Reduction of cases of statelessness

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1. Introductory remarks

In this hearing several causes of statelessness have to be discussed. The most important cause of statelessness is – without any doubt – state succession. Because of the fact that I am absolutely sure, that other speakers will deal with that source of cases of statelessness I will concentrate on a number of other issues. First of all, I will deal with the question under which conditions we have to conclude, that a person is stateless. Secondly, attention will be paid to statelessness caused by limitations of the acquisition of a nationality by descent (iure sanguinis). Last, but certainly not least, statelessness caused by deprivation of nationality because of fraud committed during the naturalisation (or option) procedure will be discussed.

2. Who is stateless?

Art. 1 of the Convention on the Status of Stateless Persons (1954) defines a stateless person as a person “who is not considered as a national by any State under the operation of its law”. This definition of a “de iure” stateless person is frequently followed in domestic nationality laws (so e.g. Art. 1 (1) (f) Netherlands Nationality Act 1985 (in the version valid since 2003)). Nevertheless, the definition of the 1954 Convention causes difficulties in practice.

One has to realise, that statelessness avoiding or reducing provisions in international instruments or in domestic nationality laws only will be activated, if the preliminary question that a certain person otherwise would be (or stay) stateless is answered in the affirmative.

In order to avoid the activation of statelessness avoiding or reducing provisions States sometimes deliberately do not classify a person as “stateless”, but label the person involved differently, e.g. as a “permanent resident non-citizen”.

1 More frequently, it happens that authorities do not classify a person as “stateless”, but as a person who’s nationality is “undetermined” or “under investigation”. It also happens, that a person is classified as a national of another State, although this is not confirmed or even denied by the foreign State involved. These classifications may be caused

   a) by lack of reliable information on the nationality legislation of the States with which the person involved has some ties or

   b) by a perhaps surprising interpretation of nationality provisions by the foreign State(s) involved.

However, the consequence is, that the person involved is deprived of the activation of statelessness avoiding or reducing provisions.

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1 E.g. the Latvian legislation distinguishes between “Latvian citizens” (Latvijas Republikas pilsoņi), “permanently resident non-citizens” (nepilsoņi), “asylum-seekers and refugees”, “stateless persons” (bezvalstnieki) and “aliens” in the broad sense of the term (ārzemnieki), including foreign nationals (ārvalstnieki) and stateless persons (bezvalstnieki).
First of all, we have to establish that in case of different interpretation of foreign nationality provisions by the authorities of a the foreign State involved and by the authorities of another State - due to the principle of autonomy of States in nationality matters - always the interpretation of the foreign State involved prevails. If the foreign State refuses to recognise the person involved as a national, other States are absolutely not entitled to conclude that the person in question is nevertheless a national of this foreign State. If the person involved does not possess any other nationality, this person is stateless and must enjoy the advantages of statelessness avoiding or reducing provisions.

Slightly different are those cases, where there is a lack of up to date information on the content of foreign nationality provisions. However, I would like to submit that if no information can be acquired within a reasonable time the person involved should be deemed to be stateless. It would be desirable to develop an international legal instrument in which this principle is codified, preferably with a concrete indication of which time is “reasonable”.

A completely different problem related to the definition of statelessness is caused by the fact, that according to the definition of the 1954 Convention a person can also be stateless although he could acquire the nationality of a foreign State by simple registration. Several States provide that the child of a national born abroad does not acquire the nationality of the parent iure sanguinis by operation of the law, but only after the registration of the child in e.g. the registers of the competent consulate of the State involved. If the parent does not register the child, the nationality involved is not acquired. The consequence is that the child will be stateless if he does not acquire the nationality of the other parent or of the country of birth. If the country of birth provides for the acquisition of nationality iure soli for children who otherwise would be stateless, the child will acquire the nationality of this country. If the country of birth provides for an option right for the stateless child involved after a certain period of residence, the parent can use that right for the child.

It is very questionable whether the statelessness avoiding or reducing provision are created for those type of cases of – more or less self caused – cases of statelessness. It is therefore not amazing, that recent modifications of domestic nationality legislation in some States try to avoid the activation of statelessness avoiding provisions in those cases.

An example is Art. 19-1 of the French Civil Code as modified in 2003

“Est français :
1° […] ;
2° L’enfant né en France de parents étrangers pour lequel les lois étrangères de nationalité ne

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2 Compare Art. 10 European Convention on Nationality 1997: “Each State Party shall ensure that applications relating to the acquisition, retention, loss, recovery or certification of its nationality be processed within a reasonable time.”

3 E.g. Spain: see Aurelia Álvarez Rodríguez y Observatorio Permanente de la Inmigración, Nacionalidad de los hijos de extranjeros nacidos en España, Madrid 2006.


5 The same applies for cases where a foreign nationality legislation allows to renounce the nationality involved, even if statelessness is the consequence.

permettent en aucune façon qu'il se voie transmettre la nationalité de l'un ou l'autre de ses parents.”

A similar development can be observed in the recent Finnish and Belgian nationality legislation. However, it is remarkable that the 1961 Convention on the reduction of statelessness nor the 1954 Convention on the status of stateless persons allow for such a “amendment” of the definition of statelessness. It should be stressed, that the three States just mentioned (France, Finland and Belgium) did not ratify the 1961 Convention. They were therefore free to modify their concept of statelessness. It would be desirable to discuss this difficulty in an international setting in view of amending the international definition of statelessness.

3. Exceptions on the transmission of the nationality iure sanguinis

In the previous paragraph it was already mentioned, that some States do not provide for the transmission of their nationality by operation of the law in case of birth abroad of a child of a national. Of course, it would be desirable if the States involved would provide that their nationality is acquired by operation of law, if the child otherwise would be stateless. The international legal community should stimulate the conclusion of international instruments which oblige States to provide this.

The same applies for States which still discriminate women regarding the possibility to transmit their nationality to children born within wedlock. States should – at least – provide that a child acquires the nationality of the mother, if he otherwise would be stateless.

Moreover, many States discriminate men regarding the possibility to transmit their nationality to children born out of wedlock. This limitation should also be subject to the proviso, that the nationality of the father is nevertheless acquired ex lege if the child otherwise would be stateless.

The same applies for those States which provide that the nationality of parents is only acquired by children born abroad, if both parents possess the nationality of the State involved.

4. Statelessness caused by deprivation of nationality because of fraud

Increasingly, States provide for the possibility for loss of nationality if the acquisition of the nationality occurred by means of fraudulent conduct, false information or concealment of a relevant fact attributable to the applicant. The 1961 Convention on the reduction of statelessness and the 1997 European Convention on Nationality allow in these cases a deprivation of nationality even where this would cause statelessness. It is desirable to develop international instruments which oblige authorities to take into account all relevant circumstances of the case.

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7 Is French:

1° A child born in France of stateless parents;
2° A child born in France of alien parents and to whom the transmission of the nationality of either parent is not by any means allowed by foreign Nationality Acts,(Act no 2003-1119 of 26 Nov. 2003).
9 Compare the CIEC Convention tendant à reduire le nombre des cas d’apatridie, Berne 13-09-1973
10 See art. 7 (1) (b) European Convention on Nationality.
before a decision on the loss of nationality because of fraud is made. Moreover, separate decision should be made regarding all individual persons involved: children should not follow their parents automatically in the loss of nationality based on fraud.11 Furthermore, the loss of nationality based on fraud should – in principle – be subject to limitation: after a certain period of time this ground for loss should not be possible anymore.12 The Explanatory report on Art. 7 of the European Convention on Nationality mentions in Nr. 63:

“In cases where the acquisition of nationality has been the result of the improper conduct specified in sub-paragraph b, States are free either to revoke the nationality (loss) or to consider that the person never acquired their nationality (void ab initio).”

This “explanation” is obviously inspired by the practice of the nationality authorities in some States, which were involved in the drafting of the Convention involved.13 However, the construction “void ab initio” should be rejected for at least two different reasons. In the first place, this construction does not allow for separate decisions regarding the different persons involved (for example children). Secondly, this construction is not subject to limitations in time.14

Deprivation of nationality because of fraud with as consequence statelessness is also possible, if a national of a Member State of the European Union acquired by fraud behaviour the nationality of another Member State and lost as a consequence of the acquisition of a new nationality his old nationality. If the new nationality is lost by deprivation because of the fraud and the old nationality is not automatically reacquired, the person involved is stateless and therefore does not possess European citizenship anymore. It is dubious, whether this consequence is acceptable.

12 The German Constitutional Court (Bundesverfassungsgericht) 24 May 2006 obviously restricts the deprivation of nationality because of fraud with the condition, that it has to be “zeitnah” (close in time).