

Proposal to address

statelessness determination procedures

in the future EU migration policy agenda

by [REDACTED]

About the author

[REDACTED] holds two LLM degrees - in European Law from the University of Leiden, and in Legal Research from the University of Utrecht. She is currently working on her doctoral thesis ‘Statelessness Determination procedures in Europe’ at the University of Amsterdam. [REDACTED] also regularly reaches out to non-academic audience, by presenting the results of her research for policy makers, and organizing workshops for civil servants, lawyers and NGOs. [REDACTED] is an associate member of the European Network on Statelessness.

The motivation for this contribution is based on the author’s research finding that issues related to statelessness are tightly intertwined within the goals and responsibilities of the European Union, and yet very little attention is being devoted to statelessness at the EU level.

Introduction

Statelessness, which is defined as the lack of a nationality,¹ is not an obvious candidate for the EU agenda, considering that Member States still retain nearly exclusive competence in the field of nationality law. However, a closer look at both the nationality-related aspects of statelessness as well as its very prominent migration aspects reveals that the EU does have competence to address statelessness in a number of ways. The author argues that the development of EU-wide standards on statelessness determination procedures would enhance the current national and international efforts in addressing the contemporary challenges of this problem.

I. Does the EU have competence to address statelessness?

A. Statelessness as a nationality issue

Technically, statelessness is always caused by the loss of and/or the failure to acquire a nationality. An important part of addressing the problem of statelessness is its prevention and reduction through regulation of the rules on acquisition and loss of nationality. Within the EU, Member States still enjoy nearly exclusive competence on granting and withdrawing nationality. However, an established line of case law of CJEU requires the Member States to have due regard to EU law when exercising their competence in the field of nationality,² and the *Rottmann*

¹ See for a definition of a stateless person Art. 1 of the 1954 UN Conv. on the Status of Stateless Persons.

² See CJEU C-369/90, Micheletti, 7 July 1992, and other judgments that followed on nationality matters within Member States, such as C-192/99, Kaur, 20 February 2001; C-200/02, Zhu and Chen, 19 October 2004 and so on.

judgment³ has made it clear that especially when statelessness is at stake, the CJEU is prepared to hold Member States' nationality practices to high international standards.

B. Statelessness as a migration issue

While prevention and reduction of statelessness is usually addressed through nationality laws, the protection of stateless persons takes place predominantly within the sphere of migration law. Citizens have an undisputed right of residence in their state, and the non-citizens, on the other hand, need a legal ground for a permission to reside. Stateless persons belong to the category of non-citizens, and therefore the regulation of their residence status and the rights attached to it often falls within the sphere of migration law, also if they have never crossed any state borders.

Statelessness is not always a ground for a residence status.⁴ However, if no solutions for legal residence are offered to a stateless person, states will often attempt to organize a return to a safe previous country of residence, and the regulation of the latter is also at the core of migration policies. Thus, protection of stateless persons covers potentially such policy areas as subsidiary/temporary protection and minimum standards for status determination, as well as the regulation of return to a previous country of residence when no legal residence is offered. The EU has undisputed competence to address such matters based on Chapter II TFEU, and has already extensively legislated on similar issues in the context of asylum law.⁵

II. Should statelessness determination procedures be addressed at the EU level?

Functioning statelessness determination procedures are essential for ensuring that the rights designated for stateless persons are benefited from by the target group.⁶ This is equally true for the rights within the nationality law, and the rights enshrined in the migration legislation. There are a number of reasons for addressing statelessness determination procedures at the EU level.

First of all, most EU Member States are parties to the 1954 Convention on the Status of Stateless Persons,⁷ and are therefore bound by the definition of a stateless person contained therein. Common standards with regard to statelessness determination procedures in the EU would enhance the coherence and uniformity of the implementation of this definition. Secondly, parties to the 1954 Convention are obliged to provide a certain level of protection to stateless persons within their jurisdictions. If statelessness is a protection status, the access to this status would benefit from EU harmonization in order to prevent stateless persons from travelling among Member States in search of a better chance at obtaining the protection. Thirdly, the EU involvement would be timely at this stage, since most Member States do not have well-functioning statelessness determination procedures yet, and some have introduced them recently,

³ Judgment of the CJEU C-135/08, Rottmann, 2 March 2010.

⁴ This is not required by the two UN Conventions on Statelessness of 1954 and 1961.

⁵ See Ch. 2 of the TFEU, and Directives 2013/32/EU of 26 June 2013 on common procedures for granting and withdrawing international protection, 2008/115/EC of 16 December 2008 on common standards and for returning illegally staying third-country nationals, 2011/95/EU of 13 December 2011 on standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection.

⁶ This has been emphasized in the recent UNHCR Guidelines and studies on statelessness, available here: <www.refworld.org/statelessness.html>.

⁷ See UN Treaty Office, <<http://treaties.un.org>>, accessed on 6 Nov. 2013. See also the EU Pledge of 19 September 2012 that Member States which have not done so yet will accede to the 1954 Convention, text available here: <www.unrol.org/files/Pledges%20by%20the%20European%20Union.pdf>.

or have committed to do so in the near future.⁸ It is easier to adjust these procedures to a common EU standard when they are in the making, and have not solidified within national legal systems yet. Last but not least, the EU is already using the term of a stateless person in its legislation on asylum,⁹ and common standards in the determination of this status would contribute to more coherence in the implementation of these existing EU measures.

III. Conclusion

Statelessness is prevalent in the EU, as evidenced by the recent UNHCR studies and academic publications.¹⁰ In the context of raising international awareness of this important issue, the EU has made a pledge that all its Member States who have not yet done so will ratify the 1954 Convention on Status of Stateless Persons and consider the ratification of the 1961 Convention on Reduction of Statelessness.¹¹ This contribution argues that the EU can and should go a step further than these pledges, and play a more prominent role in the emerging statelessness determination procedures of its Member States.

⁸ In the UK the new statelessness determination procedure took effect on the 6 of April 2013, see: <www.ukba.homeoffice.gov.uk/sitecontent/documents/policyandlaw/statementsofchanges/2013/hc1039.pdf?view=Binary>, Belgium pledged to introduce the procedure in the near future, and Hungary pledged to improve its existing procedure, see UN Ministerial Intergovernmental Event, Pledges 2011, available here: <www.unhcr.org/commemorations/Pledges2011-preview-compilation-analysis.pdf>.

⁹ See, for example, Directive 2013/32/EU of 26 June 2013 on common procedures for granting and withdrawing international protection, Art. 36.

¹⁰ See various UNHCR research projects on statelessness in Europe, in particular 'Mapping Statelessness' projects on UK, the Netherlands and Belgium, available here: <www.refworld.org/statelessness.html>. See also C. Sawyer and B. K. Blitz 'Statelessness in the European Union', Cambridge University Press, March 2011.

¹¹ See note 7 above.