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EUROPEAN COMMITTEE ON LEGAL CO-OPERATION

(CDCJ)

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| Questionnaireon stateless children’s access to nationality and child sensitive procedures for stateless children |

Document prepared by the Secretariat

Directorate General Human Rights and Rule of Law – DGI

Introduction

For the purposes of the preparation of a compendium of good practices in respect of legal aid and representation, access to information and to justice for children in procedures relating to the determination of nationality or statelessness, and a non-binding legal instrument regarding stateless children’s access to nationality, including guidance on child-sensitive procedures relating to the determination of nationality or statelessness, the CDCJ prepared this questionnaire to collect information from member states.

CDCJ members (or national experts) are invited to return their replies to the questionnaire (in a word format) at their earliest convenience and no later than 31 July 2024 to the following address: DGI-CDCJ@coe.int.

In your replies, you are invited to:

* refer to the relevant legislation and case law, and
* identify any promising practices and existing challenges.

For follow-up purposes or additional information needs, please also fill in the form below.

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1. Preventing statelessness among children
2. Do nationality laws give the right to and provide legal safeguards for children to acquire a nationality or to be given the nationality of the country where they are, if they would otherwise be stateless (including those born within the territory, those born to foreign nationals, foundlings and adopted children, as well as those who lost their nationality)? What are the legal safeguards and are they applied automatically or upon application?

In 2015, amendments to the Citizenship Act were adopted (came to force 01.01.2016), which stipulated that a minor under 15 years of age who was born in Estonia (or who immediately after birth takes up permanent residence in Estonia together with their parent or parents) is granted Estonian citizenship by naturalisation as of the moment of their birth, provided their parents or single parent whom no state recognises under valid laws as its citizen have or has lawfully resided in Estonia for at least five years by the moment of the child's birth. No application is needed.

If the parent or parents have the citizenship of another country, Estonia does not automatically grant citizenship to the child. In this case, the child gets Estonian citizenship if the parent applies for Estonian citizenship together with the child. In this case, application is needed.

A child who is found in Estonia and whose parents are unknown is declared by order of the court, at the application of the guardian of the child, to have acquired Estonian citizenship by birth.

At a written application of an adoptive parent who is an Estonian citizen, by decision of the governmental authority authorised by the Government of the Republic, a minor alien child is deemed to have acquired Estonian citizenship by birth, provided the adoptive parent was an Estonian citizen at the time of the birth of the child. Where a written application is submitted by an adoptive parent who was not an Estonian citizen at the time of the birth of the child, a minor alien child, by decision of the governmental authority authorised by the Government of the Republic, is deemed to have acquired Estonian citizenship as of the date on which Estonian citizenship was granted to the adoptive parent.

A minor under 15 years of age is granted Estonian citizenship together with their parent (parent can be citizen of the other country or be stateless, it does not matter here) who is applying for Estonian citizenship at the application of the minor’s parents or single parent, provided the minor resides permanently in Estonia on the basis of an Estonian residence permit or the right of residence. Application is needed.

Upon reaching the age of 15, a child (including a child with undetermined citizenship or stateless child) can apply for Estonian citizenship by themselves. Application is needed.

1. What guarantees of acquisition of nationality for children are applied in practice, including when the child’s statelessness is not formally established?

Please see previous answer.

Estonia does not have a separate statelessness determination procedure stipulated in legislation, but a person's citizenship (or lack thereof) is determined during other procedures (e.g. during the procedure for granting international protection or a residence permit; so we have so-called *ad hoc* procedure), because citizenship is one part of a person's identity. Possession or non-possession of citizenship is not an obstacle to obtaining international protection, residence permit or citizenship, if other conditions provided by law for obtaining them are met.

1. Is there a specific authority mandated by law to establish the nationality of a child born on the country's territory if it is in doubt? If so, please provide details about the applicable procedure (responsibilities, procedures, deadline for applying, etc.). Is the procedure initiated automatically or upon application?

Please see previous answer.

Determination of the citizenship of a child is carried out as an *ad hoc* procedure within other procedures. If a child is born to a foreigner living in Estonia, his or her citizenship or the lack thereof is generally determined in the process of obtaining a residence permit and residence permit card. these procedures are within the competence of the Police and Border Guard Board.

1. Is there a framework for cooperation with third countries in order to determine or confirm the child’s nationality as quickly as possible? What measures are in place to assist a child born in your country to determine whether they have acquired the nationality of a third country (for example the nationality of the country of which a parent is a national)?

No, there is no framework for cooperation. In general, the parent proves whether his child has the citizenship of some country or not. For this, the parents contact the foreign mission or competent authority of the country of their citizenship and for them are issued a certificate of the child's citizenship or lack thereof.

If necessary, the Police and Border Guard Board will contact the relevant country's foreign mission or competent authority with a request.

If the parents are stateless persons, the child is also automatically marked as a stateless person.

1. Child-friendly procedures for determining nationality or statelessness: legal aid, representation, access to information and justice for children
2. *Stateless children or children at risk of statelessness*
3. Is there a specific procedure for determining statelessness status? If so, is there a procedure adapted to children? Specify the additional procedural, material and evidentiary guarantees for children, including:

- time limits, non-discrimination with regard to residence status, child-friendly procedures (e.g. multidisciplinary approach and child-friendly environment) and sharing of the burden of proof especially where cooperation with third countries proves difficult or does not exist;

- the right to legal aid, the representation of children (including through a guardian), their access to information and to justice.

Estonia does not have a separate statelessness determination procedure stipulated in legislation, but a person's citizenship (or lack thereof) is determined during other procedures (e.g. during the procedure for granting international protection or a residence permit; so we have so-called ad hoc procedure), because citizenship is one part of a person's identity. Possession or non-possession of citizenship is not an obstacle to obtaining international protection, residence permit or citizenship, if other conditions provided by law for obtaining them are met. Also, the rights of individuals do not depend on whether they have the citizenship of some country, as § 9 of the Constitution of the Republic of Estonia stipulates that the rights, freedoms and duties of everyone and each person, as set out in the Constitution, are equal for Estonian citizens and for citizens of foreign states and stateless persons in Estonia.

Persons with undetermined citizenship and stateless children (including children under age of 15) are living in Estonia on the basis of a residence permit, so they are legally staying in the country. All the same rights, freedoms and obligations are granted for them which are granted to third-country nationals staying in Estonia on the basis of a residence permit. They have identity documents, the right to social benefits, right to register child´s birth, right to education, work, etc.

1. How is information on statelessness and its connections with access to nationality made accessible to stateless children (including on their rights, available services, access to specialised lawyers and the aim and possible outcome of the procedure) and to those assisting them (including on relevant legal frameworks, case law and signposting information)?

Information about applying for citizenship can be found on the website of the Police and Border Guard Board and on the website of the Integration Foundation. The state has also carried out several different information campaigns about applying for citizenship and valuing citizenship.

1. In practice, what are the strengths identified and the challenges encountered in the implementation of the procedures for determining statelessness status or nationality in the specific case of children, including migrant children?

N/A

1. *Particular case of unaccompanied children*
2. When an unaccompanied child does not have identity documents, what is the procedure to determine the child's age in case of doubt? What are the safeguards in respect of this procedure?

In all proceedings involving an unaccompanied minor, the rights and interests of the minor shall be taken into consideration above all. The provisions of the Family Law Act shall be applied to the representation of a minor alien. If the age of an alien is unknown and there is good reason to believe that the person is less than 18 years of age, the alien is deemed to be a minor. The Police and Border Guard Board shall decide on treating an alien as a minor or an adult. If the Police and Border Guard Board have reasoned doubts regarding the information provided by the person in respect of his or her age, medical examination for establishing his or her age may be conducted with the consent of the person. The Police and Border Guard Board shall inform the person of the conduct of medical examinations, of the manner of the conduct thereof and of the consequences that may follow if he/she refuses to undergo medical examination. The decision on determining the age can only be contested together with an administrative act or act relating to which the decision on determining the age was made. An unaccompanied minor shall be appointed a representative for performance of procedural acts as soon as it has been identified that the person is a minor. An unaccompanied minor may be represented by a natural or legal person who is reliable and has the knowledge and skills needed for representing an unaccompanied minor. In the proceedings for international a representative shall not be appointed if the minor shall probably attain the age of maturity before the Police and Border Guard Board makes a decision on the application. In such case the unaccompanied minor may independently perform the acts provided for by law.

1. Is there a procedure for determining statelessness status or nationality adapted to unaccompanied children? Is there an obligation to appoint a guardian for unaccompanied children for the filing of a procedure to acquire nationality, and to grant legal aid for that purpose? Specify the guarantees existing for children (see question 5), in particular, in terms of burden of proof.

Please see previous answer.

1. Birth registration
2. Is birth registration immediate and free of charge, in principle and in practice?

Registering a child's birth isn’t immediate in Estonia, the legal representative of the child shall submit a relevant application but it is convenient and fast- 80% of birth registration is done in the e-population register. Registration of a child's birth is free.

1. What are the requirements for registration? Is birth registration dependent on the parents’ documentation?

The following documents are required to register a birth:

• birth registration application;

• valid identity documents of the petitioner(s);

• health service provider's certificate of the child's birth.

• other documentary evidence, if an exceptional situation requires it.

1. Does the law allow for flexibility in evidentiary and documentation requirements (e.g. by accepting photocopies and oral testimonies) in birth registration processes? What happens if the parent(s) do not have any documentation of their own civil status?

If the parent does not have the document of marital status, in certain cases it is possible to make exceptions so that the birth can be registered. Generally, however, the documents have specific requirements that need to be submitted when registering a birth.

1. Is late registration (after the statutory deadline) of births possible? Are there additional procedures, fees or fines?

In order to register a birth, the legal representative of the child shall submit a relevant application within one month from the date of birth of the child. With good reason, the term for the registration of birth may be extended to up to two months. If the deadline has passed, it can be extended for a valid reason. The aim is that the birth of the child can be registered. It is possible to impose a penalty, but it is applied in extreme cases. Registration of a birth that has exceeded the term is free of charge.

1. Is there a procedure for registering the birth of a child in the absence of proof of the exact place, time or date of birth (in the case of births on migration routes, for example)? If so, does this procedure depend on the residence status of the child or the parents? If not, does the State provide documents for these children?

Officials base the registration of a child's birth on the legislation and registration instructions. In most cases, if a child is born in Estonia, there is information in the medical birth certificate, which is the basis for birth registration. If the child is born at home, the state also has precise regulations regarding home births. If it is a found unknown child, the expertise institution determines the presumed date of birth of the child, and there is also a regulation regarding a found child.

If there is no evidence the circumstances of the child's birth, it is possible to determine descent from the mother in court.

1. Are the children of refugees or migrants who do not meet the conditions of proof or residence registered in the ordinary civil register (or in another form of registration)?

The birth of a child can be registered in the population register regardless of the person's place of residence and his/her status.

1. Is the information of both parents recorded in the birth certificate in all cases (including when the parents are not married or in the case of LGBTIQ\* families)?

The child's data will appear on the child's birth certificate depending on how the child's birth is registered. If the child's birth is registered as a single parent, the other parent's data is missing.

In Estonia when registering a birth, the the following is entered in the population register:

* as a mother - a woman who has given birth to a child;
* as a father - a man who:
* is married to the child's mother
* or has adopted paternity
* or whose paternity has been established by a court
* or who has consented to the artificial insemination of a woman with the sperm cells of an anonymous donor
* or non-partner donor or who has consented to artificial insemination as a partner donor.
* as a second parent - the female spouse of the mother, who has given consent to the artificial insemination of her female husband.
1. Does birth registration also include a mention of the child’s nationality? If so, how is this nationality determined (based on the mother’s or father’s nationality, the nationality of the state where the registration takes place, on the parents’ declaration, etc.)?

Nationality and citizenship have different meanings in Estonia. If at least one parent has Estonian citizenship, the child has automatically Estonian citizenship. Parents with citizenship of a different European Union member state can declare the child's citizenship on the birth registration application. If the parents have the same citizenship, no application is required. The nationality of the child is not mentioned in the birth registration application.

1. Is there a possibility for civil servants not to share information on children without residence status with the immigration authorities?

NO, there is no such possibility.

1. Awareness-raising and training of relevant actors
2. What kind of training and awareness raising is provided for migration officials, civil servants responsible for registering asylum seekers, refugees and migrants, civil registrars, guardians, and judges on nationality and statelessness? Are you aware of such training and awareness raising provided to non-state actors or private actors?

To raise people's awareness, the state has carried out several different information campaigns about applying for citizenship and valuing citizenship.

1. Do your authorities raise awareness on the causes and consequences of statelessness and provide information on common profiles of stateless persons in Europe among officials called upon to deal with statelessness? If so, how?

Officials of the Ministry of the Interior have participated in conferences and workshops on statelessness organized by UNHCR.