.2.1 The residence requirements	18
3.2.2 Language requirements	19
3.2.3 Economic requirements	20
3.3 Procedural aspects	21
3.3.1 Application for naturalization.....	21
3.3.2 Proceedings.....	22
4. THE ASSESSMENT	24
4.1 Assessment of material requirements	24
4.2 Assessment of procedural aspects.....	25
RECOMMENDATIONS.....	26

CONCLUSION.....	28
LIST OF REFERENCES	30

ABSTRACT

The problem of statelessness is drawing a lot of attention nowadays. Stateless people are limited in their access to political and economic rights which makes their lives a lot harder. Millions of people are affected by statelessness issues around the world, not only stateless people themselves, but also their relatives and others. Therefore, it is important to regulate this issue properly in order to improve quality of life of all those people. States usually are gained absolute control over all the proceedings related to citizenship, such as granting, denying or revoking the citizenship. Efforts states make to resolve this problem are not effective enough. The following thesis tries to identify obligations of the states relating to access to nationality via different tactics including naturalization programs and to formulate a framework which will include suggestions of how to make those tactics more effective. The comparative study is focused on comparison between four states: Estonia, Hungary, Latvia and Slovakia. The criteria for comparison include the material ones, such as language and integration regimes, and procedural aspects, which are application process, proceedings and etc. Based on this analysis general recommendations are drafted.

Key words: *reduction of statelessness, access to nationality, application for naturalization, naturalization proceedings, residence*

INTRODUCTION

People always take their nationalities for granted. They never had to face struggles of acquiring one and they never knew how much it means to have a citizenship of a state. Once a person is born they will be registered and given a passport of the state. Usually individuals never ask themselves of how they become citizens of that state. There are two ways of acquiring citizenship: *jus soli*, which is citizenship obtained via birth on a territory of the state and *jus sanguinis*, principle by which individual is obtaining citizenship by having parent who is a national of that state¹.

However, there are citizens of no state. These are people who do not belong to any state and who struggle a lot to get access to their rights. These people are called stateless individuals.² Statelessness is a massive problem that affects more than 12 million people around the globe. Most people have never imagined how many problems persons without citizenship must face in their lives.

Citizenship is an instrument which ensures that a person can has access to their rights. There is a broad list of rights which are limited for stateless people including some of human rights, political and economic rights and etc. Today there are various international instruments which supposed to regulate the issue of statelessness. However, several counties still are facing the problem of statelessness. Each state is willing to reduce the number of stateless people, but the instruments used to reach the goal are not working properly. International community generally accepts that statelessness is a serious issue and it shall not be ignored.

One of the most popular ways of regulating level of statelessness in the country is facilitated access to citizenship via naturalization. However, even though right to nationality is recognized by international community, states still have their sovereign right to determine how their citizenship shall be acquired. It means that it is a State who decided whether a person will receive a citizenship or not. Therefore, the personal choice of an individual is not taken into consideration.

This thesis investigates how the states control the citizenship issues and examine the effects of this control. Thesis also includes a comparative study section. It is focused on comparison between the ways States deal with statelessness. After the comparison is made, some suggestions and guidelines are drafted accordingly to the results.

Methods used during the research mainly focus on the quantitative method and a comparison study. Quantitative research is justified because it is essential to transform all relevant data into statistics which helps to understand the topic. Comparison is required in to find out

¹ Kostakopoulou, Dora (2008). *The Future Governance of Citizenship*. Cambridge University Press. pp. 26–27.

² Convention relating to the Status of Stateless Persons, article 1(1)

which methods of dealing with statelessness are already used and to compare the effectiveness of each one method.

The research questions for this thesis are the following:

- Is the Estonian approach to the reduction of statelessness effective enough and how to improve it by comparing other approaches used by different states?
- Do stateless people have substantive enjoyment of rights and why some of them are not willing to acquire a citizenship?
- Why international legal framework does not work properly and are national regimes complying with international standards?

Thesis is divided into four main parts which are also divided into sub-chapters. First chapter explains the historical background of such phenomena as statelessness. It includes historical facts and explains why particular states suffer from huge amount of stateless people. It is essential to understand why some countries have more stateless individuals than other. This chapter also gives essential definitions and explains which sources of statelessness exist in general and how it connected to human rights.

After all the definitions are set the instruments of statelessness are discussed. Second chapter identifies what are international instruments on statelessness and which instruments regulate right to nationality. This chapter includes discussion on different international treaties and documents and highlights most important articles.

The third section is the biggest one and includes the comparative study itself. The comparison is made between Estonia, Hungary, Slovakia and Latvia. All four countries have to face problem of statelessness and regulate it somehow. In this chapter it is identified which instruments each State use in to regulate level of statelessness on their territories and how effective those instruments are. The comparison also is divided into two sections: the material requirements and procedural aspects of receiving a citizenship. The material requirements include some basic requirements for a candidate which shall be met in to obtain a citizenship. The procedural aspects include the procedure of receiving a citizenship and other proceeding issues an individual may face during process of obtaining a citizenship.

Fourth chapter is focused on analysis of the collected data and formulation of guidelines based on observation of different methods and instruments. This chapter only uses information which already was discussed in previous chapters and does not include any new facts.

1. THE FRAMEWORK

Following chapter gives short introduction into the issue of statelessness and gives some theoretical knowledge. Main points of the topic are discussed, and certain definitions are given. The purpose of this chapter is to provide the background information, so it would be easier to understand the comparative study section.

1.1 What is statelessness and how to regulate it?

Since the collapse of Soviet Union, the issue of statelessness became one of the most discussed topics. Numbers indicate that in 1992 already almost one third of population of Estonia had undefined citizenship status. Due to this dramatic number of stateless people on the territory of the state Estonia became the main target of Russian and International criticism.³ There is a long list of countries which have to deal with stateless population on their territory

According to the article 1 of the 1954 Convention relating to the Status of Stateless Persons and international law the term “stateless person” means “a person who is not considered a national by any state under the operation of its law”. The person who qualifies to this definition is de jure stateless and this assessment is based purely on legislation. However, the person can also be de facto stateless. The difference is that in to be de facto stateless person shall be lacking the protection of their country. People who are de facto stateless are not covered by the Convention, therefore protection of these people is one ongoing issue which is not regulated in a proper way.⁴ De facto stateless individuals in fact are unable to enjoy the rights which are attached to their nationality.⁵

Since nationality can grant people certain rights, it is important to understand what the nationality is. Nationality basically establishes who can enjoy political, legal and social community. Nationality can be defined as membership of a state. Since statelessness does harm to people it is up to governments to decide how to regulate it and how to make sure people can have access to their rights.⁶ Of course, this issue is quite topical nowadays and governments of states are working on finding suitable solution which will reduce number of stateless people.⁷

³ Tsybulenko, E.; Amorosa, P. National minorities in Estonia: 20 years of citizenship policies

⁴ Hathaway, J.: The Rights of Refugees under International Law. page 989. As cited by Van Waas, L.: Nationality matters: Statelessness under international law. p. 365

⁵ Weissbrodt, D. & Collins, C; The Human Rights of Stateless Persons, Human Rights Quarterly Vol. 28, 2006, p. 252

⁶ Donner, R.: The Regulation of Nationality in International Law; Chan, J.: The Right to a Nationality as a Human Right - The Current Trend towards Recognition.

⁷ David Boucher and Paul Kelly, The Social Contract from Hobbes to Rawls

International law recognizes right to nationality. That is why regulating status of stateless persons who are living on a territory of the state on a permanent basis is discussed a lot. One of possible solutions as to reduction of statelessness is obtaining a new citizenship via program of naturalization. However, in practice naturalization is not effective enough to reduce statelessness in most cases.⁸

Remedies for solving statelessness are mostly developed by human rights defenders. The remedies though are not legally binding, and it is up to states to decide how to regulate the issue on their territory.

Of course, the easiest way to avoid statelessness is simply to prevent it before the problem even occurs. The measures taken in to prevent statelessness are called preemptive remedies. These measures are linked to legislation which regulates birth registration and certificates. Basically, it is suggested to states to properly control the process of granting children who are born on a territory of a state with birth certificates and register them. This recommendation is simply copies Article 7 of the 1989 Convention of the Rights of the Child which obliges states to register each child immediately after birth and provide them a right to acquire a nationality. Around 50 million births a year go unregistered. The reasons for non-registration of a child include absence of mandatory birth registration, fear of discrimination and inability to access registration centers.

Even though these measures cannot help to reduce number of already existing stateless individuals, it is necessary to follow it because it helps to protect children from statelessness at least. And the problem of stateless children is also quite serious issue because stateless children are one of the most vulnerable groups in the society. These children are lacking proper protection and their rights are violated in different ways. That is why even though preemptive measures may seem useless at some point but in the reality these measures are necessary for the states to follow.

It is easier to prevent a problem then to deal with its consequences. But there already are stateless people who need state protection. In order to protect stateless people minimizing remedies are needed. These remedies do not aim to eliminate statelessness but only to facilitate everyday life for stateless people. Minimizing remedies are usually executed through administrative procedures and anti-discriminatory provisions.

Although there are some measures which minimize the problems stateless people must face in their everyday lives it is impossible to grant equal rights for both stateless individuals and people who have a citizenship of a state. Therefore, stateless people must acquire a citizenship one day. Governments of the states provide people with programs of naturalization which help those who are stateless finally become a citizen. Naturalizing

⁸ Weissbrodt, D, *The Human Rights of Non-citizens*, Oxford, First Edition, 2008

measures are the only ones which help to remove statelessness which already exists. These remedies grant nationality to a stateless person by legislative means. Naturalization basically sets a list of requirements which shall be met by a candidate in order to obtain a citizenship and all the rights attached to citizenship. It is notable though that there are no international documents which oblige states to provide such programs if naturalization on their territories.

1.2 Sources of statelessness

It is clear already of how to regulate statelessness. But it is also quite important to understand what the sources of statelessness are in order to avoid it. Basically, statelessness occurs when a person is denied or deprived of their nationality. The reasons behind it can be both internal and external.⁹ The UNHCR marked the following sources of statelessness in their report:

- Transfer of a territory. It can occur in case of dissolution or succession of a state and it considered to be the most common causes of statelessness.
- Administrative practices. State officials can remove unwanted person from national register. It also includes denationalization which occurs in case of nationality was acquired through false information.
- Principe lex sanguinis. Stateless parents cannot give their child a nationality.
- Conflict of laws. National laws may differ and conflict with each other which can result in statelessness
- Renunciation of nationality. Happens once a national renounce their nationality without obtaining nationality of another state.
- Automatic loss of nationality by operating law. Also known as *el lege*. Occurs when an individual loses connection with a state and does not seek to maintain their nationality.
- Change of nationality laws. New laws may conflict with the old ones which may result on loss of nationality for some people.

It is clear from the listed sources of statelessness that there are many ways to become stateless and sometimes it is not fault of a person when he becomes stateless. That is why regulating this issue is an obligation of a state which failed to prevent statelessness on their territory.

Analysis of the main sources of statelessness also shows that it is possible to divide all the cases of statelessness into two categories: voluntary and involuntary statelessness. There is a major distinction between those who are voluntary stateless and those who are not. Voluntary stateless person chooses to become stateless and does not take any steps for acquisition of

⁹ The Regulation of Statelessness Under International and National Law by A. Peter Muthraika (specifically pp. 106-129a)

citizenship while involuntary stateless people are those who either lost or were deprived their citizenship.¹⁰

Individuals may choose to give up their citizenship for various reasons. They may want to escape citizenship obligations, such as financial, military or penal. They also may not want to be part of State because they do not support the government and state policies, or they may want to become citizens of another state. However, involuntary stateless people do not have a choice. Acquisition of statelessness is rather a result of factors which are beyond control of the individual.

1.3 Nationality and human rights

As it was mentioned above, nationality is an instrument which allows people to access their rights. Its' main function is to create a bond between the state and an individual. However, nationality does give both rights and obligations.¹¹ German-American political theorist and philosopher Hanna Arendt in her writings stated, that being a human is already enough to be entitled with human rights because these rights are mainly established by the society.

However, in the aftermath she concluded that territorial and political belonging is required after all.¹² All in all, according to Arendt, nationality results in ability of an individual to claim full range of political, social, economic and human rights, while a stateless person simply has no party to claim these rights from.

The list of rights granted to citizens varies from state to state. The most common rights such as access to education and health care are provided by most of states but the scope of application is stated by the government authorities in each state independently.¹³

However, almost all the countries provide their citizens with rights beyond the required minimum. Therefore, lack of citizenship does affect the quality of life of stateless individual.¹⁴ Besides these negative effects stateless people may also experience the feeling of being an alien to their country which may lead to marginalization of an individual.¹⁵

Nationality does not only grant people with their rights but also serves as an instrument which functions as a determination of status of an individual.¹⁶ This is important because the

¹⁰ Bauböck, R.: Transnational Citizenship. Membership and Rights in International Migration. page 135

¹¹ Weis, P. "Nationality and Statelessness in International Law", Kluwer Academic, Dordrecht, 1979, p. 29ff

¹² Arendt, H, The origins of totalitarianism, Meridian Books, New York, 1958, p. 290ff.

¹³ Goldston, J. A.: Holes in the Rights Framework: Racial Discrimination, Citizenship, and the Rights of Noncitizens. p. 340

¹⁴ Chan, Johannes. The Right to a Nationality as a Human Right, Human Rights Law Journal 12. 1-2 (1991)

¹⁵ Batchelor. C.: Transforming international legal principles into national law: The right to nationality and the avoidance of statelessness. p. 12

¹⁶ UNHCR, Massey, H. 'UNHCR and De Facto Statelessness', Legal and Protection Policy Research Series, April 2010, p. ii

nationality is often considered to be an important factor which highly affects relationships between people and the way people communicate with each other.¹⁷

The main instrument which allows people enjoy their rights in their everyday life is, of course, International Covenant on Civil and Political Rights (ICCPR). Article 25 of this document constitutes everyday life function of nationality.

¹⁷ Canivez, Patrice. Jean-Jacques Rousseau's Concept of People. *Philosophy & Social Criticism* 30. 4 (2004): 393-412.

2. INSTRUMENTS ON STATELESSNESS

It was clearly stated what statelessness is and why it is dangerous for people. International community does understand that and proposed several instruments which shall regulate this issue and decrease damages people must experience. The following chapter examines the most important legal instruments and gives short assessment to them depending on how effective these instruments are in practice.

2.1 International instruments on statelessness

Budislav Vukas in his writings asked a question whether it is rational and wise to regulate issues of stateless people and refugees in the same way. He states that the two categories have major differences but still they both must experience lack of protection. While refugees acquire their status by leaving their country the stateless people have no state to leave at all. However, even if there are differences between two definitions, both groups are still quite vulnerable and therefore shall be treated with protection.¹⁸

There are international instruments which were concluded between two World Wars and their purpose was to bring benefit for refugees. These instruments however also dealt with stateless refugees who formally possessed a nationality which was basically useless to them. It was important to provide both groups with the same level of protection because they all were not under protection of any state. There is only one international document which deals separately with the legal position of stateless persons and this includes also stateless persons who are not refugees.¹⁹

2.1.1 1954 Convention relating to the status of stateless people

This convention is the only one which governs issues of stateless people separately from refugees and other issues. It is specifically aimed at regulating the standard of treatment of stateless people. It establishes the framework and proposes the main principles which shall grant stateless persons with protection. The convention sets a minimum set of human rights which stateless persons shall have access to.

The convention also sets a definition of a stateless person. According to this convention, the stateless person shall be defined as: *‘a person who is not considered as a national by any*

¹⁸ Gyulai, G. Statelessness in the EU Framework for International Protection, European Journal of Migration and Law, Vol. 14, 2012, p. 279.

¹⁹ Vukas Budislav Lecturer of International Law in the University of Zagreb Law School International instruments dealing with the status of stateless persons and of refugees

State under the operation of its law'. Any person who qualifies under this definition shall be granted with minimum set of human rights and be treated properly because this is what is stated in the preamble of the Convention.

1954 Convention requires states to provide stateless persons with identity papers and travel document, so they could travel freely. The convention is legally binding for all parties who signed it. However, the International Law Commission has declared this provision as part of international customary law.

An important feature of this convention is Article 34. Protection of stateless persons cannot substitute acquisition of citizenship, and therefore according to Article 34 of the convention the states shall provide stateless persons with proper programs of naturalization and assimilation. States are also obliged to make these programs as accessible as possible.

However, all the provisions of the convention relate solely to de jure stateless persons, so de facto stateless individuals still suffering lack of protection. That is why there is a Resolution I of the Final Act leading up to 1961 Convention recommends that de facto stateless persons shall also be treated as de jure stateless as far as it possible in to enable them acquire citizenship as well as de jure stateless people can.

2.1.2 1961 Convention on the Reduction of statelessness

The convention is complementary to 1954 Convention and provides mostly preventive measures. It establishes international framework in to prevent statelessness and reduce it over time. It ensures a person has a possibility to acquire a citizenship of a state and makes sure that no person is deprived of nationality without serious reason.

1961 Convention does not cover naturalization and assimilation issues because it focuses only on preventive measures. The significant feature of this convention is that it protects children whose parents are stateless. The convention requires states to grant children whose parents are stateless with citizenship if they are born on the territory of the state. This provision is quite important because it provides children with protection from statelessness and reduces it over time. The same provisions related to adult persons are needed to prevent statelessness due to loss or renunciation of nationality and state succession. However, the same convention still provides a list of situations which can justify deprivation of nationality.

2.1.3 2006 Convention on the Avoidance of Statelessness in relation to State Succession

Since state succession remains a major source of statelessness this convention solely addressed to statelessness which is a result of state succession. The international community understands that it is important to take steps to reduce statelessness, but somehow the

convention does not cover other sources of statelessness at all. However, even though the convention does not cover all the sources of statelessness and does not regulate them all, it still provides some good provisions which can reduce statelessness at some point.

The convention provides comprehensive range of provisions which ensure some basic rights, such as right to nationality, prevention of statelessness, obligations of successor state, acquisition of citizenship and preventing children statelessness.

2.2 International instruments on right to Nationality

Right to nationality is a fundamental human right and it includes right of an individual to acquire, change or retain their nationality. The right to nationality is recognized by series of international legal instruments including the Universal Declaration of Human Rights, the International Convention on the Elimination of All Forms of Racial Discrimination, the International Covenant on Civil and Political Rights and many other documents. Numerous documents also include prohibition of arbitrary deprivation of nationality and this prohibition is fundamental. The citizenship laws of each State dictate whether the State applies *jus soli* or *jus sanguinis* and explain the requirements for naturalization. The fact that right to nationality is stated by numerous international documents proves its' significance and importance.

2.2.1 1948 Universal Declaration of Human Rights

This Declaration is a milestone document in history of human rights. It was drafted by representatives with different legal and cultural background and it sets out for the first time the fundamental human rights which shall be universally protected. The articles of Declaration are considered as part of customary law and are respected by most of states. Article 15 of the Declaration sets out the right to nationality.

2.2.2 1971 The International Convention on the Elimination of All Forms of Racial Discrimination

The Convention commits its members to the elimination any forms of racial discrimination and promotes understanding among all races.²⁰

Article 5 of the Convention creates an obligation to guarantee equality before the law regardless 'race, color, national or ethnic origin'²¹ It also lists specific rights to which this equality must apply to. These rights are: equal treatment by courts and tribunals, security of the person and freedom from violence, the civil and political rights affirmed in the ICCPR,

²⁰ ICERD Article 2.1

²¹ ICERD Article 5

the economic, social and cultural rights affirmed in the ICESCR, and the right of access to any place or service used by the general public.

2.2.3 The International Covenant on Civil and Political Rights

ICCPR commits its parties to respect the civil and political rights of individuals, including the right to life, freedom of religion, freedom of speech, freedom of assembly, electoral rights and rights to due process and a fair trial.

Article 24 of the Covenant states that every child shall be granted with right to a name and right to nationality for every child.

2.2.4 Convention on the Elimination of All Forms of Discrimination against Women

This Convention defines what constitutes discrimination against women and sets up an agenda for national action to end such discrimination. States which are party to the Convention are obliged to undertake a series of measures to reduce discrimination against women in all forms. It affirms women's rights to acquire, change or retain their nationality and nationality of their children which is stated by Article 9.

2.2.5 Convention on the Rights of the Child (CRC)

Following Convention deals with needs and rights of the children. The states which ratified this document are obliged to act in the best interests of the child. The Convention requires compliance with guardianship laws as that every child has basic rights, such as right to life, right to have their own name and identity, right to be raised by their parents and to have relationship with both their parents. Right to acquire nationality is set out by Article 7 of this Convention.

3. THE COMPARATIVE STUDY

This chapter examines chances of stateless person to acquire citizenship in Estonia, Latvia, Slovakia and Hungary. The comparative study is divided into two main parts: the material requirements a person shall meet to acquire a citizenship and the procedural aspects of acquisition of nationality.

3.1 The compared states

3.1.1 Estonia

Estonia is among states with the largest stateless population in Europe. In 1992 Estonian government re-adopted 1938 Citizenship act and proposed the following statement: *'only those persons who themselves or whose parents possessed Estonian nationality before 16 June 1940 - the day of the Soviet ultimatum which was followed by the Soviet annexation of Estonia - had a legal claim to Estonian nationality.'*²² The result of this proposition was quite impressive. Almost one third of population of country became stateless. This people had basically two options: they could apply for naturalization or they could become citizens of other states.²³

In 1995 a new Citizenship Act was adopted, and it integrated some new modifications to previous requirements. It is believed that previous requirements for naturalization were easier. Estonia was highly encouraged by international community to facilitate process of naturalization. However, even after Estonia entered European Union the debate over naturalization of stateless persons have been taken over by internal incentives. Russian speaking population complained that new requirements for naturalization violated human rights, while Estonian speaking population considered national citizenship politics are quite adequate and comply with international standards.²⁴

Estonia ratified most of international instruments and most of propositions related to statelessness can be found in the 1995 Citizenship Act. Even though the Act does not provide explicit requirement of facilitate naturalization of stateless persons, it is important to note that stateless individuals in Estonia are entitled with same rights as citizens and can enjoy free access to social protection as regular Estonian citizens.

²² Thiele, C. The Criterion of Citizenship for Minorities: The Example of Estonia. ECMI working paper. 1999

²³ Hoffmann, T.; Makarychev, A. (2016). Russian Speakers in Estonia: Legal, (Bio)Political and Security Insights. In: Makarychev, A.; Yatsyk, A. (Ed.). Borders in the Baltic Sea Region - Suturing the Ruptures (147–173). Basingstoke, UK: Palgrave Macmillan

²⁴ Jarve, P., Poleshchuk, V.: Country Report: Estonia. p. 1

3.1.2 Latvia

After collapse of Soviet Union Latvian State restored the old citizenship laws which lead to growth of statelessness. Almost 750000 USSR settlers lost their citizenship, but Latvian government did not consider them to be stateless. The government decided to call these people non-citizens instead of stateless and proposed that non-citizens shall have an opportunity to be naturalized and become Latvian citizens. Question whether Latvian non-citizens shall be considered as stateless individuals is still quite debated by international bodies.

Every individual who lived on the territory of Latvia became a Soviet citizen. Therefore, after Latvia restored independence, all the citizens automatically turned into citizens of state which does not exist anymore. After the collapse the new government re-enacted citizenship laws and everyone who resided on the territory of Latvia had three options: accept Russian citizenship, become citizen of Latvia or become stateless. It is important to note that in case if an individual wanted to accept Latvian citizenship they had to meet strict language and residence requirements.

Latvia stated that all actions taken by Soviet Union were illegal and therefore principle of *ex iniuria ius non oritur* shall be invoked. Basically, new Latvian government believed that illegal actions cannot create legal situations, therefore Latvia re-established the inter-war republic and re-installed law on citizenship from 1919. Requirements for acquisition of citizenship are rather familiar with Estonian ones: Latvian citizenship was granted only to those people who were citizens before 1940 according to principle *ius sanguinis*.

3.1.3 Slovakia

Slovakia is well known by its quite favorable naturalization regime and low stateless population. Slovakian population is mostly consisting of ethnic Slovaks and therefore state legislation is oriented at ethnic Slovaks. It is notable that even though Slovakia is the country with low level of statelessness it ratified the majority of international documents on statelessness. It is believed that Slovakian naturalization regime is one of the most facilitated and effective.²⁵ However, Slovakia still did not implement a specific status and protection for stateless persons.

3.1.4 Hungary

²⁵ Hungarian Helsinki Committee: *Forgotten Without Reason: Protection of Non-Refugee Stateless Persons in Central Europe*. p. 34

Hungarian law system is mainly based on the principle of ethnicity which is demonstrated by preferential naturalization for ethnic Hungarians. Naturalization regime for stateless persons is quite favorable, but it is far less facilitated than the one for ethnic Hungarians. Hungarian naturalization is rather time-consuming and expensive and the requirements for documentation are too bureaucratic.²⁶

Hungary was one of the first states who introduced more sophisticated protection framework for protection of stateless persons. In 2006-2007 Hungary reformed immigration legislation and granted stateless individuals with specific protection status. Hungary has very small amount of stateless population, especially in comparison to Estonia or Latvia and it successfully combines ethnic citizenship policy with progressive legislation in the field of statelessness.²⁷

3.2 The material requirements

3.2.1 The residence requirements

Estonia

Residential requirements for those who wish to become Estonian citizens are listed in the Citizenship Act. Two main requirements an alien has to fulfill are that the person must hold a valid long-term residence permit and live on the territory of Estonia for eight years. An alien also must have a valid registration in Estonia.²⁸

To receive a long-term residence permit an alien must spend five years in Estonia on the basis of temporary residence permit, have permanent legal income and be covered by health insurance. Other requirements proposed by Estonian government include proper knowledge of Estonian (at least at B1 level), justification of the purpose for settling in Estonia and a place for residence in Estonia.²⁹

Latvia

Naturalization procedure for those who wish to become Latvian citizens is provided by chapter 2 of the Latvian Citizenship Law. To become a citizen an applicant must hold valid long-term residence permit for at least five years and have a legal income. Amendments to citizenship law which were proposed in 2013 has simplified process of receiving a permanent residence permit. According to new legislation an applicant does not have to stay in Latvia

²⁶ Kovacs, M., Toth, J.: Country Report: Hungary. p. 2

²⁷ Hungarian Helsinki Committee: Statelessness in Hungary: The Protection of Stateless Persons and the Prevention and Reduction of Statelessness p. 11

²⁸ § 6 1995 Citizenship Act

²⁹ § 117 2010 Aliens Act

without interruptions anymore, which made it easier for aliens to travel.

Slovakia

General requirement for an alien who applies for Slovakian citizenship is an uninterrupted permanent residence in Slovakia for eight years. The Citizenship Act defines an uninterrupted residence as a residence based on residence permit. Article 7 of Citizenship also provides stateless individuals with softer requirement of only three years of permanent residence. According to Act on Residence of Foreign Nationals there are temporary residence permit, long-term residence permit and tolerated stay and each one requires certain conditions to be met to receive one.

Hungary

The requirements for applicants include uninterrupted residence on the territory of Hungary for eight years as well as in Slovakian legislation. Person can receive temporary residence permit in the basis of statelessness of this person or on humanitarian grounds. Waiting period for naturalization is at least five years for stateless persons.

Obtaining a permanent residence permit may take three or five years depending on the regime. The national permanent residence permit requires three years of temporary and lawful stay and EU permanent residence permit requires five years. However, EU permanent residence permit provides an individual with wide range of rights.

3.2.2 Language requirements

Estonia

Estonia requires applicants to pass a test for knowledge of Estonian language and Constitution. The tests are held by the National Examinations and Qualifications Centre. To become Estonian citizen an applicant shall pass language test for at least B1 category. Those who acquired education in Estonia are released from the exam.

The test consists of four parts: listening, speech, reading and writing. The Citizenship Act specifies each part separately. The examination is free and held at least three times per year. Second part of the examination requires an applicant to prove knowledge of the Constitution, main principles of the public order, fundamental rights and freedoms and the procedure of acquisition or loss of citizenship.

Latvia

The naturalization process includes language examination and knowledge of Latvian history, Constitution, National Anthem and applicant is also required to pledge an allegiance to the Latvian state.³⁰ Those who acquired basic, secondary or higher education in Latvian are not

³⁰ 1 Kruma, K, Naturalisation Procedures for Immigrants: Latvia, p. 8-10

required to pass language tests, and those who are older than 65 are not required to pass written part of the test.

People with different kinds of disabilities (deaf, speech defects, loss of arms, blind) can also be released from passing some parts of the test. To go through naturalization process, an applicant must pay fee to the state.

Slovakia

The applicants must prove that they know Slovakian language both orally and writing at proper level and show at least general knowledge about Slovakia.³¹ Basic requirements for passing the test require an applicant to be able to discuss some very general topics, to be able to read Slovakian press and write summary of article. However, stateless people are exempted from the language test.

Hungary

Hungary requires an applicant to pass the single Hungarian Constitution and language test. People who acquired education in Hungarian and those who are over 65 years old are released from the test. To pass the test an applicant must show general knowledge of Hungarian history, Constitution, national symbols and holidays and Hungarian role in the EU. To take the examination an applicant must pay a fee. An applicant has an opportunity to get consultation few days before the examination. The state does not organize specific language trainings for the applicants.

3.2.3 Economic requirements

Estonia

Estonian Citizenship Act requires all the applicants for the naturalization to have a legal income. This means that any applicant who desires to acquire Estonian citizenship shall be able to ensure his subsistence in the territory of Estonia legally and also to have a registered place of residence in the country.

This requirement allows non-citizens who legally reside on the territory of Estonia to earn legal support from the State authorities as well as regular citizens of the country. This means that on order to fulfill the economic resources requirement an applicant only has to have small legal income because he will be entitled for state support in any case. Therefore, it is possible to notice that Estonian economic requirement is rather soft.

However, there still exists the problem of non-employment of stateless population. Usually Estonian citizens have more chances to get the job then stateless persons. Estonian employees usually ask the applicants to show quite good Estonian language skills, which puts them into

³¹ § 7 (3) h) Act No. 40/1993 Coll. on Nationality of the Slovak Republic as amended by other laws.

vulnerable position, especially in comparison with ethnic Estonians who do not need to worry about this.

Latvia

Applicants who wish to acquire Latvian citizenship via naturalization will have to prove that they are able to ensure their subsistence on the territory of the state. Applicant has to have legal income which covers costs of living in the country. Legal income includes lawfully earned remuneration for work, income received from lawful business activities and income received from renting a property.

In case if the applicant has met the economic requirements he has a right to claim his children under 15 years old to acquire citizenship as well.

Slovakia

Slovakian attitude towards applicants for naturalization differs a lot. Slovakian legislation does not provide any specific economic requirements for the applicants, except regular requirement to have a social insurance, health insurance, to fulfill all the duties implied to the foreigners on the territory of the state.

Hungary

Hungarian legislation states that the applicant has to have a registered place of residence on the territory of the state. State authorities do not grant any housing support to stateless persons. It only gives quite limited access to labor market and no financial support.

It is almost impossible to fulfill the Hungarian requirements for the applicant for two reasons. First, difficulties with receiving working permit. Even if the applicant has a working permit, employees always prefer to employ Hungarians instead of stateless individuals. Second, Hungarian regime requires an applicant to have a long-term work to fulfill the economic requirement, which is almost impossible due to discrimination of stateless persons on the labor market. Therefore, Hungarian regime is extremely strict.

3.3 Procedural aspects

During naturalization program applicant will have to deal with official proceedings as well. Procedural aspects of naturalization shall also be taken into consideration since this aspect is beyond control of applicant. Therefore, even if the person managed to fulfill all the requirements no matter how strict they are, this is only the half of the way.

3.3.1 Application for naturalization

In general, all four states require the same list of documents which must be presented while application for naturalization. Usually, the most common documents in the list include application itself, identity document and certificates representing education or previous job experience.

Estonia requires an applicant to fill all the documents in Estonian language. In case if applicant cannot submit the required documents in time he will be provided with extra time. In case if an applicant does not fulfill the requirement within this period of time, the application will be denied.

Latvian requirements have a lot in common with Estonian ones. The same list of documents shall be presented by an applicant. The application has to be filled in Latvian. These requirements do not differ from Hungarian ones. *Hungarian* application shall be filled in Hungarian and the same list of documents must be presented by the applicant.

Slovakia has similar requirements and it grants an applicant with great assistance during the proceedings. In case if there are some unclear moments with the documentation state authorities will help the applicant to remove it and make everything correct. However, in case if applicant fails to fulfill the requirement the application will be denied.

One common feature for all the states is that in case if applicants cannot submit all the documents in time his application will be denied. This practice constituted an unreasonable impediment of naturalization.³²

All the states require the applicant to fill the application in national language, which is quite problematic for a stateless person who has no knowledge of the language. Administrative fees charged for the applications are also may constitute some problems for the applicant.

3.3.2 Proceedings

National regimes of the states are compared by three main criteria, which are length of the proceedings, costs and guarantees.

Estonian regime provides long period of time for assessment of the application which is six month plus non limited time for final decision. Applicant is obliged to pay certain fees also. The fees include the payment for the application and issuance of ID card. In general, an applicant will have to pay around 50 euros during the application process. Estonian most weak points are the length of the procedure and high cost of the application fees.

³² Van Waas, L.: Nationality matters: Statelessness under international law. p. 368

Latvia in comparison with Estonia provides more guarantees. There are quite limited reasons for denial of application and therefore, after the payment of the fees applicant will not have to worry about the final decision. Of course, Latvian authorities will deny all the applications which do not meet the requirements. The application fees are almost the same as Estonian ones - 45 euros for application and ID card.

Slovak regime provides the highest application fees which is the main problem. An applicant will have to pay more than 600 euros for the application for naturalization. In other categories it shows quite long time limits which are 24 month for the final decision and better guarantees for the applicants.

The only strong point of the Hungarian regime in the comparison with other states is the costs of the process. There are no any additional application fees which is quite good for stateless applicants. However, other areas still need to be improved. The applicant could wait for the final decision for a quite long time and still there are no guarantees.

4. THE ASSESSMENT

4.1 Assessment of material requirements

The requirements the applicants must meet in different countries were collected and compared. According to the analysis, Slovakia allows a stateless person to be naturalized within the shortest period of three years of uninterrupted residence. Hungarian naturalization is the longest one, in practice stateless person must wait eight years at least. The Estonian requirements are quite strict and hard for a stateless person to follow due to difficult procedure of acquisition of temporary residence permit. Latvia amended its requirements which made the residence requirements quite soft in comparison with Estonia. After all, Estonian regime is not one of the most favorable as to residence requirements.

As to the language requirements, Slovakian regime is the most liberal because it exempts stateless persons from language examination at all. Other integration examinations are also not used. Estonian government provides numerous language courses and provides applicants with all the assistance needed. However, language requirement still remains too hard to follow, especially by older generation.

Estonia is focused on providing as much language trainings as possible in order to motivate applicants to learn the language at proper level, which still does not make the process of naturalization easier. Expenses however are covered by the government.

Hungarian examination is hard in general, even though language requirements are rather soft. The knowledge the applicant must show is quite specific which makes it hard to get prepared for the exam. The examination fee is not covered; therefore, an applicant has to spend their own money. The government authorities do not provide applicants with any kind of assistance therefore it's up to applicant how they are going to pass the test. Latvian regime again shows certain similarities with Estonian one. Language requirements are reasonable and allow people with certain disabilities to skip some parts of the test.

According to assessed data, it is possible to highlight Slovakian liberal regime and quite favorable requirements which are easy to follow by stateless persons. Estonian regime is ranked second, due to difficulties with residence requirements. However, Estonia provides the best assistance for applicants and makes the language courses as accessible as possible. Latvia provides better residence requirements which are easier to fulfill for stateless persons. Language requirements are not too strict, but accessibility of language courses is worse than in Estonia. Hungary is ranked last due to difficulties with examination which is quite hard even for ethnical Hungarians. The test includes historical and political questions; therefore an

applicant must be well-prepared. No assistance is provided by the government. Residence requirements are too high. It will take at least eight years for an applicant to acquire Hungarian citizenship.

4.2 Assessment of procedural aspects

According to the comparison all the regimes have strong and weak points. Each state has at least one point which needs improvement. For Slovak regime the most problematic part is the costs of the proceedings. Administrative fees are too high and not every stateless applicant can pay it. However, high costs of the proceedings can be justified by good guarantees.

Hungarian regime is the least favorable. The naturalization proceedings are not regulated properly and the decision making process can take quite long period of time. An applicant has no guarantees also. Estonia and Latvia in comparison with Hungary try to provide the most neutral regimes of all. Both the fees and time limits are quite neutral.

According to collected data it is possible to divide the regimes into three types:

- aggressive (no fees/ no guarantees)
- reliable (high fees/ good guarantees)
- neutral (medium fees and guarantees)

In this case, the best decision is to keep neutral regime because it is the most balanced one. It attracts applicants due to the fact that they feel that they can afford it and they have good chances to get positive decision.

RECOMMENDATIONS

The thesis investigated which regimes allow stateless persons to get naturalized in the easiest way possible. The strong and weak points of each regime were highlighted above, therefore, it is possible now to draft a list of specific recommendations which will allow Estonia to amend its citizenship policy towards stateless individuals and make their access to acquisition of citizenship softer. The importance of these recommendations can be justified by the fact that Estonia does suffer from huge amount of stateless population within its territory.

The main problem of the Estonian naturalization regime is the existence of the stereotype that it is almost impossible to acquire the citizenship in Estonia. People who did not even check the requirements themselves still believe that they are quite hard to follow. However, amendments in legislation may help to reduce number of people who will give up before trying taking the examinations. The list of following recommendations includes unique features of each regime compared before, and provides probable solution of issue of statelessness on the territory of Estonia.

In order to regulate level of statelessness Estonia shall:

1. Reduce period of residence

It is quite clear that residence period is too long. Eight years for Estonia and Hungary shall be reduced. Slovak regime allows applicants to acquire citizenship within shortest period of time, which leads to reduction of stateless persons.

2. Simplify the language examination

Another obstacle applicants meet is the examinations. Language requirements in Estonia are considered to be the hardest ones to follow. Lots of stateless individuals believe that they can never learn Estonian at proper level. It is understandable why the government does state these requirements. Estonian language is important, but it is not that necessary to speak it at that high level. Stateless individuals who live on the territory of Estonia for a long period of time already learned how to live without deep knowledge of Estonian. Therefore, high requirements probably are creating more barriers for these people to finally start their naturalization because they do not see any point in these procedure.

3. Cancel the integration tests

The knowledge applicant must show during the integration tests is not necessary for regular citizen of the state. Basically, most of the citizens would not pass this test even though they already are citizens. Also, it is important to note that person who resides on the territory of Estonia probably is integrated enough to become a citizen.

4. Make the good character requirement softer

People believe that person who once committed a crime will not be able to acquire Estonian citizenship at all. This is incorrect. Crimes which were committed long time ago shall not be considered during naturalization proceedings. Each shall have specific period of time during which state authorities can see the crime materials. After the expiry of this period of time the person shall have a right to get citizenship.

5. Reduce economic requirements

All the states compared have one same feature: employers always prefer to hire citizens of their state. Therefore, it is quite problematic for stateless individual to find a working place and fulfill economic requirements.

6. Promote acquisition of citizenship

It is important to show residents of Estonia that the government takes care of the situation and is willing to improve quality of life of stateless persons. In that case, more people will find that naturalization can be quite easy way of acquisition of citizenship and start working on it.

CONCLUSION

Citizenship and statelessness are two very important statuses. Each status results in certain rights and obligations an individual will have access to. States are the ones who decide which requirements to set for those who wish to become citizens.

The importance of citizenship cannot be overrated because it often is called a 'right to have rights'. Acquisition of citizenship for a stateless person will result in immediate improvement of quality of life and easier access to various human rights. However states are failing to provide every stateless person with a citizenship.

There are several international instruments which are regulating issue of statelessness. Each instrument is focused on reduction of statelessness. Effectiveness of these instruments cannot be measured though. Effectiveness is strictly subjective criteria and measurement can vary depending on the point of view.

The most obvious ways of measurement of effectiveness is counting number of stateless people. However, this number does not represent number of cases of prevented statelessness. Therefore, International instruments are useful and they do help to reduce statelessness in general, even though sometimes it is impossible to see the results immediately.

However, national regimes still have problems which slow down the process of naturalization of stateless persons. To analyze the situation in general the thesis compared four states and the ways these states deal with statelessness. According to the results of the comparison following statements are released:

- States tend to make the residence requirements too strict and hard to follow
- States do not provide candidates with proper assistance during naturalization
- States require candidates to pass exams which are not relevant
- States tend to give certain privileges to ethnic population during naturalization
- Stateless persons are not motivated enough
- States make the naturalization proceedings not convenient enough for the applicants

Therefore, restructuring the process of acquisition of citizenship may motivate some stateless persons to start naturalization because today this process seems to be too long and too difficult for them. The analysis and comparison helped to draft recommendations which may help to make the naturalization process easier and faster. This would result in reduced number of stateless persons which is the main focus of the thesis.

The recommendations mostly include amendments to material requirements. As it already was mentioned above, states tend to make the material requirements too high to follow them. Stateless applicants cannot fulfill the requirements, and this leads to demotivation and

creating more stereotypes. This situation shall be improved by implementation of the recommendations drafted in this thesis.

The procedural aspects of naturalization seem to be the most favorable for today. However, there still are ways in which the procedure of naturalization can be improved. As to the material aspects, there are three main fields of concern: examinations, residence and economic requirements. It is recommended to take into consideration the results of the comparison.

Amendments of the naturalization regime will lead to reduction of stateless individuals and increase their quality of life. A lot of people are afraid of the process of acquisition of citizenship and therefore are not willing to change the situation. In this case it is necessary for the state authorities to redraft their policy in order to help stateless persons and ease the naturalization process.

Main function of the government is to increase quality of life of its citizens. In order to reach this goal, it is necessary to take care of these groups of people who need extra protection and help them to live their lives in a way any citizen of a state can. Statelessness definitely is a problem which lowers quality of life of huge group of people. Therefore, reduction of statelessness shall be one of the main focuses of the government in the near future.

LIST OF REFERENCES

1. Arendt, H, The origins of totalitarianism, Meridian Books, New York, 1958, p. 290ff.
2. Batchelor. C.: Transforming international legal principles into national law: The right to nationality and the avoidance of statelessness. p. 12
3. Bauböck, R.: Transnational Citizenship. Membership and Rights in International Migration. page 135
4. Canivez, Patrice. Jean-Jacques Rousseau's Concept of People. *Philosophy & Social Criticism* 30. 4 (2004): 393-412.
5. Chan, Johannes. The Right to a Nationality as a Human Right. *Human Rights Law Journal* 12. 1-2 (1991): 1-14.
6. David Boucher and Paul Kelly The Social Contract from Hobbes to Rawls
7. Donner, R.: The Regulation of Nationality in International Law; Chan, J.: The Right to a Nationality as a Human Right - The Current Trend towards Recognition.
8. Goldston, J. A.: Holes in the Rights Framework: Racial Discrimination, Citizenship, and the Rights of Noncitizens. p. 340
9. Gyulai, G. Statelessness in the EU Framework for International Protection, *European Journal of Migration and Law*, Vol. 14, 2012, p. 279.
10. Hathaway, J.: The Rights of Refugees under International Law. page 989
11. Hoffmann, T.; Makarychev, A. (2016). Russian Speakers in Estonia: Legal, (Bio)Political and Security Insights. In: Makarychev, A.; Yatsyk, A. (Ed.). *Borders in the Baltic Sea Region - Suturing the Ruptures (147–173)*. Basingstoke, UK: Palgrave Macmillan
12. Hungarian Helsinki Committee: *Forgotten Without Reason: Protection of Non-Refugee Stateless Persons in Central Europe*. p. 34
13. Hungarian Helsinki Committee: *Statelessness in Hungary: The Protection of Stateless Persons and the Prevention and Reduction of Statelessness* p. 11
14. Jarve, P., Poleshchuk, V.: Country Report: Estonia. p. 1
15. Kostakopoulou, Dora (2008). *The Future Governance of Citizenship*. Cambridge University Press. pp. 26–27
16. Kovacs, M., Toth, J.: Country Report: Hungary. p. 2
17. Kruma, K, Naturalisation Procedures for Immigrants: Latvia, p. 8-10
18. The Regulation of Statelessness Under International and National Law by A. Peter Muthraika (pp. 106-129a).
19. Thiele, C. The Criterion of Citizenship for Minorities: The Example of Estonia. ECMI working paper. 1999
20. Tsybulenko, E.; Amorosa, P. National minorities in Estonia: 20 years of citizenship policies
21. UNHCR, Massey, H. UNHCR and De Facto Statelessness, Legal and Protection Policy Research Series, April 2010, p. ii.
22. Van Waas, L.: Nationality matters: Statelessness under international law. p. 368
23. Vukas Budislav Lecturer of International Law in the University of Zagreb Law School International instruments dealing with the status of stateless persons and of refugees

24. Weis, P. *Nationality and Statelessness in International Law*, Kluwer Academic, Dordrecht, 1979, p. 29ff
25. Weissbrodt, D, *The Human Rights of Non-citizens*, Oxford, First Edition, 2008
26. Weissbrodt, D. & Collins, C; *The Human Rights of Stateless Persons*, *Human Rights Quarterly* Vol. 28, 2006, p. 252.