23 Statelessness in the European Union

An Issue to Be Solved

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23.1 Introduction

Most of us simply cannot imagine how life would be not holding the citizenship of a state, since thankfully, for the majority of people all around the world nationality comes *ex lege*, based on the fact of birth. For this reason, the rights and the obligations connected to citizenship are taken for granted. Once nationality of a state is acquired, the majority of the fundamental rights can be exercised without impediments or limitations. These rights include the right to education, the right to healthcare, the right to free movement or the right to employment – to mention a just few. More than 12 million people in the world however, are not this lucky, and are barred from exercising their basic human rights related to citizenship, since they are not considered to be nationals of any State under the operation of their laws. Where the aforementioned rights stemming from citizenship cannot be effectively exercised for lack of nationality, those concerned will face the risk of marginalization with all of its consequences as well as exclusion from the full participation in society. Even where the legal status of such marginalized people is resolved by the government, since they have no legal existence in the past, they continue to face serious obstacles and bureaucratic problems. A stateless person is stripped of the basic rights that every national enjoys.

To be stripped of citizenship is to be stripped of worldliness; it is like returning to a wilderness as cavemen or savages… A man who is nothing but a man has lost the very qualities which make it possible for other people to treat him as a fellow man… they could live and die without leaving any trace, without having contributed anything to the common world.[1]

Everyone has the right to a nationality. No one shall be arbitrarily deprived of his nationality nor denied the right to change his nationality – as set forth under the Universal Declaration of Human Rights (UDHR)[2] – a document considered to be a milestone in the evolution of human rights. This breakthrough document was proclaimed by the United Nations General Assembly in Paris on 10 December 1948 including the first

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1 Hannah Arendt, The origins of Totalitarianism, quoted in UNHCR and IPU, 'Nationality and statelessness. A handbook for parlamentarians', 2005, p. 7.

2 GA Res. 217 A, 10 December 1948.

common catalogue and standard of rights for everyone around the world. The drafters of the UDHR realized the importance of obtaining a nationality, including the consequences of not holding a nationality at all. According to Article 15 of the UDHR a person has the right to be a national of a state, while states have the obligation to avoid the legal anomaly called statelessness. This obligation prompted the international community to take a further step in addressing the rights of stateless persons since statelessness is a form of human rights' violation: a violation of the right to nationality, the notion of equality and non-discrimination. In effect, it is a forgotten human rights crisis.

During and also in the aftermath of World War II, millions of people had to leave their homes in search for refuge. They were forcibly displaced or resettled which prompted the international community to realize the urgency of providing protection for those in need of international protection. Such refugees are not protected by their own governments because their governments are either unable or unwilling to provide protection, which is otherwise the obligation of the state of nationality. As a result, individuals may be the subject of human rights' violations giving them not choice but to leave their homes, their families and their communities to find safe haven in another country. Under the aegis of the United Nations, a comprehensive and a universal legal document was adopted in 1951, the Convention Relating to the Status of Refugees (hereinafter referred to as Geneva Convention),[3] enshrining the minimum standards regarding the treatment and the rights of refugees. The Geneva Convention is a crucial legally binding document governing statelessness. The term 'refugee' refers to persons who are in need of international protection, as defined in Article 1 of the Geneva Convention. These people, owing to a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, are outside the country of their nationality and are unable or, owing to such fear, unwilling to avail themselves of the protection of that country; or who, not having a nationality and being outside the country of their former habitual residence as a result of such events, are unable or, owing to such fear, unwilling to return to it. Consequently, international protection and the minimum rights provided to such persons are afforded to stateless refugees and those stateless persons, who are regarded as refugees.

But what happens to those persons whose status does not fall under the scope of the Geneva Convention, yet they are in need of protection, since they do not hold a nationality and therefore they cannot exercise their respective rights, and they are not afforded protection by any State? The international community was compelled to act in order to protect stateless persons' rights. As a result, a unique international instrument was adopted under the aegis of the United Nations in 1954, the Convention relating to the Status of Stateless Persons (hereinafter referred to as 1954 Convention).[4] The drafters of the 1954 Convention aimed to ensure that stateless persons can enjoy their basic human

3 1951 Convention Relating to the Status of Refugees, United Nations Treaty Series, Vol. 189, p. 137.
4 1954 Convention relating to the Status of Stateless Persons, United Nations Treaty Series, Vol. 360, p. 130.

rights and freedoms without being discriminated against because of the lack of nationality. The instrument creates a unique status that defines the term of a stateless person with the intention of creating a uniform status of statelessness and to provide for minimum rights to be afforded to stateless persons. According to Article 1 of the 1954 Convention, a stateless person is a person, who is not considered to be a national by any state under the operation of its law. This case of statelessness is called *de jure* statelessness since it is a purely legal description which definition has become a part of customary international law.[5] Nevertheless, it must be underlined that it is also a narrow definition, since the criterion for not being considered a national by any state under the operation of its law does not include persons who may technically have a nationality but for some reason they are unable to enjoy their rights related to nationality or who unable to prove their nationality.[6] *De facto* stateless persons, whose status is much more difficult to precisely define, are persons outside the country of their nationality who are unable or, for legitimate reasons, unwilling to avail themselves of the protection of that country.[7] Protection is understood as the right to diplomatic and consular protection provided by the country of nationality. *De facto* statelessness arises where a state withdraws benefits connected to nationality or where people cannot enjoy their rights stemming from nationality due to the inaction of the relevant state. That is, *de facto* stateless persons have the right to enjoy the benefits ensuing from a given nationality, but for some reason they are unable to enjoy those rights.[8] *De facto* stateless persons do not fall under the personal scope of the 1954 Convention. For the purposes of the present article, the term stateless person is understood as a *de jure* stateless person, following the definition of stateless person in Article 1 of the 1954 Convention.

Besides the legal distinction between *de jure* and *de facto* statelessness, another possible categorization may be based on residency and its permanent nature. Stateless migrants are those persons, who have migratory background or are migrants and who do not obtain a relevant tie to the country in the territory of which they resided and need at least minimal protection of their rights by the county they currently reside in. Statelessness occurs in a migratory context when for example a person who left their country of nationality and was for some reason deprived of the nationality they obtained without having acquired the nationality of the habitual residence. Those born in transit from a mother who cannot confer her nationality to her child according to the nationality rules of her citizenship are in a similar situation: they are also unable to acquire the nationality of the father. This is the case for example when the father dies, abandons the family

5 According to the International Law Commission (ILC) the definition of a stateless person laid down in the 1954 Convention 'can no doubt be considered as having acquired a customary nature'. Articles on Diplomatic Protection with commentaries, 2006, p. 49.

6 D. Weissbrodt & C. Collins, 'The Human Rights of stateless Persons', *Human Rights Quarterly*, Vol. 28, 2006, p. 251.

7 H. Massey, 'UNHCR and De Facto statelessness', *Legal and Protection Policy Research Series*, 2010, p. 61.

8 Weissbrodt & Collins 2006, p. 252.

before the child is born, or is unable or unwilling to carry out the administrative steps necessary for conferring his nationality to the child. It may also be the case that according to the rules governing the nationality of the father, he cannot transfer his nationality due to specific circumstances, such as when the child is born abroad. An example of stateless persons in a migratory context would be the children born to of Syrian mothers in transit. According to Legislative decree 276 on nationality,[9] anyone born within or outside the territory of Syria to a Syrian Arab father, anyone born in the country to a Syrian Arab mother and whose legal family relationship to their father has not been established, shall be considered a Syrian Arab *ipso facto*. The discriminatory nature of the rule is easy to discern, since the mother cannot transfer her nationality to her child in all circumstances in particular if the child was born abroad and the father cannot transfer his nationality to the child; meanwhile, the father can transfer his nationality to his child regardless of the place of birth. In such cases the child will be born stateless should the country of birth fail to provide safeguards to prevent statelessness and to reduce the number of stateless persons.

There is another category of stateless persons, those who have never crossed an international border in their lives, who have never left their 'own country':[10] the country where they were born and raised. These people have got strong connection to the country they live in, and not only the place of birth but in particular personal and family ties. They are the so-called *in situ* stateless persons. In the case of *in situ* statelessness, *in situ* stateless individuals become stateless mostly because of discriminatory measures taken by the country of habitual residence on the basis of race, ethnicity, colour and membership of a national minority, national origin, religion or belief and social origin which all are protected characteristics, or due to state succession. In case of discriminative measures such as the arbitrary deprivation of nationality as a form of discrimination against a particular group, statelessness will be inherited, passed on from generation to generation,

9 Legislative Decree 276 – Nationality Law [Syrian Arab Republic], Legislative Decree 276, 24 November 1969.

10 The concept of 'own country' was explicitly mentioned in Article 12(4) of the International Covenant on Civil and Political Rights (ICCPR): "No one shall be arbitrarily deprived of the right to enter his own country.." As far as *in situ* statelessness is concerned, it is crucial to mention in this study the interpretation of the UN Human Rights Committee (HRC) in para. 20 in CCPR General Comment no. 27 of the expression of 'own country'. According to the HRC: "The wording of article 12, paragraph 4, does not distinguish between nationals and aliens ('no one'). Thus, the persons entitled to exercise this right can only be identified by interpreting the meaning of the phrase 'his own country'. The scope of 'his own country' is broader than the concept 'country of his nationality'. It is not limited to nationality in a formal sense, that is, nationality acquired at birth or by conferral; it embraces, at the very least, an individual who, because of his or her special ties to or claims in relation to a given country, cannot be considered to be a mere alien. This would be the case, for example, of nationals of a country who have there been stripped of their nationality in violation of international law, and of individuals whose country of nationality has been incorporated in or transferred to another national entity, whose nationality is being denied them. The language of article 12, paragraph 4, moreover, permits a broader interpretation that might embrace other categories of long-term residents, including but not limited to stateless persons arbitrarily deprived of the right to acquire the nationality of the country of such residence."

regardless of the place of birth, habitual residence or other factors reflecting the genuine and effective link to the country of residence.[11] Thus, inheriting statelessness is down to the inaction of the state concerned, which fails to take measures to stop statelessness from being conferred from parent to child or fails to implement existing measures to prevent the spread of statelessness. State succession may lead to an increased volume of migration and statelessness. In this case, people living in the same territory will find themselves under a different jurisdiction, often as a consequence of armed conflicts or legal measures introduced. While these people are not considered to be migrants, discriminatory laws may be introduced against them for historical reasons or for belonging to an ethnic group that has become a minority in the newly established country. Examples for statelessness resulting from state succession may be found in the aftermath of Soviet Union's collapse. The break-up of the Soviet Union left a great number of people in a precarious situation regarding their citizenship: they became a minority group in a newly formed country and political context where their legal status was not clarified. In the Central Asian region, the break-up of the Soviet Union became the main cause of statelessness, even though the persons concerned otherwise have links of birth, habitual residence or descent to the given state.[12] State restoration also yields the threat of creating a large stateless population as a consequence of a new, sometimes unclear political context. The Baltic countries may be cited as examples of state restoration following the break-up of the Soviet Union, with Estonia, Latvia and Lithuania regaining their sovereignty in 1991. In the period of Soviet occupation large numbers of ethnic Russians moved to the Baltic States. When these countries regained their sovereignty, ethnic Russians were left without nationality. Estonia, which is not a signatory state of either the 1954 Convention or the 1961 Convention on the Reduction of Statelessness (hereinafter referred to as the 1961 Convention),[13] had re-established its independence in 1991 after the collapse of the Soviet Union. Estonia was then faced with the challenge of dealing with the legal status of thousands of ethnic Russians. In 1991 the new Estonian citizenship law entered into force, which, in continuity with the 1940 citizenship law, granted citizenship only to those persons and their descendants who had possessed Estonian citizenship between 1918 and 1940 in the period of the first Estonian Republic. Then Estonia encouraged non-Estonians to get registered and apply for citizenship in the Russian Federation or elsewhere. Since around one-third of the Estonian population did not have their citizenship settled by 1992, they became stateless.[14]

Statelessness may occur in many different circumstances such as in the case of discrimination, the legal inconformity between two nationality laws, and the lack of birth

11 Note on UNHCR and stateless persons, Executive Committee of the High Commissioner's Programme, Sub- Committee of the Whole on International Protection, 2 June 1995, para. 13.

12 M. Farquharson, '*Statelessness in Central Asia*' 2011 UNHCR p. 4.

13 1961 Convention on the Reduction of Statelessness, United Nations Treaty Series, Vol. 989, p. 175.

14 'Mapping statelessness in Estonia' UNHCR Regional Representation for Northern Europe, Stockholm, 2016 pp. 14-16.

registration, arbitrary deprivation of nationality or the loss or withdrawal of the citizenship, or state succession and state restoration. In the case of statelessness, the persons concerned cannot enjoy their basic human rights, which are connected to the fact of obtaining a citizenship. The lack of a determined stateless status leads to the consequence of not being able to live in dignity. Dignity plays an important role respecting all human rights[15] which importance and its basic nature was laid down in the UDHR.[16]

23.2 Main Challenges in the European Union

Statelessness is considered to be a rather controversial issue in the European Union. The question of regulating nationality law remains in the competence of the Member States, a rule laid down by Declaration No. 2 of the Treaty of Maastricht.[17] Since the European Union has no competence for regulating the conditions for acquiring the nationality of Member States, statelessness, in its entirety, is left unregulated by the European Union. Since the word entirety has been used, it should be pointed out, that at the same time, the European Union regulates the rights and obligations and also the level of protection of a specific group of stateless persons. Stateless asylum seekers and stateless refugees fall under the personal scope of the migration *acquis*. The Qualification Directive[18] may be mentioned as an example: in particular, the purpose of the directive is to lay down standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection. Goal of the directive is to establish a uniform status for refugees or for persons eligible for subsidiary protection, and to unify the substance of the protection granted. Stateless persons have been arriving to the European Union, who are in need of international protection. They seek asylum because owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, they are outside the country of their former habitual residence and as a result of the well-founded fear of being persecuted are unable or, owing to such fear, are unwilling to return to the country of their former habitual residence.

15 E. Wicks, 'The Meaning of 'Life': Dignity and the Right to Life in International Human Rights Treaties', *Human Rights Law Review*, Vol. 12, No. 2, 1 June 2012, p. 206.

16 GA Res. 217 A, 10 December 1948, Article 1: All human beings are born free and equal in dignity and rights.

17 "The Conference declares that, wherever in the Treaty establishing the European Community reference is made to nationals of the Member States, the question whether an individual possesses the nationality of a Member State shall be settled solely by reference to the national law of the Member State concerned. Member States may declare, for information, who are to be considered their nationals for Community purposes by way of a declaration lodged with the Presidency and may amend any such declaration when necessary."

18 Directive 2011/95/EU of the European Parliament and of the Council of 13 December 2011 on standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, for a uniform status for refugees or for persons eligible for subsidiary protection, and for the content of the protection granted. OJ L 377/9.

Statelessness can be the reason and also the consequence of persecution. Those asylum seekers who are stateless and qualify as a beneficiary of international protection enjoy the protection of a Member State on the basis of being eligible for international protection.

Protection is granted to stateless refugees or stateless beneficiaries of subsidiary protection as long as they qualify for international protection status. But what happens to these individuals after they are no longer considered to be refugees or beneficiaries of subsidiary protection? According to Article 11 of the Qualification Directive,

a third-country national or a stateless person shall cease to be a refugee if he or she (a) has voluntarily re-availed himself or herself of the protection of the country of nationality; or (b) having lost his or her nationality, has voluntarily re-acquired it; or (c) has acquired a new nationality, and enjoys the protection of the country of his or her new nationality; or (d) has voluntarily re-established himself or herself in the country which he or she left or outside which he or she remained owing to fear of persecution; or (e) can no longer, because the circumstances in connection with which he or she has been recognised as a refugee have ceased to exist, continue to refuse to avail himself or herself of the protection of the country of nationality; or (f) being a stateless person, he or she is able, because the circumstances in connection with which he or she has been recognised as a refugee have ceased to exist, to return to the country of former habitual residence. It shall be noted that points (e) and (f) shall not apply to a refugee who is able to invoke compelling reasons arising out of previous persecution for refusing to avail himself or herself of the protection of the country of nationality or, being a stateless person, of the country of former habitual residence.

Therefore, it is crucial to identify and also acknowledge the statelessness of those asylum seekers who have applied for international protection, for even if the international protection status of the stateless persons concerned has ceased, they shall still remain stateless. Unless the country of former habitual residence grants them citizenship, they cannot exercise their rights stemming from nationality. Therefore, they cannot lead a life in dignity and their rights remain unprotected for lack of nationality. The European Union must take on the task of dealing with the situation of former stateless refugees in its territory, both at present and in the near future. Accordingly, a uniform status for stateless persons and the uniform substance of protection for such persons must be introduced and afforded within the European Union.

The question is as follows: how can childhood statelessness be prevented? Childhood statelessness can easily be prevented by applying and effectively implementing specific safeguards. These are to ensure appropriate and effective protection for the best interest of the child, as laid down in the Convention on the Rights of the Child.[19] The 1961 Convention is not a human rights catalogue, but it gives detailed guidance on how the

19 "In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration." Art. 3(1) of the Convention on the Rights of the Child G.A. Res. 44/25, 20 November 1989.

right to a nationality can be implemented correctly and how it should be transposed into national law.[20] The uniqueness of the 1961 Convention is owed to the protection or safeguard approach it follows. This entails the application of a widely accepted principle of nationality law, namely the principle of *jus soli*, in order to reduce, avoid and prevent statelessness. According to Article 1 of the 1961 Convention, those countries where nationality rules follow the *jus sanguinis* principle 'where the child would otherwise be stateless' the *jus soli* principle shall be applied.[21] Meanwhile, in those contracting states, where the child was born abroad and for whatever reason he or she cannot inherit the parents' nationality, the *jus sanguinis* principle must be applied 'where the child would otherwise be stateless'.[22]

What can the European Union do to prevent childhood statelessness? As highlighted above, the European Union does not have the competence to regulate nationality law, therefore, the rules for acquiring nationality remain in the competence of the Member States. This means that the European Union cannot create a common framework and apply common rules where Member States ensure that no child is born stateless within their respective territories. Therefore, Member States have no obligation to nationality to those children who would otherwise be stateless. Since the European Union cannot oblige Member States to provide nationality to otherwise stateless children, another way must be found to protect the rights of children and to effectively enforce the principle of the best interest of the child. Accordingly, in order to achieve this goal, the Member States of the European Union shall accede to the 1954 Convention which lay down the minimum rights of stateless persons, and also join the 1961 Convention which establishes an international framework to ensure the right of every person to a nationality with the obligation of establishing safeguards in nationality laws to prevent statelessness at birth and later in life.

20 L. Van Waas, 'International and regional safeguards to protect children from statelessness', in: Laura van Waas & Amal de Chickera (eds.), *The World's Stateless – Children*, Oisterwijk, Wolf Legal Publishers, 2017, p. 345.

21 1961 Convention on the Reduction of Statelessness, Art. 1(1): "A Contracting State shall grant its nationality to a person born in its territory who would otherwise be stateless."

22 1961 Convention on the Reduction of Statelessness, Art. 1(4): "A Contracting State shall grant its nationality to a person who would otherwise be stateless and who is unable to acquire the nationality of the Contracting State in whose territory he was born because he has passed the age for lodging his application or has not fulfilled the required residence conditions, if the nationality of one of his parents at the time of the person's birth was that of the Contracting State first above mentioned. If his parents did not possess the same nationality at the time of his birth, the question whether the nationality of the person concerned should follow that of the father or that of the mother shall be determined by the national law of such Contracting State."

23.3 The Relevance and Importance of the Statelessness Determination Procedure

What happens to those stateless persons who are not in need of international protection and therefore not eligible for neither refugee nor subsidiary protection status? According to UNHCR data in 2014 when the *I Belong* campaign was launched, approximately 600,000 stateless persons lived in Europe, of which 400,000 lived in the European Union. These persons faced injustice and violations of their human rights as a result for losing their nationality for whatever reason and becoming stateless. These people are not in need of international protection, they do not have a well-founded fear of being persecuted or run a risk of serious harm because of a protected characteristic enshrined in the Geneva Convention or in the Qualification Directive. In the absence of proper identification and an appropriate statelessness determination procedure, stateless persons are likely to seek asylum in order to receive protection from a country. Of course, assessing asylum claims of those stateless persons who are not eligible for international protection creates a great pressure on the national asylum systems, the competent determining authorities. This renders asylum systems even less effective and efficient, while generating an additional financial burden for these systems due to unnecessarily assessed asylum applications and the costs of detaining persons who belong nowhere. After their asylum application fails, most probably the persons concerned receive deportation orders which cannot be implemented, or they are arbitrarily[23] detained[24] because the deportation order cannot be implemented since there is no country which considers these persons to be their nationals. Since these people do not belong anywhere, they cannot stay lawfully in the territory of the state concerned, the have no access to the labour market. Therefore, they can only work unlawfully and in the eye of the state concerned they are unwanted and do not exist. Stateless persons without having their status granted, are marginalized and are in a greater risk of exploitation and abuse. They face constant a risk of detention since they do not have the right of free movement, not only across international borders, but also within the country where they reside. Consequently, and they cannot contribute to the society they live in.

In order to provide effective protection to stateless persons and to ensure that they are able to exercise their human rights stemming from nationality, the identification of state-

23 The detention of the persons concerned is often prolonged and they most likely have to face repeated detention because of the lack of implementation of removal orders. The circumstances of arbitrariness shall be interpreted broadly 'to include not only unlawfulness, but also elements of inappropriateness, injustice and lack of predictability.' Guidelines on the Applicable Criteria and Standards relating to the Detention of Asylum-Seekers and Alternatives to Detention, UNHCR, 2012, Guideline 4, point 18.

24 The detention will be arbitrary unless it is inter alia: provided for by national law, carried out in pursuit of a legitimate objective, non-discriminatory, necessary, proportionate and reasonable, and carried out in accordance with the procedural and substantive safeguards of international law. Guidelines to Protect Stateless Persons from Arbitrary Detention, ERT, 2012, p. 76.

less persons plays a crucial role, since it must be the first task in order to find the solution of reducing and preventing statelessness.[25] Accordingly, an effective protection system requires a statelessness determination procedure, that promotes and facilitates the identification, prevention, reduction of statelessness and the protection of stateless persons. These are the activities of UNHCR.[26] Mapping the stateless population and creating an efficient and transparent determination procedure are not only in the interest of the persons concerned, but the states as well. Therefore, it is of utmost importance to incorporate specific safeguards in the statelessness determination procedure, such as providing information on eligibility criteria, ensuring the right to use the language during the whole procedure which is understood by the applicant, ensuring an interview with the competent authority, ensuring access to legal counsel where free legal assistance is provided. Each determination should be based on the individual merits of the claim, the decisions must be given within reasonable time, and there is a right to appeal and access the assistance of UNHCR.[27] But what happens to stateless refugees? As it was already introduced in this study, the legal status of stateless refugees is defined under the scope of the migration acquis, in the Common European Asylum System. If stateless asylum seekers are eligible for refugee status or subsidiary protection status, their rights are protected since they are under the scope of migration acquis. Although their legal status seems to be regulated, their international protection status might expire when specific circumstances are met. At the same time, they will have not acquired another nationality or will not have been naturalized. These people will find themselves without protection and will therefore again be in the need of international protection on grounds of being stateless. So if the person concerned lodges an asylum application and a statelessness application, then both applications shall be examined carefully and both statuses shall be granted to the applicant because for the aforementioned reasons.

Except for Cyprus, Estonia, Malta and Poland, every Member State of the European Union ratified the 1954 Convention. Although the 1954 Convention provides the definition of stateless persons and the basic set of rights which shall be ensured to the persons concerned, it does not give any orientation on how to identify stateless persons. Therefore, it does not oblige states that had joined the Convention to establish a specific statelessness determination procedure. Without identification and without an effective statelessness determination procedure, the rights of the persons concerned cannot be effectively ensured. Without taking into account the definition of a stateless person in the 1954 Convention, it is impossible to map the population thought to be stateless and therefore determining whether the person concerned is eligible for protection as a state-

25 L. Van Waas, 'Nationality Matters', *School of Human Rights Research Series*, Vol. 29, 2008, p. 423.

26 Conclusion on Identification, Prevention and Reduction of Statelessness and Protection of Stateless Persons Conclusion on Identification, Prevention and Reduction of Statelessness and Protection of Stateless Persons No. 106 (LVII) – 2006, Executive Committee 56th session. United Nations General Assembly document A/AC.96/1035, point a.

27 Handbook on Protection of Stateless Persons, UNHCR, Geneva, 2014.

less person. So far, only a few Member States of the EU established a statelessness determination procedure, namely Hungary, France, Italy, Spain, Latvia, United Kingdom, Belgium and Slovakia which is proved to be a rather disappointing phenomenon since establishing a statelessness determination procedure is considered to be crucial[28] in order to comply with the international obligations.

23.4 The Rottmann Case

As it was already mentioned in the present article, the EU has no competence to create uniform standards for acquiring, losing and withdrawing citizenship and the rules of naturalization. Therefore, the case law of the Court of Justice of the European Union (hereinafter referred to as CJEU) is sparse on the issue of statelessness. Despite the lack of CJEU case law relating to deprivation of nationality, in the *Rottmann*[29] case the CJEU indirectly influenced the prevention and also the reduction of statelessness. The CJEU was asked whether it is contrary to European Union law, in particular to [Article 20 TFEU (ex Article 17 TEC)], for a Member State to withdraw from a citizen of the Union the nationality of that State acquired by naturalisation and obtained by deception inasmuch as that withdrawal deprives the person concerned of the status of citizen of the Union and of the benefit of the rights attaching thereto by rendering him stateless, acquisition of that nationality having caused that person to lose the nationality of his Member State of origin.[30]

Dr Janko Rottmann was an Austrian citizen, who applied for German nationality after he transferred his residence to Germany. In accordance with Austrian law, by acquiring German nationality, he lost his Austrian nationality *ex lege*. However, his German nationality was also withdrawn, since Rottmann was a subject of a criminal investigation in Austria which he did not mention in the framework of the naturalization procedure. If the withdrawal of German nationality had become final, Rottmann would have lost his

28 Katja Swider, 'Protection and Identification of Stateless Persons through EU Law', *Amsterdam Centre for European Law and Governance Working Paper Series,* 2014-05, p. 18.

29 Judgement of 2 March 2010 in Case 135/08, *Janko Rottmann v. Freistaat Bayern*, [2010] ECR p. I-1449.

30 Case 135/08, *Rottmann v. Freistaat Bayern*, in particular para. 36 of the judgement.

EU citizenship. This would have meant losing the rights flowing from union citizenship laid down in Article 20 TFEU,[31] but also becoming stateless. The CJEU underlined the obligation of Member States to respect EU law and its values and principles while exercising their competence. The CJEU concluded that despite the international human rights standards and documents regarding statelessness and the deprivation of nationality, EU law does not foresee a prohibition of the deprivation of nationality if the person concerned will become stateless in circumstances where the person concerned acquired the nationality of the Member State by naturalization. However, if the loss of citizenship also means the loss of union citizenship, then the deprivation of nationality has to be proportionate under EU law. That is, in case the deprivation of nationality results in the loss of EU citizenship, (covering cases where statelessness occurs), such deprivation of nationality is prohibited under EU law. The importance of the *Rottmann* case lies in the fact that in spite of the Declaration No. 2 of the Treaty of Maastricht, it was the first case where the CJEU came up with a judgement where it stated that Member State competence to regulate the acquisition, loss and deprivation of nationality[32] and the conditions of naturalization falls under the scope of EU law, since these acts have an effect on rights stemming from union citizenship.

23.5 Need for Action – What Should Be Done?

The practice and the established and effective statelessness determination procedure in the Member States of the European Union are rather varied. A specific statelessness determination procedure aiming to protect the rights of the persons concerned has not yet been introduced in the majority of the Member States. The basic rights of those stateless persons, who are granted refugee status or subsidiary protection in the European Union are protected as long as they have an international protection status. If the international protection status of a stateless beneficiary of refugee status or subsidiary protection ceases to exist because of any of the aforementioned reasons and the person con-

31 "Citizens of the Union shall enjoy the rights and be subject to the duties provided for in the Treaties. They shall have, inter alia:
   a. the right to move and reside freely within the territory of the Member States;
   b. the right to vote and to stand as candidates in elections to the European Parliament and in municipal elections in their Member State of residence, under the same conditions as nationals of that State;
   c. the right to enjoy in the territory of a third country in which the Member State of which they are nationals is not represented, the protection of the diplomatic and consular authorities of any Member State on the same conditions as the nationals of that State;
   d. the right to petition the European Parliament, to apply to the European Ombudsman, and to address the institutions and advisory bodies of the Union in any of the Treaty languages and to obtain a reply in the same language." Consolidated versions of the Treaty on European Union and the Treaty on the Functioning of the European Union – Consolidated version of the Treaty on European Union, OJ 2012 C 326.

32 L. Van Waas, 'Fighting Statelessness and Discriminatory Nationality Law in Europe', *European Journal of Migration and Law*, Vol. 14, 2012, p. 255.

cerned has not yet acquired a nationality or should their stateless status be undetermined, the person concerned shall be in need of protection on the grounds that they are stateless. Accordingly, to ensure the enjoyment of basic human rights to stateless persons and to be able to identify stateless persons, all Member States should ratify the 1954 Convention and the 1961 Convention to overcome childhood statelessness. With identification comes determination as well, therefore, establishing a specific statelessness determination regime is crucial to fulfil obligations that bind state parties to the aforementioned conventions. Meanwhile, identification is also in the interest of the states, so that they have information on who resides in their territory, since mapping the stateless population and determining their stateless status decreases the risks to national security and public order.

Creating a common standard on how to establish the statelessness determination procedure in the Member States is crucial to ensure the same level of protection and the same rights to stateless persons while leaving the Member States' national laws on the rules of acquisition of nationality untouched.

23.6 Concluding Remarks

After introducing the basic legal terms regarding statelessness, we may conclude that statelessness is a form of violation of human rights, a legal anomaly. The legal invisibility of the persons concerned will be perpetuated without an appropriate solution for stabilizing stateless persons' legal statuses and protecting their rights. Therefore, to guarantee the human rights of stateless persons, identification plays an essential role in stabilizing their legal status and to establish an adequate, effective and dedicated determination procedure which is also in the interest of the Member States since introducing a statelessness determination procedure clarifies who resides in their territories. Accordingly, promoting accession to the 1954 Convention and the 1961 Convention among Member States is crucial. Despite the lack of CJEU case law on statelessness, the *Rottmann* case is a cornerstone, because it was the first time that the CJEU rendered a judgement stating that the competence of Member States on nationality issues falls under the scope of EU law since these acts affect rights flowing from union citizenship. Nevertheless, it should not be forgotten that the main element of solving the issue of statelessness the political will, something that is currently missing in the majority of the Member States.