

The Black Box of Nationality

THE NATURALISATION
OF REFUGEES AND
STATELESS PERSONS
IN HUNGARY

Written by
Gábor Gyulai

2016



Funded and supported by
the United Nations High Commissioner for Refugees (UNHCR)

Table of Contents

Executive summary	3
1. Introduction.....	5
2. International obligations	7
2.1 From <i>domaine réservé</i> to human rights.....	7
2.2 The international obligations of Hungary concerning the naturalisation of refugees and stateless persons	8
2.3 Emerging European legal standards applicable to naturalisation procedures?.....	9
3. Nationality and the naturalisation procedure in Hungary.....	15
3.1 General framework and material conditions	15
3.2 An opaque procedure with insufficient safeguards.....	18
4. Decision-making practices	21
4.1 Statistical trends.....	21
4.2 The assessment of material conditions in individual cases	23
5. Conclusions and recommendations	25

© UNHCR, 2015. All rights reserved.

This report and sections thereof may be distributed and reproduced without formal permission for the purposes of non-commercial research, private study and news reporting provided that the material is appropriately attributed to the author and the copyright holder.



Published by: **Hungarian Helsinki Committee**
Bajcsy-Zsilinszky út 36–38., H-1054 Budapest, Hungary
www.helsinki.hu



European
Network on
Statelessness

The Hungarian Helsinki Committee was a co-founder of the **European Network on Statelessness (ENS)** and is currently a member of its Advisory Committee.
www.statelessness.eu



This publication was made possible by the generous support of the **United Nations High Commissioner for Refugees (UNHCR)**.

The views expressed in this publication are those of the author and the Hungarian Helsinki Committee, and do not necessarily reflect the views of the UNHCR, the ENS or any other entity.

Written by: Gábor Gyulai (Refugee Programme Director at the Hungarian Helsinki Committee, President of the European Network on Statelessness and international trainer on asylum and statelessness)

Design and layout: Judit Kovács / Createch Ltd.

Cover illustration: András Baranyai

Proof-reading: Janice Ayarzagoitia Riesenfeld

Thanks to: Albert Pucsok, Attila Szabó, Tamás Molnár, Judit Tóth, Gerard-René de Groot, Viktor Kazai, Nóra Novoszádek, Balázs Tóth, Ágnes Ambrus, Katinka Huszár, Gruša Matevžič, Márta Pardavi and András Kádár for their support and for sharing their expertise.

Executive summary

In the 21st century nationality law is **not anymore the exclusive *domaine réservé* of states**, as international legal obligations increasingly limit state sovereignty in this area. Stateless persons are not recognised as nationals by any state and lack the protective tie of nationality that is often key to the enjoyment of human rights. Forced migrants, such as refugees, usually do not have an effective, functioning nationality, and cannot benefit from the protection of their state of nationality, even when they are not stateless. Recognising the strong need of both groups for an effective nationality in order to find a durable protection solution, the 1951 Refugee Convention and the 1954 Statelessness Convention oblige states parties to **facilitate the naturalisation of refugees and stateless persons**.

In addition to these specific norms, the **European Convention on Human Rights and EU law** (as interpreted by the European Court of Human Rights and the EU Court of Justice, respectively) can be relied on for relevant **procedural safeguards**. These norms emanate, in particular, from the right to private life (and the link between this right and social identity), the right to an effective remedy, the right to be heard and the strong connection between EU citizenship and the nationality of individual Member States. The latter act “in the scope of Union law” when deciding upon naturalisation claims, and thus on access to EU citizenship.

As a pioneering initiative, this study aims to test, through a national example, to what extent these obligations are respected in practice. In lack of a researchable body of reasoned administrative or judicial decisions, the findings of the study are based on the analysis of the **law, statistics** and information about **individual cases** provided by experts. The main **findings** of the study include:

- Both refugees and stateless persons are integrated into the **most preferential category** with regard to the mandatory minimum **domiciled residence requirement** before naturalisation (3 years). However, persons with a stateless status are not allowed to establish a *domicile* (only several years later, when and if they acquire a permanent residence permit); therefore, this favourable condition has a limited impact in their case.
- In all other aspects, refugees and stateless persons are required to fulfil **similar conditions than any other applicant** for standard naturalisation.
- Hungary does not effectively fulfil its international obligation to reduce as far as possible the charges and costs associated with the naturalisation of refugees and stateless persons, who are required to **pay high fees** for passing a mandatory “basic constitutional studies” examination and for presenting an official certified translation of various documents.
- Between 2011 and 2015, over 700 000 persons – the vast majority of whom do not live in Hungary – acquired Hungarian nationality in an extremely accelerated, simplified and facilitated procedure, based on their Hungarian ancestry (“simplified naturalisation”). In the same period, 3 122 migrants living in Hungary could naturalise in a standard procedure, among whom there were only **46 refugees and 38 stateless persons**. The rate of positive decisions was only the **half of the average rate (57%) in case of stateless persons (33%), and only the quarter of the average in case of refugees (14%)**. These statistics – read in conjunction with the legislative shortcomings and the experiences of individual cases – clearly indicate that the naturalisation of these two groups is **in practice not facilitated, but actually rendered more difficult**.
- The Hungarian procedural framework for naturalisation **lacks the most fundamental transparency and fair procedure safeguards**; decisions are not reasoned and no appeal is allowed at all against rejection. This uniquely **opaque decision-making** raises serious concerns with regard to the compatibility of Hungarian law with the standards emanating from EU law and the European Convention on Human Rights (as interpreted by the relevant international courts), and even the Fundamental Law (Constitution) of Hungary.

- **No transparent and justified thresholds** exist when assessing the **livelihood and accommodation** conditions for naturalisation, and it appears that **unreasonably high requirements** are being applied on certain occasions, which may have a particularly negative impact on refugees and stateless persons.

Based on the analysis, it can be concluded that **Hungary does not satisfactorily fulfil in practice its international obligations** concerning the facilitated naturalisation of refugees and stateless persons. The study presents a set of concrete recommendations in order to remedy this situation.

This publication wishes to **provide inspiration and a methodological tool** to practitioners and academics in other areas of the world to conduct similar research initiatives, thus contributing to global awareness-raising about this important, yet fairly under-researched topic.

1. Introduction

Nationality is a specific legal bond between a person and a state, which embodies a set of mutual rights and obligations, and which usually – but not indispensably – represents a variety of strong social, political, economic and cultural ties. Nationality has a complex meaning, to which a number of different approaches exist. Consequently, there is **no universally accepted, clear definition** of nationality, and approaches diverge all across the globe (as a result of cultural, historical, legal, etc. differences). The International Court of Justice in its 1955 *Nottebohm* judgment provided arguably the most frequently quoted description of nationality:

According to the practice of States, to arbitral and judicial decisions and to the opinions of writers, nationality is a legal bond having as its basis a social fact of attachment, a genuine connection of existence, interests and sentiments, together with the existence of reciprocal rights and duties. It may be said to constitute the juridical expression of the fact that the individual upon whom it is conferred, either directly by the law or as the result of an act of the authorities, is in fact more closely connected with the population of the State conferring nationality than with that of any other State. Conferred by a State, it only entitles that State to exercise protection vis-à-vis another State, if it constitutes a translation into juridical terms of the individual's connection with the State which has made him its national.¹

Naturalisation is the non-automatic, discretionary manner of acquiring a nationality. This means in practice that the applicant must usually submit a claim, and the administrative authority or court in charge of deciding upon this claim will have a wide range of discretion when delivering its decision. For naturalisation, states usually set various criteria, such as:

- long-term residence in the country;
- a clear criminal record or a proof of being “of good moral conduct”;
- material/financial conditions;
- eventually the renunciation of one’s previous nationality (in case the state does not accept multiple nationality);
- passing language or other examinations in proof of the applicant’s integration into society; etc.

States often set **more favourable criteria** (such as shorter waiting time or exemption from certain conditions) for specific groups. These groups are often considered as privileged (due to their specific – linguistic, ethnic, religious, historical, educational or family – link to the country’s population), while others are treated sympathetically due to their specific vulnerability.²

For most migrants, naturalisation is a **crucial step in the process of integration** into the society of their new home. This is when – at least in *sensu stricto* legal terms – they cease to be a migrant and obtain a legal status which is fully equal with that of nationals. At the same time, there are groups for whom naturalisation represents even more than this:

- **Forced migrants, such as refugees, usually do not have an effective, functioning nationality**, even if they are not stateless. Per definition, they are not able to enjoy the protection and assistance of the state of their nationality, or they even have to fear persecution by state authorities. They have been forced to leave the territory of their country, and they are protected from being returned there. Usually, they are unable to establish any contact with the officials of their state of nationality, not even outside the country’s territory. These circumstances often reduce refugees’ and other

¹ *Liechtenstein v. Guatemala*, International Court of Justice, 6 April 1955 – emphasis added

² Cf. the specific rules for the naturalisation of refugees and stateless persons presented in Chapter 2.2

forced migrants' nationality to a formal status incarnated in a passport or identity document, but not in any "genuine connection of existence, interests and sentiments" or "reciprocal rights and duties"³ as it would be normally expected.

- **Stateless persons are not recognised as nationals by any state** under the operation of its law.⁴ While most human rights as defined by international legal instruments apply to all human beings under the jurisdiction of a state (not only to its nationals), in practice the enjoyment of human rights is largely dependent on one's nationality status, thus making stateless persons especially vulnerable to human rights violations.

These circumstances motivated the international community to adopt norms which call states to **facilitate the naturalisation of these two groups**, and as such, their pathway to a meaningful, effective nationality. There is **hardly any research** on the practical application of these norms in the states parties to the relevant conventions, due to a number of factors, in particular:

- The general lack of detailed and properly disaggregated statistical data;
- The lack of awareness about the relevant international obligations and the sensitivity of anything related to nationality;
- The numerous methodological difficulties (difficult access to or non-existence of researchable case files or jurisprudence, no contact between researchers and the persons concerned, etc.).

Therefore, on one hand, this brief study aims to uncover **yet unavailable information on the extent to which Hungary fulfils its international obligations** with regard to the naturalisation of refugees and stateless persons. But also, it wishes to **provide inspiration and a methodological tool** to practitioners and academics in other states to conduct similar research initiatives, contributing to a better awareness about this issue globally. To this end the study will look into:

- Exactly what **international obligations** are binding on Hungary with regard to the access of refugees and stateless persons to Hungarian nationality;
- To what extent Hungarian **law** is in line with these obligations; and
- To what extent the fulfilment or negligence of these obligations can be traced in **administrative practices**.

In lack of researchable case files and jurisprudence,⁵ the author could only rely on:

- The analysis of **legislation**;
- Official **statistics** received from relevant authorities;
- On his and his organisation's several years of **direct experience** with asylum, migration, nationality and statelessness-related matters;⁶ as well as
- The valuable information provided by **external experts** directly following a number of naturalisation cases for several years, namely attorney-at-law Albert Pucsok⁷ and the Menedék Association for Migrants,⁸ in the framework of various research interviews.

Given the overwhelming similarities between the situation of refugees and **beneficiaries of subsidiary protection**, this latter group has also been added to the analysis, whenever relevant.

This practice-oriented study reflects the situation as of **December 2015** and concludes with a set of concrete **recommendations** for Hungary.

3 Cf. the definition of nationality by the International Court of Justice in the *Nottebohm* case, see footnote 1

4 Cf. 1954 Convention relating to the Status of Stateless Persons, Article 1 (1)

5 See reasons in Chapter 3.2

6 The author is the director of the Refugee Programme at the **Hungarian Helsinki Committee** (a leading human rights NGO in Hungary and an implementing partner of the UNHCR since 1998) and president of the **European Network on Statelessness (ENS)**

7 A Budapest-based attorney at the Péteri Law Firm, with a vast experience in counselling and representing migrants, asylum-seekers and refugees, including dozens of applicants for naturalisation in recent years

8 A non-governmental organisation providing social and integration assistance to migrants and refugees in Hungary, including several dozens of applicants for naturalisation in recent years (www.menedek.hu)

2. International obligations

2.1 From *domaine réservé* to human rights

Since the birth of modern states in the 17th–18th century, nationality has been perceived a core element of state sovereignty. Traditionally, states have the right to decide whom they consider their nationals and whom they don't. Consequently, nationality law has long been seen as the *domaine réservé* of domestic law, and even nowadays states have the primary role in determining their regulation related to nationality.

In the 21st century, nationality law is **not the exclusive *domaine réservé* of domestic law any more**. While states do retain a very significant level of sovereignty on nationality matters, since the 1930s international standards and the emerging international human rights regime have an increasing impact. Article 1 of the Convention on Certain Questions relating to the Conflict of Nationality Laws already emphasised back in 1930 that each state's right to determine under its law who its nationals are is to be recognised by other states

[...] in so far as it is consistent with international conventions, international custom, and the principles of law generally recognised with regard to nationality.

The Inter-American Court of Human Rights formulated probably the clearest confirmation of this changing approach to the regulation of nationality in 1984, stating that

[...] despite the fact that it is traditionally accepted that the conferral and regulation of nationality are matters for each state to decide, contemporary developments indicate that international law does impose certain limits on the broad powers enjoyed by the states in that area, and that the manners in which states regulate matters bearing on nationality cannot today be deemed within their sole jurisdiction; those powers of the state are also circumscribed by their obligations to ensure the full protection of human rights. [...] The classic doctrinal position, which viewed nationality as an attribute granted by the state to its subjects, has gradually evolved to the point that nationality is today perceived as involving the jurisdiction of the state as well as human rights issues [...].⁹

International law currently sets forth obligations, and thus limits states' room of manoeuvre to adopt nationality-related rules, especially in relation with the following matters:¹⁰

- the prohibition of discrimination, for example based on race, sex or disability;¹¹
- the prevention of statelessness;¹²
- rights of the child (especially every child's right to acquire a nationality);¹³

9 Inter-American Court of Human Rights (IACrtHR), *Advisory Opinion on Proposed Amendments to the Naturalization Provision of the Constitution of Costa Rica*, OC-4/84, 19 January 1984, Paras 32 and 33

10 For a more detailed analysis see Mónika Ganczer, *The Right to a Nationality as a Human Right?*, in Marcel Szabó, Petra Lea Láncoš, Réka Varga and Tamás Molnár (Eds.), *Hungarian Yearbook of International Law and European Law 2014*, The Hague, 2015, pp. 15–33

11 1966 International Convention on the Elimination of All Forms of Racial Discrimination, Article 5 (d) (iii); 1979 Convention on the Elimination of All Forms of Discrimination against Women, Article 29 (1); 2006 Convention on the Rights of Persons with Disabilities, Article 18 (1) (a); 1997 European Convention on Nationality, Article 5

12 1961 Convention on the Reduction of Statelessness; 1997 European Convention on Nationality, Articles 6 (1) (b), 6 (2) and 7 (3); 2006 Council of Europe Convention on the Avoidance of Statelessness in relation to State Succession

13 1966 International Covenant on Civil and Political Rights, Article 24; 1989 Convention on the Rights of the Child, Article 7 (1); 1969 American Convention on Human Rights, Article 20 (1)–(2)

- fair procedure safeguards;¹⁴
- prohibition of the arbitrary deprivation of nationality;¹⁵
- multiple nationality;¹⁶
- facilitated naturalisation of certain specific groups.¹⁷

2.2 The international obligations of Hungary concerning the naturalisation of refugees and stateless persons

The gradual transformation process presented in the previous sub-chapter has had an impact on the legal framework of naturalisation in Hungary, too, giving rise to various international legal requirements embedded in domestic legislation. The concrete obligations emanating from international legal instruments and directly relevant to the scope of this research can be summarised as follows:

- As a general obligation, Hungary shall as far as possible **facilitate the naturalisation of refugees and stateless persons** residing on its territory;¹⁸
- In particular, Hungary shall make every effort to **expedite** the naturalisation proceedings of refugees and stateless persons;¹⁹ and in any case, it shall not require a period of residence exceeding 10 years before lodging an application;²⁰
- As well as Hungary shall make every effort to **reduce as far as possible the charges and costs** associated with the naturalisation of refugees and stateless persons.²¹

There are **no specific obligations with regard to beneficiaries of subsidiary protection**, given that all the relevant international instruments pre-date the creation of this harmonised protection status under EU law. Nevertheless, Hungary has the basic obligation to allow beneficiaries of subsidiary protection (as lawful and habitual residents) to naturalise, and in this context, it shall not require a period of residence exceeding 10 years before lodging an application.²²

The European Convention on Nationality sets forth, in addition, three important **procedural standards**, namely:

- The obligation to process naturalisation claims within a reasonable time;²³
- The obligation to motivate decisions on naturalisation claims in writing;²⁴ and
- The obligation to subject decisions on naturalisation to administrative or judicial review.²⁵

14 1997 European Convention on Nationality, Articles 10–13

15 1969 American Convention on Human Rights, Article 20 (3); 1997 European Convention on Nationality, Article 4 (c); Arab Charter on Human Rights, Article 29 (1)

16 1997 European Convention on Nationality, Articles 14–17; Arab Charter on Human Rights, Article 29 (3)

17 1951 Convention relating to the Status of Refugees, Article 34; 1954 Convention relating to the Status of Stateless Persons, Article 32; 1997 European Convention on Nationality, Article 6 (4)

18 1951 Convention relating to the Status of Refugees (promulgated by Law-Decree no. 15 of 1989), Article 34; 1954 Convention relating to the Status of Stateless Persons (promulgated by Act II of 2002), Article 32; 1997 European Convention on Nationality (promulgated by Act III of 2002), Article 6 (4)

19 1951 Convention relating to the Status of Refugees, Article 34; 1954 Convention relating to the Status of Stateless Persons, Article 32

20 1997 European Convention on Nationality, Article 6 (3)

21 1951 Convention relating to the Status of Refugees, Article 34; 1954 Convention relating to the Status of Stateless Persons, Article 32

22 1997 European Convention on Nationality, Article 6 (3)

23 Article 10

24 Article 11

25 Article 12

Upon ratification, Hungary made **reservations** to the latter two articles of the Convention, retaining the right not to apply them, in accordance with its domestic legislation. These reservations are still in force at the time of writing, meaning that the above-quoted **fair procedure safeguards are not binding on Hungary**. It is noteworthy, though, that out of twenty states that ratified the Convention only Bulgaria made a similar reservation to both articles in question (and Denmark concerning the right to administrative review).

2.3 Emerging European legal standards applicable to naturalisation procedures?

Beyond the clear-cut legal obligations presented in the previous chapter, Hungary is confronted with **slowly, but steadily emerging regional human rights and fair procedure standards** relevant to naturalisation procedures.

The **European Convention on Human Rights**²⁶ does not include the right to a nationality, as such. Nonetheless, since the late nineties, the European Court of Human Rights has been repeatedly referring in its jurisprudence to the link between the access to nationality and the person's ability to exercise her/his **right to private life**, in connection with Article 8 of the ECHR. The Court first explicitly addressed this issue in the 1997 *Karassev* judgment, pointing out that

*[...] the Court does not exclude that an arbitrary denial of a citizenship might in certain circumstances raise an issue under Article 8 of the Convention because of the impact of such a denial on the private life of the individual.*²⁷

Most of the subsequent judgments of relevance concerned cases of **stateless persons**, whose access to nationality was denied (typically as a result of state succession).²⁸

In the milestone 2011 *Genovese* judgment the Court went further when declaring that

*[...] the denial of citizenship may raise an issue under Article 8 because of its impact on the private life of an individual, which concept is wide enough to embrace aspects of a person's social identity. While the right to citizenship is not as such a Convention right and while its denial in the present case was not such as to give rise to a violation of Article 8, the Court considers that its impact on the applicant's social identity was such as to bring it within the general scope and ambit of that Article.*²⁹

Mr. Ben Alexander Genovese was neither stateless, nor threatened with expulsion, but as a child born out of wedlock to parents of different nationalities he was adversely affected by discriminatory nationality laws in Malta, which denied him access to the country's nationality by birth. By ruling that this form of discrimination constitutes a breach of Article 14 of the ECHR (non-discrimination) in conjunction with Article 8 (right to private life), and by dragging the concept of **social identity** into the reasoning, the Court made a major step forward. It lowered its previous threshold, **opening avenues for a more extensive interpretation of the link between the right to private life and nationality**, even in cases not resulting in statelessness. Forthcoming years are expected to bring along a number of similar cases in which the Court will hopefully further clarify this link and the human rights and fair procedure requirements related thereto.

²⁶ Convention for the Protection of Human Rights and Fundamental Freedoms, Rome, 4 November 1950 – hereinafter ECHR

²⁷ *Karassev v. Finland*, Application no. 31414/96, Admissibility decision of 12 January 1999

²⁸ See in particular *Slivenko and Others v. Latvia*, Application no. 48321/99, Admissibility decision of 12 January 1999, Para. 77; *Kuduzović v. Slovenia*, Application no. 60723/00, Admissibility decision of 17 March 2005, Para. 2; *Kurić and Others v. Slovenia*, Application no. 26828/06, Chamber Judgment of 13 July 2010; *Kurić and Others v. Slovenia*, Application no. 26828/06, Grand Chamber Judgment of 26 July 2012, Para. 336

²⁹ *Genovese v. Malta*, ECHR, Application no. 53124/09, 11 October 2011, Para. 33; see also Gerard-René de Groot, Olivier Vonk, *Non-discriminatory access to the nationality of the father protected by the ECHR – A comment on Genovese v. Malta*, EUDO Citizenship, 2012

Based on the fact that an arbitrary or discriminatory denial of nationality can result in the breach of Article 8 and 14 of the ECHR, Article 13 of the same Convention – **the right to an effective remedy** – should also apply, provided that the person concerned can present an “**arguable claim**”³⁰ of such violation. The effective remedy offered by a judicial or non-judicial body should – in brief – have the following characteristics:

- It should allow the competent domestic authorities to deal with the **substance** of the complaint, as well as to grant **appropriate relief**;³¹
- It should be sufficiently available and effective **in practice**, not only in theory and in law, considering the **individual circumstances** of the case and the general **legal and political context**.³²

Given the specific Hungarian context,³³ it is of particular relevance that the Court established in the 1999 *Wille* judgment the breach of Article 13 because of the lack of an effective (or any sort of) remedy **against the decision of the head of state**.³⁴

Notwithstanding this highly promising tendency, we are still far from clear ECHR-based standards with regard to naturalisation rules. Observing the relevant body jurisprudence as a whole, however, it is apparent that **persons who have been denied access to nationality in an arbitrary and/or discriminatory procedure and who have no effective domestic remedy against this decision now have a reasonable chance to successfully acquire legal remedy from the European Court of Human Rights, provided that the denial of nationality has a significant adverse effect on their private life, including their social identity**. The latter impact seems easier to demonstrate, if the person is, or as a consequence, becomes stateless, or/and if she/he has strong linguistic, cultural, economic, social, etc. connections with the country in question (and no such strong links exist with other states). Cases of children born and raised on the territory of the state in question appear to be judged especially sensitively by the Court.

The possible emergence of common norms relating to nationality in **EU law** needs to be explored as well. EU law **does not contain any specific requirement concerning naturalisation procedures** in the Member States. However, the **EU Court of Justice** has repeatedly confirmed that while it is for each Member State to lay down the conditions for the acquisition and loss of nationality, when doing so, they must have “*due regard to Community law*”.³⁵

The 2010 *Rottmann* judgment delivered important clarifications about this general principle by emphasising that

*The proviso that due regard must be had to European Union law does not compromise the principle of international law [...] that the Member States have the power to lay down the conditions for the acquisition and loss of nationality, but rather enshrines the principle that, in respect of citizens of the Union, the exercise of that power, in so far as it affects the rights conferred and protected by the legal order of the Union, as is in particular the case of a decision withdrawing naturalisation such as that at issue in the main proceedings, is amenable to judicial review carried out in the light of European Union law.*³⁶

30 See among others *Leander v. Sweden*, Application no. 9248/81, 26 March 1987, Para. 77

31 *Halford v. the United Kingdom*, Application no. 20605/92, 25 June 1997, Para. 64; *M.S.S. v. Belgium and Greece*, Application no. 30696/09, 21 January 2011, Para. 288

32 *Van Oosterwijk v. Belgium*, Application no. 7654/76, 6 November 1980, Paras 36-40; *Kudła v. Poland*, Application no. 30210/96, 26 October 2000, Para. 152; *Riccardi Pizzati v. Italy*, Application no. 62361/00, Grand Chamber Judgment of 29 March 2006, Para. 38; *McFarlane v. Ireland*, Application no. 31333/06, 10 September 2010, Para. 114; *Đorđević v. Croatia*, Application no. 41526/10, 24 July 2012, Para. 101; *El-Masri v. “the former Yugoslav Republic of Macedonia”*, Application no. 39630/09, 13 December 2012, Para. 255

33 See Chapter 3.2

34 In relation to Article 10 of the ECHR, the freedom of expression. See *Wille v. Liechtenstein*, Application no. 28396/95, 28 October 1999

35 *Mario Vicente Micheletti and others v. Delegación del Gobierno en Cantabria*, C-369/90, 7 July 1992, Para. 10; *Belgian State v. Fatna Mesbah*, C179/98, 11 November 1999, Para. 29; *Kunqian Catherine Zhu and Man Lavette Chen v. Secretary of State for the Home Department*, C200/02, 19 October 2004, Para. 37; *Janko Rottmann v. Freistaat Bayern*, C135/08, 2 March 2010, Para. 39

36 *Janko Rottmann v. Freistaat Bayern*, C135/08, 2 March 2010, Para. 48 – emphasis added

Considering the inseparability of the nationality of an EU Member State and EU citizenship, the Court of Justice reached the following conclusion:

*Having regard to the importance which primary law attaches to the status of citizen of the Union, when examining a decision withdrawing naturalisation it is necessary, therefore, to take into account the consequences that the decision entails for the person concerned and, if relevant, for the members of his family with regard to the **loss of the rights enjoyed by every citizen of the Union**. In this respect it is necessary to establish, in particular, whether that loss is justified in relation to the gravity of the offence committed by that person, to the lapse of time between the naturalisation decision and the withdrawal decision and to whether it is possible for that person to recover his original nationality.³⁷*

At first sight, the *Rottmann* judgment may seem to have limited relevance to naturalisation matters, since it solely relates – in explicit terms – to those already holding the citizenship status of the EU.³⁸ The *loss* of a legal status to which EU law attaches a set of rights is no doubt a stronger scenario to evoke EU competence than the *acquisition* of such a status. Nevertheless, the **arbitrary, discriminatory or unfair denial to naturalise a person who, in objective terms, appears to be eligible** (and thus denying her/him access to EU citizenship) is in many aspects **compatible with the loss of nationality and EU citizenship status**. Hence it may be easier to argue for the application of the *Rottmann* principles to this particular scenario (rather than to the general rules governing the acquisition of nationality in a Member State).

In this respect, the *Rottmann* judgment definitely constitutes a milestone, as it sets **concrete boundaries to state sovereignty** with regard to whom they consider or no longer consider as their citizen. The precedent has been set for bringing nationality-related issues under the ambit of EU law by means of referring to the specific status of EU citizenship and this important judgment may open avenues for an organically developing case law on this matter in the future.

But even until then, **the “due regard to Community law” principle can be relied upon**, especially as the Court of Justice explicitly quotes this rule with regard to the conditions for the acquisition of nationality. The primary challenge when referring to this principle is the absence of norms directly applicable to naturalisation within EU law. However, it is important to recall, first of all, that **the Treaty of the European Union sets a general rule of law and justice** standard when declaring that

The Union is founded on the values of respect for human dignity, freedom, democracy, equality, the rule of law and respect for human rights, including the rights of persons belonging to minorities. These values are common to the Member States in a society in which pluralism, non-discrimination, tolerance, justice, solidarity and equality between women and men prevail.³⁹

In addition, the **EU Charter of Fundamental Rights**⁴⁰ sets forth a number of potentially relevant norms. Using the rule of law and justice standard of the EU Treaty or the provisions of the Charter in the field of asylum or migration is still a challenging novelty for most practitioners throughout the Union. Applying them to nationality-related issues is an absolute *terra incognita*. A detailed analysis of this complex and yet undiscovered issue would fall beyond the scope of this study; nonetheless the following factors should be kept in consideration:

- Member States are only obliged to apply the provisions of the Charter when “implementing Union law”.⁴¹ The well-established jurisprudence of the Court of Justice, however, interprets this rule in a more extended manner, repeatedly confirming (both pre- and post-Charter) that “implementing Union law” actually means “**acting in the scope of Union law**”. This interpretation extends beyond the direct implementation of EU law and includes legal actions that

³⁷ *Janko Rottmann v. Freistaat Bayern*, C135/08, 2 March 2010, Para. 56 – emphasis added

³⁸ See Para. 48, quoted above

³⁹ Consolidated versions of the Treaty on European Union and the Treaty on the Functioning of the European Union, 2012/C 326/01, Article 2

⁴⁰ Charter of Fundamental Rights of the European Union, 2000/C 364/01 – hereinafter Charter or EU Charter of Fundamental Rights

⁴¹ Charter of Fundamental Rights of the European Union, 2000/C 364/01, Article 51 (1)

serve the fulfilment of EU obligations, even if they are not directly based on EU law. For example, in the 2013 *Fransson* case this principle was applied to Swedish proceedings for the prosecution of a tax evader (not governed by EU law), as they served the *objective* of ensuring the collection of value-added tax and the avoidance of fraud (both of which are under the scope of EU law), and thus the proper implementation of EU law.⁴²

- There are at least three arguments to demonstrate that a Member State acts in the scope of Union law when deciding upon naturalisation claims, and thus the applicability of the Charter in this context:
 1. **EU citizenship is established by the Treaty on the Functioning of the European Union**,⁴³ which also sets out the main rights attached to this status. At the same time, the only way to access this status established by EU law is through acquiring the nationality of a Member State, i.e. in a procedure governed by domestic rules. This scenario perfectly resembles to that of the above-described *Fransson* judgment: if a domestic legal proceeding (prosecution for tax evasion – naturalisation) is clearly linked to an objective established under EU law (VAT collection and anti-fraud measures – effective existence of EU citizenship), the domestic procedure is to be considered to fall under the scope of EU law.
 2. A number of consequent Court of Justice judgments refer to the **“due regard to Community law” principle** in connection with the procedures aiming at the acquisition of nationality.⁴⁴ If naturalisation procedures could not fall under the scope of EU law (at least under certain circumstances), these repeated references would not make sense, raising serious concerns with regard to the proper application of the subsidiarity principle, as defined by the EU Treaty.⁴⁵
 3. The EU is obliged to develop a common immigration policy, aimed at, *inter alia*, ensuring the **fair treatment of third-country nationals legally residing in Member States**. To this end, the EU is entitled to adopt measures to define the rights of these third-country nationals, including the conditions governing their freedom of movement.⁴⁶ While the EU legislator might not have had naturalisation in mind when drafting this provision, the text itself does allow for such an interpretation. Naturalisation is an important and – legally speaking – final step in the integration process of third-country nationals in the EU, which entails a set of rights and the freedom of movement. Several international legal instruments require European states to allow long-term residents (or specific groups of them) to naturalise after a certain amount of time, in order to ensure their fair treatment and successful integration.⁴⁷

This means that actions related to naturalisation, even if *per se* falling under national competence, **can be considered as acting in the scope of EU law, due to the immediate impact of such measures on EU citizenship and the fair treatment of long-term residents in the Union**. Consequently, the Charter should be applicable to such state actions.

- In so far as the Charter contains rights which correspond to the rights guaranteed by the ECHR, **“the meaning and scope of those rights shall be the same as those laid down by the [ECHR]”**, not preventing the EU from providing more extensive protection.⁴⁸ The right to private life, the prohibition of discrimination and the right to an effective remedy are all included in the Charter, too.⁴⁹ Consequently, the previously presented relevant principles established by the European Court of Human Rights have to be similarly observed when applying the Charter.

⁴² *Åklagaren v. Hans Åkerberg Fransson*, C617/10, 26 February 2013, Paras 24–28

⁴³ Treaty on the Functioning of the European Union, Article 20

⁴⁴ See full references earlier in this Chapter

⁴⁵ Treaty of the European Union, Article 5 (2) – If naturalisation procedures did not fall under the scope of EU law, the Court of Justice would not have the right to evoke standards of EU law in this respect

⁴⁶ Treaty on the Functioning of the European Union, Article 79

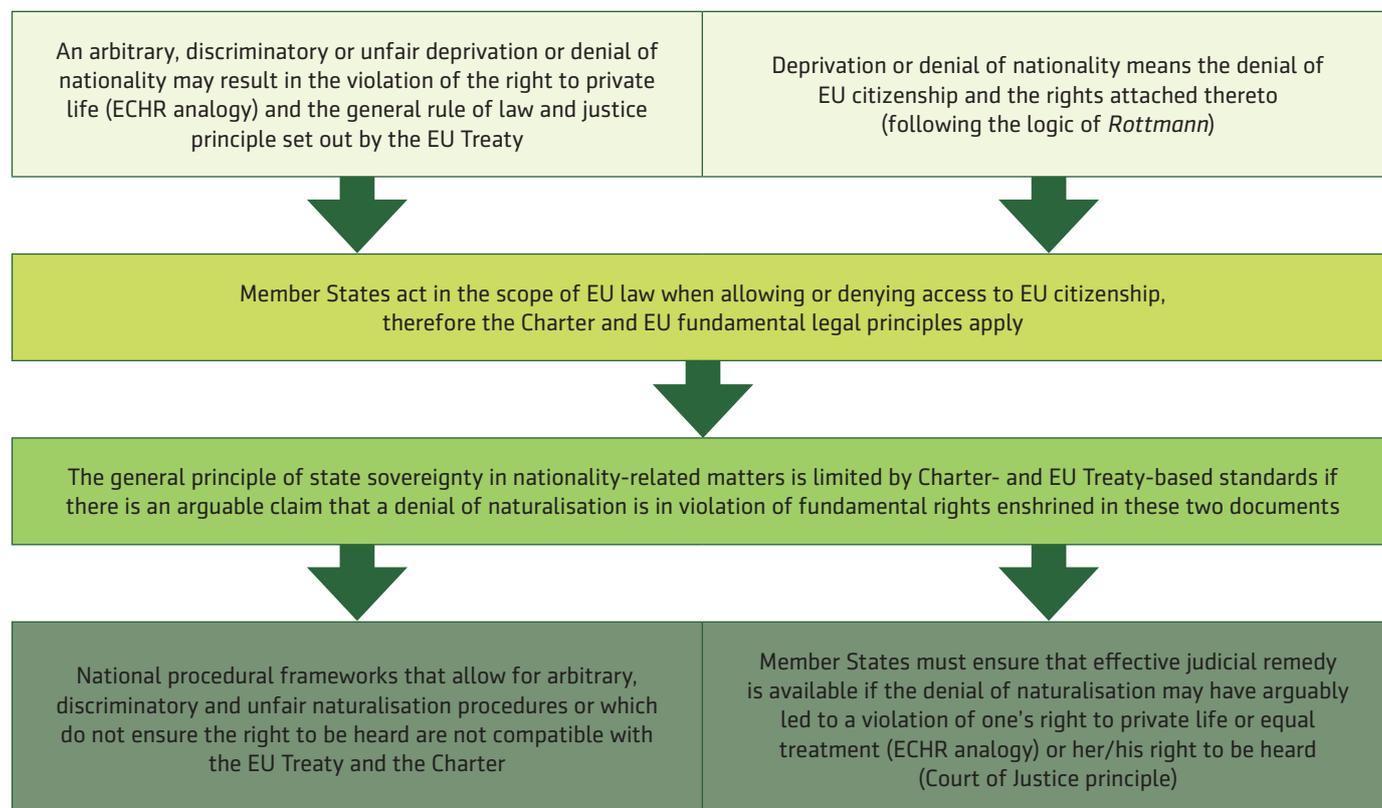
⁴⁷ 1997 European Convention on Nationality, Article 6 (3)–(4); 1951 Convention relating to the Status of Refugees, Article 34; 1954 Convention relating to the Status of Stateless Persons, Article 32

⁴⁸ Charter of Fundamental Rights of the European Union, 2000/C 364/01, Article 52 (3)

⁴⁹ Articles 7, 21 and 47, respectively – Note that under the Charter only a tribunal (judicial authority) can ensure an effective remedy, while the ECHR is more permissive as to the judicial or non-judicial character of the appeal body

- The EU Court of Justice has firmly established in its jurisprudence the **right to be heard** as a fundamental right of a general scope of application. The Court of Justice has defined this right as the guarantee that every person has the opportunity to make known her/his views effectively *before the adoption of any decision liable to affect her/his interests adversely*.⁵⁰ In the settled jurisprudence of the Court of Justice this right is rooted in the rights of the defence, which is a general principle of EU law,⁵¹ and therefore the right to be heard is **inherent in all proceedings**.⁵² The general applicability of this principle is also reflected by the variety of cases in which the Court of Justice has evoked it, including asylum, migration, customs regulation or data protection. Considering the previous argument according to which Member States act in the scope of EU law when allowing or denying access to EU citizenship, it should be concluded that the right to be heard, as defined by the EU Court of Justice, is **applicable in naturalisation procedures as well**.

In a fairly simplified scheme these principles would mean the following for naturalisation procedures in Member States:



50 See for example *Sopropé – Organizações de Calçado Lda v. Fazenda Pública*, C349/07, 18 December 2008, Paras 36-37; *M.M. v. Minister for Justice, Equality and Law Reform, Ireland, Attorney General*, C277/11, 22 November 2012, Paras 87-88; *Kamino International Logistics BV, Datema Hellmann Worldwide Logistics BV v. Staatssecretaris van Financiën*, Joined cases C129/13 and C130/13, 3 July 2014, Para. 29; *Sophie Mukarubega v. Préfet de police, Préfet de la Seine-Saint-Denis*, C166/13, 5 November 2014, Para. 46; *Khaled Boudjlida v. Préfet des Pyrénées-Atlantiques*, C249/13, 11 December 2014, Para. 36

51 Therefore not limited to the more restrictive wording of Article 48 (2) of the Charter, which applies solely to those who have been charged

52 In some of the relevant judgments, the Court of Justice also refers to the right to good administration (Article 41 of the Charter) as a source of the right to be heard, in addition to the rights of the defence. In a somewhat confusing and contradictory manner, on certain occasions the Court evoked Article 41 of the Charter as binding on Member States' administrative practices (see *M.M.*), while in more recent cases it rejected this approach, arguing that this provision only applies to the EU itself (see *Mukarubega* and *Boudjlida*). Nevertheless, the Court still maintained in recent judgments that the right to good administration is a general principle of EU law, therefore has a wider scope of application than the more limitative wording of the Charter (see *H.N. v. Minister for Justice, Equality and Law Reform, Ireland, Attorney General*, C604/12, 8 May 2014, Para. 49; *YS v. Minister voor Immigratie, Integratie en Asiel and Minister voor Immigratie, Integratie en Asiel v. M.S.*, Joined cases C141/12 and C372/12, 17 July 2014, Para. 69).

It would be certainly premature to conclude that these recent developments in the jurisprudence of the European Court of Human Rights and the EU Court of Justice have imposed clear obligations on Hungary regarding how to shape its naturalisation rules and practices. Nonetheless, there are clear indications that **the process of dragging nationality matters out of the exclusive *domaine réservé* of nation states has accelerated in Europe** in the last two decades, and Member States of the EU and the Council of Europe may have to face increasing pressure in forthcoming years for the introduction of fair procedure safeguards in naturalisation procedures, wherever such norms are not observed. Hence, these emerging standards – even if not yet necessarily clear and generally agreed upon – need to be considered when analysing Hungary’s compliance with international legal norms with regard to refugees’ and stateless persons’ access to nationality.

Finally, reference should be made to the domestic constitutional norm which “translates” the right to good administration requirement of the EU Charter, and as such may strengthen the above-presented line of argumentation. Article XXIV (1) of the **Fundamental Law of Hungary** stipulates that

Everyone has the right to have her/his affairs handled impartially, fairly and within a reasonable time by the authorities. Authorities shall provide reasons for their decisions, as prescribed by a statute.

At first sight, the second sentence is somewhat ambiguous in its wording, since it is not clear whether the statute in question can only determine the *extent* to which reasoning shall be provided (or its specific characteristics in certain cases), or whether it can also totally *exempt* authorities from providing any reasoning. The official explanatory memorandum of the Fundamental Law can help clarify this doubt, as it **explicitly refers to the right to good administration provision of the EU Charter** as the source of this norm. The referred Charter provision sets forth, in order to fulfil the criteria of an impartial and fair procedure, a general obligation

- to respect the right to be heard;
- to provide access to one’s case file; and
- to issue reasoned decisions.

Based on the official explanatory memorandum it can be concluded that the domestic constitutional norm obliges all Hungarian authorities (be it an administrative or judicial authority, or even the President of the Republic) to **respect the above norms in any type of procedure**. This does not exclude specific statutory norms that allow, for example, for a simplified or short reasoning, if due grounds are present, yet the total absence of reasoning is not allowed.

3. Nationality and the naturalisation procedure in Hungary

3.1 General framework and material conditions

Hungarian law knows only **one type of nationality**, with no distinction between different categories of citizens and/or nationals (as in the United Kingdom, for example) or between nationals by birth and by naturalisation (as in several Latin-American states).⁵³ Both Hungarian legislation and everyday language use the term “**citizenship**” (*állampolgárság*) to describe nationality, as it is understood in English and in international law. As in all Central and Eastern European languages, the literal translation of “nationality” in Hungarian (*nemzetiség*) refers to an ethnic, linguistic and cultural affiliation, not necessarily reflecting one’s legal bond of citizenship to a state.

Nationality and naturalisation are regulated by the country’s Fundamental Law (Constitution)⁵⁴ and, in particular, the **1993 Citizenship Act**.⁵⁵ Hungarian law **allows for multiple nationality**, without requiring applicants for naturalisation to renounce of their other nationality or nationalities.⁵⁶

Hungarian law sets forth a variety of conditions for naturalisation, as well as different categories entitled to a preferential treatment. For several years, three categories existed, all of which required the applicant to have a **domicile, livelihood, accommodation and a clear criminal record** in Hungary, as well as to successfully pass a “**basic constitutional studies**” **examination** in Hungarian language. The only difference between the standard and the two types of preferential naturalisation was the **mandatory waiting time** before an application could be lodged: 8, 5 and 3 years, respectively. Preferential treatment was motivated both by international obligations (e.g. *vis-à-vis* refugees) or ethno-cultural preferences.

In 2010, an amendment to the Citizenship Act made it possible for **persons of Hungarian origin** to acquire Hungarian nationality in a simplified fast-track procedure.⁵⁷ Under this naturalisation scheme, applicants merely have to demonstrate that they had at least one Hungarian ancestor (regardless of the distance in time or generations) or to substantiate their origin in Hungary,⁵⁸ provided that they have a clear criminal record, do not pose a threat to national or public security and speak Hungarian. Residence, domicile, livelihood and accommodation in Hungary were not required, nor the successful completion of any sort of formal examination. This new provision – commonly referred to as “**simplified naturalisation**” (*egyszerűsített honosítás*)⁵⁹ – has allowed several hundreds of thousands of persons not living in Hungary to acquire the country’s nationality, including the right to vote.⁶⁰

In 2012, a further category has been added, in order to facilitate the naturalisation of foreigners married to Hungarian nationals, under similar circumstances to those applied in the case of simplified naturalisation.⁶¹

53 Section 1 (1) of the Citizenship Act explicitly excludes such distinction

54 The Fundamental Law of Hungary of 25 April 2011

55 Act LV of 1993 on Hungarian citizenship

56 For more information on Hungarian nationality regulation and practice in English see: Mária M. Kovács, Judit Tóth, *Country Report: Hungary*, EUDO Citizenship, April 2013; Szabolcs Pogonyi, *Naturalisation Procedure for Immigrants – Hungary*, EUDO Citizenship, February 2013; Gábor Gyulai, *Nationality Unknown? – An overview of the safeguards and gaps related to the prevention of statelessness at birth in Hungary*, Hungarian Helsinki Committee, January 2014

57 Act LV of 1993 on Hungarian citizenship, Section 4 (3), as amended by Section 2 (2) of Act XLIV of 2010; in force as of 1 January 2011

58 Including those with origins in the historic Kingdom of Hungary that existed before the Treaty of Trianon of 1920, and which included contemporary Slovakia, most of contemporary Croatia and significant parts of contemporary Romania, Serbia, Ukraine and Austria

59 Note that the 1993 Citizenship Act does not use this term. However, as it is commonly used to distinguish this highly specific naturalisation scheme from the others, it will be used throughout this report.

60 Cf. relevant statistics in Chapter 4.1

61 Act LV of 1993 on Hungarian citizenship, Section 4 (3a), as amended by Section 52 of Act CCVII of 2012

The following table summarises the different rules applicable to the five scenarios of naturalisation at the time of writing:⁶²

	Standard naturalisation	Standard naturalisation with preferential conditions		“Simplified naturalisation”	
Who is eligible?	Anyone not falling under the other categories	If the applicant: <ul style="list-style-type: none"> Was born in Hungary; or Established a domicile in Hungary as a minor. 	If the applicant: <ul style="list-style-type: none"> Is married to a Hungarian national for more than 3 years; Has a minor child who is a Hungarian national; Has been adopted by a Hungarian national; Has been recognised as refugee in Hungary; or Is stateless. 	If the applicant: <ul style="list-style-type: none"> Has been married for at least 10 years to a person who is a Hungarian national at the time of the application; or Has been married for at least 5 years to a person who is a Hungarian national at the time of the application and with whom the applicant has a child. 	If the applicant has a Hungarian ancestor (regardless of the distance in time or generations) or if she/he can substantiate her/his origin in Hungary
Residence requirement	8 years of continuous <i>domicile</i> in Hungary	5 years of continuous <i>domicile</i> in Hungary	3 years of continuous <i>domicile</i> in Hungary ⁶³	No residence requirement (the applicant does not even have to live in Hungary)	
Livelihood and accommodation requirement	The applicant shall have secured livelihood and accommodation in Hungary (with no concrete or relative threshold determined in law or public guidance)			No livelihood or accommodation requirement	
Criminal record requirement	The applicant shall have a clear criminal record according to Hungarian law, and there shall be no pending criminal proceedings against her/him before a Hungarian court				
Security requirement	The naturalisation of the applicant shall not violate Hungary's national or public security				
Examination requirement	The applicant shall successfully pass a “basic constitutional studies” examination, unless she/he is exempted by law because she/he: <ul style="list-style-type: none"> Has a fully or partially⁶⁴ limited legal capacity; Has graduated from a school or university where the language of education is Hungarian; Is more than 60 years old; Proves that due to a permanent and irreversible deterioration of her/his health conditions she/he is unable to pass the examination. 			The applicant shall prove that she/he speaks Hungarian (but not in a form of a formal examination), unless her/his legal capacity is fully or partially limited	

62 Summarising the provisions of Section 4 of Act LV of 1993 on Hungarian citizenship – Note that residence (waiting time) requirements do not apply to minors if they apply together with their parent or if their parent has already acquired Hungarian nationality

63 If the underage applicant has been adopted by a Hungarian national she/he can naturalise regardless of her/his current domicile

64 Only if the applicant is a minor or if a court has limited her/his legal capacity specifically with regard to the naturalisation procedure

In order to properly understand these conditions, it is important to emphasise that under Hungarian law, having a “**domicile**” is far more than having a registered place of residence. Not all lawfully staying foreigners are permitted to register a domicile:⁶⁵

Can register a domicile	Cannot register a domicile
Citizens of the European Economic Area (EEA) ⁶⁶ and their family members (including their third-country national family members)	Third-country nationals with a humanitarian residence permit, including those recognised as stateless persons and beneficiaries of a tolerated (<i>befogadott</i>) status ⁶⁷
Third-country national family members of Hungarian nationals	
Third-country nationals with a permanent resident status ⁶⁸	Third-country nationals holding a non-permanent residence permit on grounds of employment, studies, research, family unity, etc. ⁶⁹
Refugees and beneficiaries of subsidiary protection ⁷⁰	

In practice, this means that for those who cannot establish a domicile the mandatory waiting time before becoming eligible for naturalisation starts counting only when they obtain a permanent residence permit. The latter requires a **minimum of 3 years of residence**, which is then **to be automatically added** to the required length of domiciled residence applicable to the person in question. Thus in reality, a stateless person with a humanitarian residence permit – even in the best case scenario – will only be able to apply for naturalisation after 6 (3+3) years.

It is also noteworthy that **no standard thresholds** exist in law or in publicly available guidance with regard to what is acceptable as a secured **livelihood and accommodation** for a person or a family unit. It is not clarified in the law either what **continuous residence** means in this context – unlike in the case of the conditions to obtain a permanent residence permit, where Hungarian law contains clear thresholds.⁷¹

Applicants are **not required to pay an administrative fee** for naturalisation. However, the basic constitutional studies **examination has a mandatory fee** (applicable in every case), which is **50% of the gross monthly minimum salary**,⁷² the exact sum of which is determined by a government decree on a yearly basis. This represents a significant financial burden, as demonstrated by the following contextual data:

	HUF	EUR ⁷³
Fee of basic constitutional studies examination (2015)	52 500	170
Net monthly minimum salary in Hungary (2015) ⁷⁴	68 775	220
Statistical minimum of monthly subsistence (2014) ⁷⁵	87 351	280
Average monthly net salary in Hungary (January–November 2015) ⁷⁶	160 800	520

65 Act LV of 1993 on Hungarian citizenship, Section 23 (1); Act LXVI of 1992 on the registration of citizens’ personal data and residence, Section 4 (1)

66 The European Economic Area (EEA) includes the European Union, Iceland, Liechtenstein and Norway. Domicile is registered by the authorities on the basis of a registration certificate, residence card or permanent residence card issued by the Office of Immigration and Nationality (see Sections 21, 22 and 24 of Act I of 2007 on the entry and stay of persons enjoying the right of free movement).

67 See Act II of 2007 on the entry and stay of third-country nationals, Sections 29 (1) (a)–(b), 52/A (1)

68 This category covers third-country nationals holding various types of permanent residence permits. Third-country (non-EEA) nationals in Hungary can apply for a so-called “national permanent residence permit” (*nemzeti letelepedési engedély*) after 3 years of continuous residence and an “EC permanent residence permit” (*EK letelepedési engedély*) after 5 years of continuous residence. A number of strict material conditions shall be fulfilled for obtaining any of these permits, and only the second one provides the rights attached to free movement within the European Union. This category also includes those with an “interim permanent residence permit” (*ideiglenes letelepedési engedély*), as well as persons holding a permanent residence permit based on the regulation in force prior to 2007 (the so-called *bevándorolt* status). Cf. Act II of 2007 on the entry and stay of third-country nationals, Section 32 (1).

69 See Act II of 2007 on the entry and stay of third-country nationals, Sections 13–29

70 Cf. Act LXXX of 2007 on asylum, Section 17 (1)

71 Cf. Act II of 2007 on the entry and stay of third-country nationals, Sections 35 (2) and 38 (6)

72 Government decree 125/1993. (IX. 22.) on the implementation of Act LV of 1993 on Hungarian citizenship, Section 13 (6)

73 Approximate, rounded figures, using an average conversion rate of 2015 (1 EUR ≈ 310 HUF)

74 Government Decree no. 347/2014. (XII. 29.)

75 Source: Central Statistical Office

76 Source: Central Statistical Office

In summary, refugees, stateless persons and beneficiaries of subsidiary protection have to fulfil the following conditions for naturalisation:

- **Secured livelihood and accommodation** (with no threshold in law or public guidance determining what this means in practice);
- **Clear criminal record** and no pending criminal proceedings before a Hungarian court;
- **No threat** to national or public security;
- **Successful examination of basic constitutional studies** (with a price amounting to 50% of the gross monthly minimum salary), unless exempted by law because of prior studies in the Hungarian school system, age, disability or specific permanent health problems;
- **3 years** of continuous residence with a domicile for refugees and **8 years** of continuous residence with a domicile for beneficiaries of subsidiary protection,⁷⁷ which – in principle – can start upon the grant of status. The waiting time is minimum **6 years** in case of stateless persons granted a stateless status (minimum 3 years to obtain a permanent residence permit and, consequently, a domicile, and minimum 3 additional years for the possibility to naturalise).⁷⁸

3.2 An opaque procedure with insufficient safeguards

The administrative authority in charge of registering and assessing naturalisation claims is the **Office of Immigration and Nationality** (*Bevándorlási és Állampolgársági Hivatal*), hereinafter referred to as the OIN.⁷⁹ Within this office, a specific directorate deals with nationality-related matters.

Naturalisation claims can be submitted at various places, such as local government offices (*kormányhivatal*), consular offices or the OIN itself.⁸⁰ Applicants must attach to their claim all relevant documents and information that prove that they fulfil the relevant conditions set out by the Citizenship Act. This includes the mandatory submission of the applicant's **birth certificate** as well as a proof of her/his **marital status**.⁸¹ Despite the evident impossibility to obtain such official documents for many refugees and stateless persons there are **no specific rules allowing for flexibility** when applying this requirement to these groups in a special situation. According to practice, as observed by attorney Pucsok, it is possible to ask for an exemption from this requirement in case of insurmountable obstacles, and such requests have – on occasions – been positively considered. However, if the request is not granted the applicant will not receive any information about this being a reason for rejection.⁸²

Official foreign documents must go through **diplomatic legalisation (authentication)** before submission, unless this would take an unreasonably long time (according to the declaration of the competent consular officer) or if this would result in seriously adverse legal consequences for the applicant.⁸³ This latter exception could constitute an important safeguard for refugees and other beneficiaries of international protection; nonetheless, there is no information whether it is applied as such in practice.

77 According to Section 17 (1) of Act LXXX of 2007 on asylum the same rights and duties apply to beneficiaries of subsidiary protection as to refugees, if not otherwise specified by law or government decree. However, Section 17 (4) of the same Act stipulates that the preferential naturalisation conditions for refugees cannot be applied to beneficiaries of subsidiary protection; the latter group thus falls under the scope of standard (non-preferential) provisions.

78 Stateless persons have been moved from the 5-year to the 3-year preferential category in 2013, see Act CCXVIII of 2013, Section 4 (1)

79 Cf. Government Decree 162/1999. (XI. 19.) on the Office of Immigration and Nationality

80 Act LV of 1993 on Hungarian citizenship, Section 13 (1)

81 Act LV of 1993 on Hungarian citizenship, Section 14 (3)

82 See more details about the lack of reasoned decisions later in this chapter

83 Act LV of 1993 on Hungarian citizenship, Section 14 (5) (a); Government decree 125/1993. (IX. 22.) on the implementation of Act LV of 1993 on Hungarian citizenship, Section 2/A

All documents in foreign languages must be submitted together with their **official, certified translation**.⁸⁴ In Hungary, it is only the Hungarian Office for Translation and Attestation (*Országos Fordító és Fordításhitelesítő Iroda*) is allowed to issue certified translations.⁸⁵ According to critiques, this long-standing monopoly has not only led to questionable quality on some occasions, but also to unreasonably high prices. The following table shows a comparative example of what this requirement may mean to an applicant for naturalisation in financial terms:⁸⁶

	HUF	EUR ⁸⁷
Standard price of the certified translation of a birth or marriage certificate, or identity document, or an apostille from any language	8 450	27
Price of the certified translation of a one-page document from English, French or Russian to Hungarian (3 000 characters per page in Hungarian)	19 260	62
Price of the certified translation of a one-page document from Arabic, Persian, Somali or Pashtun to Hungarian (3 000 characters per page in Hungarian)	36 390	120
Net monthly minimum salary in Hungary (2015) ⁸⁸	68 775	220
Statistical minimum of monthly subsistence (2014) ⁸⁹	87 351	280
Average monthly net salary in Hungary (January–November 2015) ⁹⁰	160 800	520

This means that applicants, in order to be able to attach a few pages and some official documents to their naturalisation claim, are **usually obliged to pay considerable amounts**, often representing a significant part of their monthly income – if not more. As an interesting comparison, significant discounts have been made available for applicants for simplified naturalisation (with reference to Hungarian ancestry⁹¹). In these procedures, the translation and authentication of a birth or marriage certificates, or identity cards costs only HUF 4 445 (half of the standard price).⁹²

Applicants **can consult their files** during the procedure.⁹³ However, in the cases observed by attorney Pucsok, the file **only contained the documents submitted by the applicant**, but no other documents which could shed light on the OIN’s assessment process or the reasons for rejection.

The law **does not foresee any personal hearing** and in practice hearings like those in the asylum or immigration procedures do not take place. According to the practical experience of attorney Pucsok, if deemed necessary, it is the Alien Policing Control Department of the OIN that conducts a field visit to the applicant’s home, including making interviews with the applicant and/or her/his family.

The Citizenship Act provides that, based on the proposal of the Minister of the Interior (in practice, the OIN), it is **the President of the Republic who decides** on naturalisation claims.⁹⁴ The OIN has **3 months** to submit its proposal to the President’s office.⁹⁵ The President’s decision requires a counter-signature by a member of the government.⁹⁶ Since

84 Act LV of 1993 on Hungarian citizenship, Section 14 (5) (b)

85 Decree of the Council of Ministers no. 24/1986. (VI. 26.) on translation and interpreting, Section 5

86 Prices calculated on the basis of the official price list available on the [website](#) of the Hungarian Office for Translation and Attestation, with the less costly option possible

87 Approximate, rounded figures, using an average conversion rate of 2015 (1 EUR ≈ 310 HUF)

88 Government Decree no. 347/2014. (XII. 29.)

89 Source: [Central Statistical Office](#)

90 Source: [Central Statistical Office](#)

91 See Chapter 3.1

92 See the [website](#) of the Hungarian Office for Translation and Attestation

93 Act LV of 1993 on Hungarian citizenship, Section 18 (a)

94 The Fundamental Law of Hungary of 25 April 2011, Section 9 (4) (i); Act LV of 1993 on Hungarian citizenship, Section 6 (1)

95 Act LV of 1993 on Hungarian citizenship, Section 17 (2)

96 The Fundamental Law of Hungary of 25 April 2011, Section 9 (5)

the decision is formally made by the President, naturalisation is **not considered an administrative procedure** under Hungarian law.⁹⁷ This raises several concerns:

- **None of the procedural safeguards** that are usually binding on administrative authorities are applicable in naturalisation procedures. In particular, rejections do not take the form of an administrative decision, and as such, contain **no reasoning**. Nor does the applicant have any other means to learn about the reasons for rejection. **Neither administrative appeal, nor judicial review** is possible against a negative decision.
- The decision made by the President appears to be a **mere automatism**, rather than an in-merit review of the OIN's preliminary assessment. The author's information request concerning the existence of any case in which the President has taken a decision different from the proposal of the OIN since 1 January 2010 was officially answered to the negative. This means that among the several hundreds of thousands of naturalisation cases⁹⁸ **there was not a single one (!) in which the OIN's assessment would have been questioned, reviewed or altered.**⁹⁹ Also, it is highly unlikely that the Office of the President would have the capacity in human resources to conduct an expert review of each case.
- As apparent, **the actual decision is made by the OIN** and then rubberstamped by the Office of the President of the Republic. Therefore, while naturalisation decisions are – *de jure* – not delivered in an administrative procedure, this task is still performed by an organ of the public administration, using the human, financial and other resources of public administration, as well as including the typical elements of an administrative procedure, such as the collection of evidence, the assessment of facts and circumstances, etc. It is then most probably correct to conclude that **the naturalisation procedure is still a *de facto* administrative procedure**, which has been deliberately exempted by the legislator from all the rules and safeguards that normally should apply to such proceedings.

These circumstances result in a situation where an organ of the public administration is allowed to take decisions concerning a crucial element in the life of human beings without ever being obliged to provide any justification for its decision to anyone. **Decisions are made by the OIN in a “black box”, lacking the most basic procedural safeguards of transparency, accountability and fair procedure.** The absurdity of this framework becomes even more apparent knowing that the OIN is obliged by law to observe serious transparency and fair procedure safeguards (reasoned decisions, access to full case file, exposure to judicial scrutiny in appeal procedures, etc.) in *all* other types of procedure it conducts, be they related to asylum, immigration, permanent residence or statelessness determination.

97 Section 13 (1) of Act CXL of 2004 on the general rules of administrative procedures and services explicitly stipulates that the rules of administrative procedure are not applicable to naturalisation procedures

98 See statistics in Chapter 4.1

99 See the official letter written by the director-general of the Office of the President of the Republic to the author of this publication on 4 November 2015

4. Decision-making practices

The lack of reasoned decisions and researchable jurisprudence also means that – beyond the analysis of the legal framework – the only possibility to assess Hungary’s observance of the relevant international obligations is to analyse statistical trends and case studies.

4.1 Statistical trends

Neither the OIN, nor the Office of the President of the Republic publishes detailed statistics about naturalisation procedures. The figures presented below are provided by the OIN and have been obtained through targeted information requests by the UNHCR¹⁰⁰ and the Hungarian Helsinki Committee.¹⁰¹ The following table summarises the main statistical data that are directly or indirectly (for comparison) are relevant for the purposes of the present research:

	Standard naturalisation (with standard or preferential conditions) – decisions						Persons who obtained Hungarian nationality through simplified naturalisation ¹⁰²
	Total		Refugees out of the total		Stateless ¹⁰³ out of the total		
	Positive	Negative	Positive	Negative	Positive	Negative	
2011	1 295	603	12	49	7	13	128 677
2012	512	565	16	108	5	14	182 103
2013	439	457	8	65	9	18	193 968
2014	486	409	10	59	5	17	137 988
2015 Jan–Oct	390	286	N.A.	N.A.	12	15	58 731
SUM¹⁰⁴	3 122	2 320	46	281	38	77	701 467
Positive decisions rate¹⁰⁵	57%		14%		33%		

The following main conclusions can be drawn from these data:

- Adopting the legal framework for simplified naturalisation in 2010 gave rise to a **massive naturalisation campaign**, of unprecedented dimensions in Hungarian history. In less than five years over 700 000 persons – the vast majority of whom do not live in Hungary – acquired Hungarian nationality in a much facilitated fast-track procedure, based on

100 Data concerning the naturalisation of refugees between 2011 and 2014. See the letter of 21 September 2015 of the OIN’s deputy director-general to the head of the Hungary Unit at the UNHCR Regional Representation for Central Europe. Information by courtesy of the UNHCR.

101 Data concerning simplified and standard naturalisation procedures between 2011 and October 2015, disaggregated according to the nationality of the applicant. See the letter of 9 November 2015 of the OIN’s director-general to the author.

102 Based on the data provided by the OIN (including the information on the other nationality of the applicants) it is estimated that over 99% of this category acquired Hungarian nationality based on Hungarian ancestry (Act LV of 1993 on Hungarian citizenship, Section 4 (3)).

103 Hungary has a specific protection status for stateless persons (for more information see Gábor Gyulai, *Statelessness in Hungary*, Hungarian Helsinki Committee, 2010). As the OIN does not collect disaggregated naturalisation statistics based on stateless status, this category includes all stateless applicants, regardless of their immigration status. Consequently, stateless refugees may appear in both relevant categories.

104 Between 1 January 2011 and 31 December 2014 for refugees, between 1 January 2011 and 31 October 2015 for all other data

105 Between 1 January 2011 and 31 December 2014 for refugees, between 1 January 2011 and 31 October 2015 for stateless persons and total

their Hungarian ancestry and affiliation.¹⁰⁶ Cases of simplified naturalisation thus **outnumber standard procedures by 225**, as under the “traditional” rules only a bit more than 3 000 persons acquired Hungarian nationality in the same five years.

- Between 2011 and 2014 **only 46 refugees** managed to acquire Hungarian nationality. This is a **worryingly low number** considering that at the end of 2010, 1 887 refugees were living in Hungary,¹⁰⁷ all of whom completed the 3-year minimum residence requirement during the period in examination.
- Between 2011 and October 2015 **only 38 stateless persons** acquired Hungarian nationality. This figure is difficult to interpret in itself, in lack of comparative statistical data. The 2011 census found 113 stateless persons in Hungary,¹⁰⁸ but due to the usual methodological difficulties in measuring the dimension of statelessness (underreporting, lack of awareness, data based on self-identification, unclear legal situation, etc.) this figure may easily be significantly lower than the actual number of persons living without a nationality in Hungary.
- In statistical terms, **refugees and stateless persons have a significantly lower chance to successfully naturalise than the average**. During the period under examination, only 14% of refugee applicants for naturalisation were successful with their claim, while the average “success rate” was 57%. The 33% proportion of successful claims among stateless persons also falls far below the average.

In summary, recent official statistics confirm that Hungarian naturalisation policies are entirely based on an **overt ethnic preferentialism**, as already described in literature.¹⁰⁹ The analysis of the complex historical, cultural and political factors behind this phenomenon would fall beyond the scope of this study. Also, the author does not wish to debate the right of every person of a Hungarian identity to have a proper legal recognition thereof. Nevertheless, one cannot ignore the **striking discrepancy between the rapid naturalisation of hundreds of thousands who do not actually live in Hungary on one hand, and the extremely restrictive naturalisation practices and very modest number of naturalisations among refugees and stateless persons**, towards whom Hungary has an international obligation of preferential treatment in this respect.

While statistical data should not, *per se*, lead to any simplifying conclusion, the above figures, interpreted in the context of the wider legislative and policy framework,¹¹⁰ suggest that Hungary – in practical terms – **falls short of fulfilling its international obligations** to facilitate the naturalisation of refugees and stateless persons.

Note that there is no statistical data available concerning the naturalisation of beneficiaries of subsidiary protection. Also, such naturalisation is very unlikely to have taken place, as this status has only been introduced in 2007, while the mandatory residence requirement for this group is 8 years.¹¹¹

106 The vast majority of those who naturalised under this scheme were nationals of Romania (446 824 persons), Serbia (131 259 persons) and Ukraine (104 929 persons), three of the four countries which are home to large ethnic Hungarian minorities (Slovakia introduced a strict ban on multiple nationality in response to the Hungarian simplified naturalisation procedure, therefore the number of naturalisations has remained relatively low among the Hungarian minority of that country). According to the **official data** provided by the Central Statistical Office of Hungary, the number of Romanian, Serbian and Ukrainian nationals living in Hungary decreased by 71 739 from 2011 to 2015. This is very likely to be the direct impact of the simplified naturalisation, meaning also that around 90% of those who acquired Hungarian nationality in this fast-track procedure do not actually live in Hungary.

107 Source: OIN **official statistics**

108 See the **official data** published by the Central Statistical Office of Hungary

109 See for example Mária M. Kovács, Judit Tóth, *Country Report: Hungary*, EUDO Citizenship Observatory, April 2013; Judit Tóth, *Principles and Practice of Nationality Law in Hungary*, Regio 8:21–39; etc.

110 See Chapter 3

111 See Chapter 3.1

4.2 The assessment of material conditions in individual cases

In lack of reasoned decisions, judicial review, researchable databases and clear thresholds in law or guidance it is **impossible to gather reliable data about how the material conditions are assessed** within the “black box” of the naturalisation procedure. At the same time, anecdotal evidence provided by experts who have been accompanying numerous cases in recent years can adduce useful information. Given the extremely low number of cases (and the lack of legal assistance in most of them), even such information is particularly difficult to acquire.

The lack of strict thresholds in law for the livelihood or accommodation requirement – if applied in a permissive manner – could serve the fulfilment of Hungary’s international obligations to facilitate refugees’ and stateless persons’ access to nationality. The individual cases presented to the author, however, indicate that this is not the case.

For example, the Citizenship Act requires the applicant to show that she/he has secured livelihood in Hungary. Despite the present tense used by the law, in the cases known to attorney Pucsok, the OIN required **a proof of sufficient revenue for all the 3 years preceding the submission of the claim**. If the applicant did not have sufficient income for the entire period, her/his claim was rejected, even if she/he had a secured livelihood when applying for naturalisation. This requirement cannot be derived from the law, and **raises concerns regarding the arbitrary interpretation** of a material condition, especially in case of refugees and stateless persons, where flexibility would be required under Hungary’s international obligations.

In certain individual cases, there is **no apparent logic behind the rejection**. For example, attorney Pucsok reported about a case where a refugee applicant was repeatedly rejected, despite his clear criminal record, his Hungarian partner and two children of Hungarian nationality, the family’s decent apartment and around HUF 400 000 (≈EUR 1 300) monthly income. For comparison, the official statistical minimum of monthly subsistence for a family of two parents and two children was HUF 253 318 (≈EUR 820) in 2014.¹¹² The case of the Karimi family reported in a previous research study¹¹³ is even more descriptive of this problem. Mr. Karimi is stateless, Ms. Karimi is a recognised refugee, their four children were all born in Hungary. Mr. Karimi is a successful entrepreneur, with a clear criminal record, who employs 15 Hungarian nationals in his company, and the family has a standard of living that is most probably higher than the Hungarian average. Despite apparently fulfilling all the conditions for naturalisation, the Karimi family’s several subsequent claims have all been rejected. The Menedék Association reported about a case, where the naturalisation claim of a single refugee mother was rejected despite her clear criminal record, her ensured accommodation and stable job. As all other conditions were fulfilled, it appeared that naturalisation was denied because the applicant’s monthly net income of HUF 120 000 (≈EUR 380) was not considered sufficient livelihood, whilst it is nearly the double than the minimum monthly salary as defined by law.

At the same time, the experience of the Menedék Association suggests that those with **a high income and significant savings** have a better chance for successful naturalisation than those with only a “normal” or average standard of living. Also, according to the cases assisted by them, refugees who arrived in Hungary as **unaccompanied minors**, and whose livelihood and accommodation is ensured through a state-funded scheme for a few years after being released from the childcare system also appear to have better chances to acquire Hungarian nationality than other refugees, while benefiting from this specific support scheme.

The Menedék Association also reported about another practical difficulty, regarding the fulfilment of the domicile condition. The first registered domicile of refugees is usually a reception centre, where they are allowed to stay for one month (before June 2016 for two months) following the recognition of their status. Many refugees need some days to register their new domicile after moving out from the reception centre. According to the Menedék Association’s experience, in such cases the OIN **starts counting the required 3 years of domiciled residence from zero**, even if the “break” between the two domiciles is only a few days. This is a *mala fide* administrative practice which has no reasonable practical grounds.

112 Source: Central Statistical Office

113 Gábor Gyulai, *Nationality Unknown? – An overview of the safeguards and gaps related to the prevention of statelessness at birth in Hungary*, Hungarian Helsinki Committee, January 2014, pp. 17–18 – Karimi is not the real name of the family

Practical experience also suggests that the **specific circumstances and difficulties of refugees** are not necessarily considered in due manner. In a case known to the HHC, a seriously traumatised torture survivor who has been living in Hungary for over 10 years as a refugee, with no criminal record and with a modest, yet regular and lawfully earned monthly salary and accommodation was rejected, despite the extreme vulnerability of the applicant and the significant support received for different refugee-assisting organisations, both of which factors could have well motivated a flexible interpretation of the material conditions.

These cases – while far from outlining a comprehensive picture – appear to confirm the conclusions drawn from the analysis of the legislative framework and the statistics.

5. Conclusions and recommendations

The researcher faces **considerable difficulties** when trying to assess to what extent Hungary fulfils its international obligations relevant to the naturalisation of refugees and stateless persons, since

- There is no researchable body of reasoned administrative or judicial decisions;
- Most shortcomings affecting refugees and stateless persons are rooted in the general lack of transparency and fair procedure safeguards in naturalisation procedures, therefore the analysis cannot leave out of scope the general framework either;
- Some crucial international obligations emanate from an evolving jurisprudence of international courts (rather than obvious contractual obligations) and therefore are not yet clearly settled.

Nevertheless, following the careful analysis of the national legislation, statistics and some available experience of individual cases a number of concrete conclusions can be drawn and several recommendations can be made.

CONCLUSION I

Hungary fulfils its international obligation to expedite naturalisation proceedings for refugees, by integrating them into the most preferential category with regard to the mandatory minimum domiciled residence requirement (3 years) before naturalisation. At the same time, no preferential treatment is applied in case of beneficiaries of subsidiary protection, in case of whom the mandatory domiciled residence requirement is 8 years.

Those granted subsidiary protection also flee torture, death, inhuman treatment and war, similarly to refugees, and very often their perspective to return is by no means more imminent than that of refugees. What has been said about the ineffectiveness of most refugees' nationality¹¹⁴ can be equally said about the nationality of those in need of this complementary form of international protection. Currently, no international obligation exists to extend the preferential treatment of refugees to this group. However, the EU's willingness to approximate the two protection statuses is evident, based on the Recast Qualification Directive¹¹⁵ and the European Commission's guidance on family reunification, which explicitly emphasised that

*[...] the humanitarian protection needs of persons benefiting from subsidiary protection do not differ from those of refugees, and encourages MSs to adopt rules that grant similar rights to refugees and beneficiaries of temporary or subsidiary protection.*¹¹⁶

Naturalisation is considered a "durable solution" in case of refugees and beneficiaries of subsidiary protection and as such, constitutes a key element of their long-term protection, which renders the above-mentioned principle applicable to naturalisation as well.

RECOMMENDATION I: Hungary is recommended to extend the preferential treatment applied to refugees with regard to naturalisation to beneficiaries of subsidiary protection. The mandatory residence requirement for beneficiaries of subsidiary protection before naturalisation should be reduced from 8 to preferably 3 (or alternatively 5) years.

¹¹⁴ See Chapter 1

¹¹⁵ 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 (recast), Recital 39

¹¹⁶ Communication from the Commission to the European Parliament and the Council on guidance for application of Directive 2003/86/EC on the right to family reunification, Section 6.2

CONCLUSION II

Hungary partly fulfils its international obligation to expedite naturalisation proceedings for stateless persons, by – on one hand – integrating them into the most preferential category with regard to the mandatory minimum domiciled residence requirement (3 years) before naturalisation, but – on the other hand – not allowing persons with a stateless status to establish a domicile.

Stateless persons who are married to a Hungarian national or who have refugee or subsidiary protection status are able to immediately register a domicile in Hungary, and therefore to naturalise within 3 years after acquiring their status. Those married to Hungarian nationals or who have refugee status fall anyway under the most preferential category, even if their statelessness is not considered. Stateless beneficiaries of subsidiary protection constitute therefore the only category in this group for whom statelessness really accelerates their access to naturalisation (3 years instead of the 8 years applicable for this legal status).

Meanwhile, those granted stateless status (and a humanitarian residence permit) are not allowed to register a domicile.¹¹⁷ This means that their first possibility to establish a domicile is when they acquire a permanent residence permit, for which the minimum residence requirement is 3 years. In the best-case scenario, stateless persons with this dedicated status will first be eligible for naturalisation 6 (3+3) years after the grant of status. Also, stateless persons who never manage to fulfil the strict material requirements for the acquisition of a permanent residence permit will never become eligible for naturalisation. Consequently, the integration of stateless persons into the most preferential category is undoubtedly a positive step forward, yet its actual impact on practice is limited because of the unduly restrictive domicile requirement.

RECOMMENDATION II: *Hungary is recommended to modify the requirement of having a domiciled residence in Hungary to having a lawful and habitual residence in the country for given periods of time. Alternatively, Hungary should allow stateless persons holding a stateless status (humanitarian residence permit) to establish a domicile, similarly to refugees.*

CONCLUSION III

Hungary does not effectively fulfil its international obligation to reduce as far as possible the charges and costs associated with the naturalisation of refugees and stateless persons.

Applicants for naturalisation are not required to pay a fee. Nonetheless, refugee and stateless applicants – like anyone else – have to pay a significant fee (50% of the gross minimum monthly salary) for the mandatory basic constitutional studies examination.¹¹⁸ Moreover, they are required to submit foreign-language documents in an official, certified translation, which results in significant costs, too.¹¹⁹ All in all, a refugee or stateless applicant, in most cases, has to pay HUF 70 000–100 000 (≈EUR 220–320) in order to be able to submit her/his application. This is more than the net monthly minimum salary in Hungary and is around what was determined as the statistical minimum of monthly subsistence in the country in 2014. Considering that many refugees and stateless persons (unlike many immigrants in Hungary) may have difficulties to make ends meet, such costs can easily create an insurmountable obstacle, or – at least – a significant factor of demotivation.

Neither law, nor practice foresees any preferential treatment for refugees or stateless persons, while significant discounts have been made available for applicants for simplified naturalisation (with reference to Hungarian ancestry¹²⁰).

¹¹⁷ See details in Chapter 3.1

¹¹⁸ See details in Chapter 3.1

¹¹⁹ See details in Chapter 3.2

¹²⁰ See Chapter 3.1

RECOMMENDATION III: *In order to comply with its obligation under Article 34 of the 1951 Refugee Convention and Article 32 of the 1954 Statelessness Convention, Hungary is urged to exempt refugees and stateless persons from paying fees in the naturalisation procedure. The basic constitutional studies examination (if deemed indispensable) should be free of charge for these groups. The necessary certified translations should also be prepared free of charge, or alternatively, at a significantly reduced price. By analogy, these preferential rules should extend to beneficiaries of subsidiary protection as well.*

Given the limited number of cases and their minuscule proportion among all naturalisation procedures, implementing this recommendation would not cause any considerable financial loss for the state.

CONCLUSION IV

Beyond the reduced mandatory residence requirement, Hungarian rules on naturalisation do not foresee any preferential treatment for refugees or stateless persons, which raises concerns about whether Hungarian law and policy are in line with the country's international obligations to facilitate the naturalisation of these two groups.

Refugees and stateless forced migrants are often in a very different situation compared to most migrants.¹²¹ What may be a justified condition for naturalisation in most cases, can become an insurmountable obstacle for these vulnerable groups. Refugees, in particular, are frequently traumatised and have been through severe experiences of ill-treatment, hardship, uprooting and even torture. The consequences of these experiences may make it very difficult for them to pass a formal examination.

In both types of simplified naturalisation it has been made sufficient to present one's claim in Hungarian (and thus demonstrate sufficient language knowledge), exempting applicants from passing the basic constitutional studies examination, therefore such an alternative solution would not be alien to the Hungarian legal framework.

RECOMMENDATION IV: *In order to comply with its obligation under Article 34 of the 1951 Refugee Convention and Article 32 of the 1954 Statelessness Convention, Hungary is urged to exempt refugees and stateless persons from the basic constitutional studies examination, substituting this requirement with that of presenting the claim and participating in the procedure in Hungarian language (as a proof of language knowledge), similarly to the practice in simplified naturalisation cases. Alternatively, the exemption of those who cannot pass the examination due to health reasons (already in the law), should explicitly mention that this provision needs to be applied permissively in cases of refugees and stateless persons. By analogy, these preferential rules should extend to beneficiaries of subsidiary protection as well.*

CONCLUSION V

Statistics demonstrate that only a minuscule number of refugees and stateless persons have managed to naturalise in Hungary in the past five years and the proportion of positive decisions was significantly lower in these groups than the average in standard naturalisation cases, therefore suggesting that Hungary is in breach of its obligations to facilitate the naturalisation of these two groups.

Between 2011 and 2015 over 700 000 persons – the vast majority of whom do not live in Hungary – acquired Hungarian nationality in an extremely accelerated, simplified and facilitated procedure. In the same period 3 122 immigrants could naturalise in a standard procedure, among whom there were only 46 refugees and 38 stateless persons. The rate of positive

¹²¹ This is even more the case in the Hungarian context, where according to various research studies and statistics, immigrants – on average – have much higher education and better employment rates than Hungarian nationals.

decisions was only the half of the average rate (57%) in case of stateless persons (33%), and only the quarter of the average in case of refugees (14%).¹²² These statistics – read in conjunction with the legislative shortcomings and the experiences of individual cases – clearly indicate that the naturalisation of these two groups is in practice not facilitated, but actually rendered more difficult. Also, it demonstrates that it is impossible to assess a country's compliance with its international obligations regarding the naturalisation of refugees and stateless persons in the absence of reliable and publicly available statistics.

RECOMMENDATION V: *In order to allow the UNHCR and civil society actors to assess its compliance with the relevant international obligations, Hungary – and the Office of Immigration and Nationality in particular – are urged to publish annual naturalisation statistics disaggregated on the basis of the applicant's other nationality, as well as to collect and publish specific statistics on the naturalisation of refugees and beneficiaries of subsidiary protection on a yearly basis.*

CONCLUSION VI

The Hungarian procedural framework for naturalisation lacks the most fundamental transparency and fair procedure safeguards, thus resulting in opaque decision-making, raising serious concerns with regard to the compatibility of Hungarian law with the standards emanating from EU law and the European Convention on Human Rights (as interpreted by the relevant international courts), and even the Fundamental Law (Constitution) of Hungary.

Hungary ratified and promulgated the 1997 European Convention on Nationality in 2002. 14 years were not enough to lift Hungary's reservation with regard to those provisions of the Convention that obliges signatory states to motivate decisions and allow appeals in naturalisation cases (accepted by the vast majority of states parties). Maintaining reservations for such a lengthy period questions Hungary's true commitment to and fulfilment of the Convention.

RECOMMENDATION VI/A: *Hungary is urged to lift its reservations to Article 11 and 12 of the 1997 European Convention on Nationality.*

Decisions are, in practice, made by the Office of Immigration and Nationality and, as statistics show, are automatically signed by the Office of the President of the Republic. While the decision-making process is *de facto* an administrative procedure, *de jure* it is not considered as such, and thus lacks all the safeguards foreseen by law for such procedures. Decisions on naturalisation are not reasoned and no legal remedy is available against rejections, not allowing anyone (including the person concerned and her/his legal representative) to have *any* information ever about why the claim has been refused.¹²³ Such a procedural framework may allow for potentially unfounded, or even, *ad absurdum*, arbitrary decisions. Experience from individual cases show that there are rejections concerning refugees, for example, where apparently all the conditions should have been reasonably considered as fulfilled, yet the claim was refused.

The way in which relevant EU law and the European Convention on Human Rights have been recently interpreted in the jurisprudence of the EU Court of Justice and the European Court of Human Rights (respectively) indicates the existence of emerging standards, which set limits to state sovereignty with regard to the safeguards applicable in naturalisation procedures. Denial to naturalise a person who reasonably fits all requirements set by law in an unfair, discriminatory or arbitrary process may constitute a violation of the applicant's right to private life, for which a Council of Europe Member State can be held responsible before the Strasbourg Court. Given the intimate and inseparable relation between EU

¹²² See detailed statistics in Chapter 4.1

¹²³ See details in Chapter 3.2

citizenship and the nationality of a Member State, the latter “acts in the scope of EU law” when denying naturalisation to an applicant who reasonably fulfils all the criteria set out by law, and thus it is expected to observe the safeguards enshrined in the EU Charter of Fundamental Rights and the EU Treaty. In any case, Hungary is bound to respect the right to be heard and the right to an effective remedy, in light of the jurisprudence of the two European courts, even if no explicit and specific obligation from an international legal instrument is applicable.¹²⁴

The existence of these obligations is yet far from being unanimously agreed upon, and there is very little literature one can rely on. Yet the complex analysis of all relevant sources of law and jurisprudence do point in the direction presented in this study.¹²⁵ Furthermore, the current Hungarian framework for naturalisation falls short of the general right to good administration norm enshrined in the Fundamental Law of Hungary.¹²⁶

RECOMMENDATION VI/B: *In order to respect its obligations under the European Convention on Human Rights, the EU Treaty, the EU Charter for Fundamental Rights (as interpreted by the relevant international courts), the European Convention on Nationality (if and when the reservations made by Hungary are lifted) and the Fundamental Law of the country, Hungary is urged to reform its domestic legal framework of naturalisation procedures. The reform, as a minimum, should include the following elements:*

- *Naturalisation procedures should become standard administrative procedures, falling under the scope of all relevant procedural norms and safeguards;*
- *The right to be heard should be respected: applicants should have the opportunity to make known their views effectively before the adoption of a negative decision;*
- *Administrative decisions should provide reasoning both in fact and in law;*
- *Applicants should be allowed to seek effective remedy against negative administrative decisions before a court, similarly to asylum, statelessness determination or alien policing procedures.*

CONCLUSION VII

No transparent and justified thresholds exist when assessing the livelihood and accommodation requirements for naturalisation, and it appears that unreasonably high standards are being applied on certain occasions, which may have a particularly negative impact on refugees and stateless persons.

RECOMMENDATION VII/A: *In order to avoid any arbitrary, unfair or discriminatory decision-making, the law should include clear and transparent standards for what should be considered as secured livelihood and accommodation. The livelihood threshold could be linked to the minimum monthly salary determined by law, or the statistical minimum monthly subsistence as determined by the Central Statistical Office.*

The OIN’s reported practice to require a proof of secured livelihood for the entire period of 3 years¹²⁷ before naturalisation¹²⁸ has not fundament in the law, since the Citizenship Act requires secured livelihood *in present tense*. This administrative practice is therefore arbitrary and may wrongly exclude eligible candidates from naturalisation. There are good grounds to require a proof of livelihood for a certain period of time before the application; however, this period should be reasonably short considering that the aim is to verify the applicant’s livelihood in present tense.

¹²⁴ Cf. with Hungary’s reservations to the 1997 European Convention on Nationality

¹²⁵ See detailed analysis and concrete references in Chapter 2.3

¹²⁶ See details in Chapter 2.3

¹²⁷ The minimum residence requirement before naturalisation for refugees and stateless persons

¹²⁸ See Chapter 4.2

RECOMMENDATION VII/B: *The Office of Immigration and Nationality is urged to stop its reported practice to require a proof of livelihood for the entire 3-year period before the application for naturalisation is submitted. In order to avoid any arbitrary, unfair or discriminatory decision-making, the law should include clear and transparent standards concerning the period for which a proof of secured livelihood and accommodation can be requested. This period should preferably be of 6 months (or alternatively 1 year).*

The OIN's reported practice to "start counting from zero" the 3-year domiciled residence requirement if there is a short gap between two registered domiciles¹²⁹ is unfair and may wrongly exclude eligible candidates from naturalisation – especially refugees who often face significant difficulties when trying to move out from reception centres to private accommodation. The fact that a few days or weeks elapse between two registered domiciles does not alter the person's lawful and habitual residence in Hungary. Both EU and Hungarian immigration law is sufficiently permissive in this respect,¹³⁰ which further indicates the unreasonable character of the OIN's practice in the field of naturalisation.

RECOMMENDATION VII/C: *The Office of Immigration and Nationality is urged to stop its reported practice to "start counting from zero" the 3-year domiciled residence requirement before naturalisation if there is a short gap between two registered domiciles. In order to avoid any arbitrary, unfair or discriminatory decision-making, the law should clarify the minimum length of lacking a registered domicile that can justify the re-start of counting the minimum mandatory domiciled residence. To this end, parallel provisions governing the minimum required continuous residence for the issuance of a permanent residence permit in both EU and Hungarian law should be copied or used as a source of inspiration.*

129 See Chapter 4.2

130 See Chapter 3.1 and cf. Act II of 2007 on the entry and stay of third-country nationals, Sections 35 (2) and 38 (6)

