

Ending Childhood Statelessness:

A Study on Estonia

Working Paper 04/15



EUROPEAN NETWORK ON STATELESSNESS

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Introduction

In 1991, when Estonia regained its independence, the country's new political leadership decided to embark upon the restoration of the pre-WWII Estonian Republic (1918-1940). Citizenship was extended only to the citizens of the pre-war Estonia and their descendants. As a result, a substantial part of Estonia's population (the Soviet-era settlers) became stateless, including children born in Estonia.

After many years of heated debates, on 21 January 2015, the *Riigikogu* adopted new amendments to the Citizenship Act, two of which directly relate to the right to a nationality of children. Firstly, a stateless child born in Estonia to stateless parents (with "undetermined citizenship") who have lived in Estonia for at least 5 years before the child's birth will automatically acquire citizenship. This rule will also be applied retroactively to qualifying children who are under the age of 15 when the law comes into force in January 2016. Secondly, persons aged under 18, who have another citizenship in addition to the Estonian one, cannot be deprived of Estonian citizenship until the age of majority. These amendments will help to decrease the figure of stateless children who were born in Estonia, whose number in 2014 was 936.

This report provides an overview of the situation of childhood statelessness in Estonia and discusses the extent to which existing national legislation, policy and practice comply with international standards in the field.

1. Post-independence Estonian citizenship policy

In 1991, when Estonia regained its independence, the country's new political leadership decided to embark upon the restoration of the pre-WWII Estonian Republic (1918-1940). This determined the nature of Estonian citizenship policy. Thus, on 6 November 1991, the legislature¹ decided that citizenship would be extended only to the citizens of the pre-war Estonia and their descendants. During the autumn/winter of 1991-92, some Estonian politicians including a number of representatives from the Congress of Estonia², argued that all those who entered Estonia after 16 June 1940, did so illegally and therefore had no automatic right to citizenship. The final resolution followed in 1992 with the re-enactment of the 1938 Citizenship Act — which excluded the Soviet-era settlers — by granting automatic citizenship almost exclusively to those who were citizens in 1940 (before the Soviet takeover) and their descendants. This caused mass statelessness among the almost 40% of the population who were not ethnic Estonian.

The main features of the 1992 citizenship regulation were the exclusiveness of the *ius sanguinis* principle and the avoidance of dual citizenship (exceptions were later made for citizens by birth). **Every person who possessed Estonian citizenship before 16 June 1940 — the day of the Soviet ultimatum followed by the annexation of Estonia — had a legal claim to Estonian citizenship. No other permanent residents could enjoy this right, and hence they became stateless.** The scale of the problem can be illustrated through a comparison of voting polls in two referenda which took place just before and just after independence. In the independence referendum in March 1991, 1,144,309 people had the right to vote.³ In the constitutional referendum in the summer of 1992, the reported number of people with such a right was 689,319, just over 60% of the 1991 figure.⁴ Consequently, approximately 454,000 adults in Estonia had been disenfranchised.

Thus, a substantial part of Estonia's population (mostly ethnic Russians and other Russian-speaking minorities) became stateless. In Estonian political discourse they are labelled differently from the terminology of international law, as '*individuals with undetermined citizenship*' (*määratlemata kodakondsusega isikud*). This term is widely used in Estonian official documents although it has never been established as a legal definition. Estonian authorities avoid using the term 'stateless' and the law does not contain a definition of 'stateless person'. Estonian law uses the term 'alien' rather than 'foreign national' to categorise a person who is not an

¹ The so-called Supreme Soviet which has the function of a Parliament.

² Radical nationalists' movement in Estonia before regaining independence that played important role in the forming of political climate.

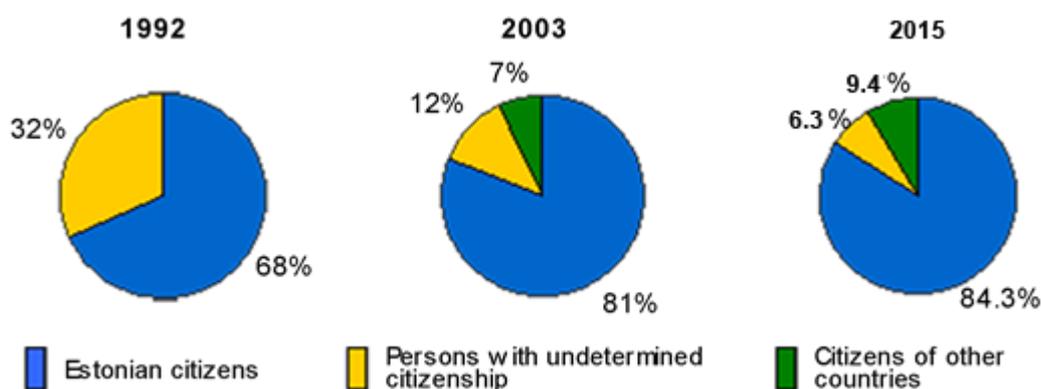
³ *Riigi Teataja*, no. 8, March 1991, at 189.

⁴ *Rahva Hää!*, 26 September 1992, at 2.

Estonian citizen (Article 3 (1) of Aliens Act of 1993). The category of ‘aliens’ also applies to the aforementioned stateless persons who continue to form a large group among Estonia’s non-citizens. The Estonian identification document issued to a stateless person is also called an ‘Alien’s passport’.

Naturalisation in Estonia began in 1992 and peaked in the 1990s. The figures below illustrate the dynamics of the process:

Figure 1 (Source: Ministry of the Interior, Population Register⁵)



As shown, regardless of official integration policy, in the 2000s the number of those naturalised was low. Interest in acquisition of Estonian citizenship grew again in the period after accession to the European Union in 2004. According to UNHCR’s global population statistics, as of mid-2014, there were still 89,533 stateless persons in Estonia.⁶

2. International obligations relating to (childhood) statelessness

Estonia is a state party to the following relevant international conventions: the Convention on the Rights of the Child, the International Covenant on Civil and Political Rights, the Convention on the Elimination of All Forms of Racial Discrimination, the Convention on the Elimination of All Forms of Discrimination against Women and the Convention on the Rights of Persons with Disabilities.

Estonia is not a party to the 1961 Convention on the Reduction of Statelessness or the European Convention on Nationality; nor has it acceded to the 1954 Convention relating to the Status of Stateless Persons. Thus, to date, Estonia has not signed or ratified any of the conventions regarding the reduction of statelessness or the rights and status of stateless persons. The reason offered by Estonian authorities is that, in their assessment, there are no stateless persons in Estonia, just a number of *individuals with undefined citizenship*; therefore, the State has no need to join these conventions. This is the case in spite of the pledge made by the delegation of the European Union to the United Nations in 2012 on behalf of all EU member states which included the explicit statement that “the EU Member States which have not yet done so pledge to address the issue of statelessness by ratifying the 1954 UN Convention relating to the Status of Stateless Persons and by considering the ratification of the 1961 UN Convention on the Reduction of Statelessness”.⁷ There has been no public discussion on the matter in Estonian media, except in Russian language papers and experts’ opinions. The problem has been a topic for discussion behind closed doors, for instance within the Presidential Round table on minorities (a quasi-official forum for deliberation) and at special meetings with parliamentarians.

⁵ <http://estonia.eu/about-estonia/society/citizenship.html>

⁶ UNHCR, Mid-Year Trends 2014, available at <http://www.unhcr.org/54aa91d89.html>.

⁷ See: <http://www.unrol.org/files/Pledges%20by%20the%20European%20Union.pdf>

3. Childhood statelessness in Estonia

Several studies deal with the issue of statelessness in Estonia; however, they have not specially focused on stateless children (see Annex 2). Remarkably, only one publication is in the Estonian language. Others have been presented in international *fora*, demonstrating the relative lack of debate on this issue at the domestic level. Nevertheless, **the issue of childhood statelessness has been raised as an issue in Estonia on numerous occasions, in particular by international actors.** For example, the situation attracted attention of the OSCE High Commissioner on National Minorities (HCNM), Max van der Stoep, who in the 1990s provided a number of recommendations to Estonia on the issue. His activity has been thoroughly reported on by Vadim Poleshchuk in his study “Advice not Welcome”⁸. One of the chapters considers the recommendations made with respect to access to nationality for the children of stateless parents.⁹ The first relevant such recommendation was presented in 1993:

“Children born in Estonia who would otherwise become stateless should be granted Estonian citizenship, taking into account Article 3, paragraph 6, of the Estonian Citizenship Law, Article 24, paragraph 3, of the International Covenant on Civil and Political Rights¹⁰, and Article 7, paragraph 2, of the Convention on the Rights of the Child”¹¹.

Estonia did not respond to the issue immediately, but later after a visit by HCNM to Tallinn in 1997, Estonia presented its viewpoint to justify the non-fulfilment of the recommendation:

1. *The Ministry claims, by reference to the opinion of lawyers of the Ministry of Foreign Affairs and international experts (not named) that the Convention on the Rights of the Child and the International Covenant on Civil and Political Rights do not contain a legal obligation of Estonia to automatically provide citizenship to all children born in Estonia.*
2. *Art. 7 Convention on the Rights of the Child and Section 3 Art 24 International Covenant on Civil and Political Rights:*
 - a) *are expressed in general terms*
 - b) *do not specifically centre on the issue of statelessness*
 - c) *do not stipulate which concrete citizenship is to be granted, whether it should be the state of birth or some other state; there is no international recognition of the principle of jus soli*¹².

In the final part of the message, it is suggested that in order to escape statelessness, the former citizens of the USSR are free to accept citizenship of the Russian Federation. This demonstrates a view which used to be shared by many politicians in Estonia, who believed that when Russia declared itself the legal successor of the USSR, all former citizens of the USSR were to be considered citizens of the Russian Federation. This position was incorrect and also disregarded the right of the individual to have a say with regards to the acquisition of citizenship, and it was later dropped, although not without hesitations.

In his response on 21 May 1997, the HCNM reiterated his recommendations, whilst pointing out that he does not advocate the automatic granting of citizenship to children.¹³ The subsequent reaction of the Foreign Minister of Estonia, Mr H. Ilves, was uncompromising. He wrote: “Examining of data available in the European Documentation Centre on nationality situated in the Council of Europe, [...] has shown that European

⁸ Poleshchuk, V. (2001), *Advice not welcomed. Recommendations of the OSCE High Commissioner to Estonia and Latvia and the Response*, Kieler Schriften zur Riedenswissenschaft, Bd. 9, Münster: Lit Verlag

⁹ *Ibid*, at 62-65

¹⁰ “Every child is eligible to get citizenship” article 24(3) ICCPR

¹¹ Poleshchuk, V. (2001), *Advice not welcomed. Recommendations of the OSCE High Commissioner to Estonia and Latvia and the Response*, Kieler Schriften zur Riedenswissenschaft, Bd. 9, Münster: Lit Verlag at 62

¹² *Ibid*, at 63

¹³ Such a reply seems like a departure from the principles expressed in the Convention on the Rights of the Child. It should be kept in mind that the mandate of the OSCE HCNM is to seek for peaceful solution of inter-ethnic problems and conflicts. Therefore, taking into consideration the sensitive character of the issue in Estonian situation, he preferred to propose a compromise resolution.

legislation on citizenship are far from being in alignment... The laws in a number of countries do not follow the principle of your recommendations.” In addition, he again returned to the argument that the children of former USSR citizens are not, in fact, stateless persons, because their parents have an option to acquire for them, by undergoing a simple administrative procedure, citizenship of the Russian Federation.

Finally, in 1998, Estonia agreed to grant citizenship to children of stateless parents on the basis of an application procedure, thus following a compromise proposal by the HCNM. It established an age limit for application for citizenship by these children at 15 years of age.

International experts criticised this decision as violating Section 1 Art. 2 of the Convention on the Rights of the Child, under which “States Parties shall respect and ensure the rights set forth in the present Convention to each child within their jurisdiction...”.¹⁴ Also, Art. 1 of the Convention determines that “[a] child means every human being below the age of eighteen years unless [...] majority is attained earlier”. In Estonia a person attains majority at 18. Therefore, as formulated by Carmen Thiele, “this domestic regulation is not fully in line with the international obligations of Estonia”.¹⁵

The issue has since been raised regularly in various opinions and recommendations on Estonia by UN and CoE committees, and by numerous other international actors.¹⁶ In 2011, for instance, within the Universal Periodic Review process before the UN Human Rights Council, Ecuador recommended that Estonia “Resolve the problem of persons without citizenship, and prevent such cases from arising in the future” – a recommendation that Estonia accepted.¹⁷ In the spring of 2013, the Commissioner for Human Rights of the Council of Europe Nils Muižnieks visited Estonia and recommended introducing amendments into Estonian legislation which would automatically grant Estonian citizenship to stateless children born in the country.¹⁸ In 2014, the topic of citizenship was also touched upon by the UN Committee Against Torture. It expressed concern in connection with about 7 % of population still being “persons with undetermined citizenship”, and with low level of registration of children of undetermined nationality born in Estonia as citizens. Among other things, the Committee recommended to Estonia to¹⁹:

- *Adopt legal and practical measures to simplify and facilitate the naturalization and integration of stateless persons and non-citizens, including by revisiting the requirements for the granting of citizenship;*
- *Continue and enhance the efforts by the Citizenship and Migration Board to raise the awareness of parents whose children are eligible for naturalization through the simplified procedure of the requirements for citizenship, and consider granting automatic citizenship at birth, without previous registration by parents, to the children of noncitizen parents who do not acquire any other nationality;*
- *Despite the information provided by the State party regarding its decision not to ratify the 1954 Convention relating to the Status of Stateless Persons and the 1961 Convention on the reduction of statelessness²⁰, reconsider such ratification as a matter of priority.*

Regrettably, the issue of childhood statelessness was not a matter of priority in domestic debates and in most cases was intertwined with other problems: the general issue of mass statelessness and its political consequences; the problem of valid documents for stateless persons; conditions for naturalisation, including exams and language requirements, among others. The opposition Centre Party of Estonia initiated four bills between September 2007 and August 2010: Bills no. 126, 306 and 796, which were meant to introduce the *ius*

¹⁴ The CRC protects the right of all children to acquire a nationality in article 7.

¹⁵ Thiele, C (1999), ‘The Criterion of Citizenship for Minorities: The Example of Estonia’, ECMI Working Paper 5, Flensburg

¹⁶ One can point out several recent examples. The topic was raised in the recommendations of the Committee on the Elimination of Racial Discrimination (CERD): see CERD/C/EST/CO/8-9 (2010), item 15; and CERD/C/EST/CO/10-11 (2014), item 11; and in the recommendation of the Committee on Economic, Social and Cultural Rights: E/C.12/EST/CO/2 (2011), item 9

¹⁷ A/HRC/17/17, 28 March 2011

¹⁸ Report by Nils Muižnieks, Commissioner for Human Rights of the Council of Europe following his visit to Estonia from 25 to 27 March 2013, CommDH (2013) 12, Section 106, www.coe.int.

¹⁹ UN Committee against Torture. Concluding Observations on the 5th Periodic Report of Estonia, Adopted by the Committee at Its 50th Session (6–31 May 2013), CAT / C / EST / CO / 5, 17 June 2013, Section 22

²⁰ The reasons of Estonian authorities see above (at 2-3)

solli principle in Estonia; Bill no. 113 sought to simplify the naturalisation requirements for older people and for some other groups, including stateless children. Yet none of these bills passed in the *Riigikogu* (Estonian Parliament).

The Estonian official position is that international experts are satisfied with Estonian policy in the field of citizenship legislation. However, this is simply not true. As far back as the autumn of 1991, experts of the Parliamentary Assembly of the Council of Europe expressed in their Report a serious concern with the deprivation of the right to citizenship in Estonia and predicted that it could affect the character of the democratic system in the country²¹.

There were also numerous critical statements and particular recommendations by the fact-finding missions and individual experts concerning the situation in Estonia. One can now find most of them in the collection published by Hanne-Marget Birckenbach²². In another paper, Birckenbach points out that:

“Despite their different evaluation of the human rights aspects, fact-finding missions did not fail to establish relevant facts. All fact-finding missions have recognised severe problems concerning the rights of those permanent residents of Estonia and Latvia, who found themselves excluded from citizenship. They agreed that the domestic situation in Estonia and Latvia should under no circumstances remain as they found it. They considered it to be dysfunctional, dangerous and unjust, even if it was in harmony with the spirit of the international human rights system... Reforms were found to be necessary that would lead to the integration of non-citizens into Estonian and Latvian society”²³.

In general, Estonian policy on citizenship has remained conservative, without major domestic debates after the adoption of the Citizenship Act of 1992. The mainstream political parties have regularly declared prior to national elections that, regardless of the election results, the Citizenship Act and the corresponding policies will not be changed.²⁴ The partial liberalisation of naturalisation requirements for some groups (such as the disabled, older people, and stateless children) was normally a result of pressure from the international community, like efforts by the OSCE High Commissioner (see above) and CoE, whose recommendations were openly or covertly supported by the European Commission. It is worthwhile to note that in the EU Accession Partnership of 1999 for Estonia the issue of ‘integration’ of non-citizens was already explicitly raised among short and mid-term priorities. According to Dimitry Kochenov, in the case of Estonia and Latvia, “for the first time the naturalisation policies of the candidate countries were influenced by the pre-accession pressure of the EU, which has only limited powers in this domain”.²⁵ Estonia interpreted the admission to the EU as an indication of international approval of its citizenship policies and indeed, since then, the EU and other international actors virtually stopped issuing recommendations on how Estonia should develop its citizenship policy.

Regardless of official integration policy, since the year 2000, the number of those naturalised was low. Interest to citizenship of Estonia slightly soared again in the period after accession to the European Union in 2004, but its effect was brief, as shown in the figure below:

²¹ Pekkanen, Raimo & Danelius, Hans. Report on Human Rights in the Republic of Estonia. Doc. AS/Ad hoc-Bur-EE (43) 2. 1991, items 35-39.

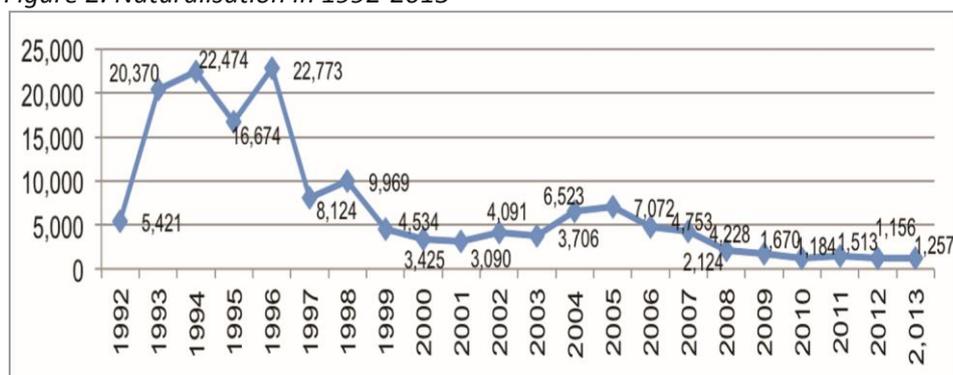
²² Birckenbach, Hanne-Margret. Preventive Diplomacy through Fact-Finding. How the international organisations review the conflict over citizenship in Estonia and Latvia. Lit Verlag, Hamburg, 1997, Part II

²³ Birckenbach, Hanne-Margret. Preventive Diplomacy: Conclusions from international intervention into Estonian and Latvian Conflicts over citizenship. SCHIFF-texte Nr. 44, Kiel, 1997.

²⁴ Nevertheless, some mainstream parties have included vague promises regarding liberalisation of the naturalisation procedure in the pre-election materials as a reaction to national and international critic

²⁵ Kochenov, D. (2006), *EU's Numerous Contradictory Approaches to Minority Protection: Internal-External Paradox and Mutually Exclusive Pre-accession Standards*, Paper presented at ‘Exchanging Ideas on Europe 2006: Visions of Europe: Key Problems, New Trajectories’ UACES 36th Annual Conference and 11th Research Conference, Limerick, Ireland (31 August – 2 September 2006).

Figure 2. Naturalisation in 1992-2013



Source: Police and Border Guard Board, www.estonia.eu

These findings present a worrying symptom. They indicate that a feeling of hopelessness in terms of obtaining citizenship is widespread among the non-Estonian non-citizens community. People have not only become more uncertain about their citizenship prospects for the time being, they have also become unsure as to whether they wish to obtain Estonian nationality at all under the present conditions. There are various reasons and explanations for this trend, but overall it appears that non-citizens are increasingly uninterested in obtaining Estonian citizenship.

The lack of nationality has a significant impact for the enjoyment of certain rights and services in Estonia. This is presented in detail in a report by Vadim Poleshchuk, published in 2004.²⁶ The following summary provides a snapshot of the way in which statelessness affects people's lives.

Non-discrimination, civil and political rights

- Generally, non-citizens enjoy protection against discrimination. However, in certain areas differential treatment of citizens and non-citizens is permitted.
- Non-citizens and citizens are equal before law. However, non-citizens (as well as minorities) are overrepresented in the prison population and underrepresented among those received parole verdict.
- Generally, non-citizens private and family life and home are protected. However, the authorities hold specific powers to check on the enforcement of immigration rules at non-citizens' home, work and in public places.
- Non-citizens' right to family reunification is observed to a lesser degree as compared with citizens.
- Only Estonian citizens can vote in national elections or stand for a seat in the national parliament. Non-citizens have the right to vote in local elections. Non-citizens cannot be members of political parties.²⁷

Economic, social and cultural rights

- The educational level of non-citizens is close to the level of Estonian citizens. As for age structure, older generations are overrepresented among the stateless population.
- In general, it is possible to come to Estonia for work but the procedure is complicated and a work permit is required. The stateless population does not need work permits because of their special legal status.
- Non-citizens cannot work in public office and in some other positions. For all positions in the public domain and for many positions in the private domain the law requires a certificate of Estonian language proficiency (if the person did not graduate from an Estonian-language education institution).
- Unemployment rates among non-citizens is 1.5-2 times higher comparing with Estonian citizens. This reflects the social-economic inequality between ethnic minorities and the majority in the country.

²⁶ V. Poleshchuk, Non-citizens in Estonia. Report to the 64 session of the UN CERD Committee. LICHR, 2004 (<http://www.lichr.ee/home/wp-content/uploads/2014/05/non-citizens.pdf>).

²⁷ Ibid., p. 34-35.

- Estonian citizens and non-citizens have equal access to most social benefits and services. Certain exceptions are valid for aliens with temporary residence permits, but this does not affect the stateless population.
- Non-citizens can peacefully enjoy their property rights. However, a few restrictions are in place for their transactions with immovable property.²⁸

4. Law and practice on acquisition of citizenship

Acquisition of nationality in Estonia is regulated by the Citizenship Act.²⁹ **In general, in Estonian citizenship law the principle of *ius sanguinis* dominates.** There are no further regulations or circulars on the rules of acquisition and loss of nationality in Estonia. All these rules are fully given in the text of the Citizenship Act and related amendments to it. The Administrative Court is responsible for resolving disputes relating to the application of the nationality regulations.³⁰

The Act includes acquisition of citizenship by birth and by naturalisation. Citizenship by naturalisation (including for achievements of special merit) is granted by a decision of the Estonian Government.³¹

According to the Citizenship Act³², Estonian citizenship is acquired at birth:

- If at least one of the child's parents holds Estonian citizenship at the time of the child's birth.
- If the child is born after the death of his or her father and if the father held Estonian citizenship at the time of his death.
- If a child of unknown parents is found in Estonia, unless the child is proven to be a citizen of another state and subject to a court declaring that the child has acquired Estonian citizenship by birth upon application by the guardian of the child or a guardianship authority.
- If an alien minor is adopted by an Estonian citizen, upon written application of the adoptive parent who is Estonian.

In 1995, Estonia adopted a new Citizenship Act, which is still in force. This Act joined together all regulations on citizenship and complicated requirements for acquisition of Estonian citizenship by naturalisation. It is widely believed in Estonia that the naturalisation requirements introduced by the 1995 law, especially the written part of the language test (an essay) and the oral part (conversations with no pre-defined topics) were more difficult to fulfill than the previous ones. As a result, the rate of citizenship acquisition dropped sharply when, starting in 1996, the naturalisation process was switched to this new set of requirements.³³

Since the *ius sanguinis* principle dominates, the law does not include provisions about access to nationality for children born on a ship or plane registered with Estonia.

The International Covenant on Political and Civil Rights (Article 24(3)³⁴) and the Convention on the Rights of the Child (Article 7(1)³⁵), both of which Estonia has ratified, provide, that every child has the right to acquire a nationality in particular where the child would otherwise be stateless. However, according to the initial version of the 1995 Citizenship Act, the children of stateless parents born in Estonia could not acquire Estonian

²⁸ V. Poleshchuk, Non-citizens in Estonia. Report to the 64 session of the UN CERD Committee. LICHR, 2004 (<http://www.lichr.ee/home/wp-content/uploads/2014/05/non-citizens.pdf>) at 46

²⁹ Citizenship Act. Adopted 19.01.1995. RT I 1995, 12, 122. <https://www.riigiteataja.ee/akt/103022015004>. Last amended on 21.01.2015, RT I, 03.02.2015, 1.

³⁰ According to the Database of Court Decisions no more than 100 cases regarding issue of citizenship were presented to the Administrative Court. It is not clear how many of them were presented on behalf of minors. https://www.riigiteataja.ee/kohtuteave/kohtulahendite_otsing/haldusasjad.html

³¹ Documents in such cases are prepared by the Police department, which is under the Ministry of Interior Affairs.

³² Articles 3, 1938 Citizenship Act. Article 5, 1995 Citizenship Act

³³ EUDO Citizenship Observatory. Country report: Estonia. <http://eudo-citizenship.eu/docs/CountryReports/Estonia.pdf>

³⁴ Every child has the right to acquire a nationality.

³⁵ The child shall be registered immediately after birth and shall have the right from birth to a name, the right to acquire a nationality and, as far as possible, and the right to know and be cared for by his or her parents.

citizenship after birth. These minors, while still under the age of 15, could be granted Estonian citizenship only together with their parents when applying for citizenship by naturalisation. The Citizenship Act also didn't provide any simplified procedure of naturalisation for children of stateless parents born in Estonia who are older than 15 years old even if the child is stateless.

Some politicians and lawmakers saw the danger of compromising the governing principle of citizenship acquisition (*ius sanguinis*) by adding the *ius soli* principle to it. After political and academic debates, in which the role of recommendations issued by international actors should not be underestimated, an amendment to the Citizenship Act was finally adopted in 1998.³⁶

Following an amendment to the Citizenship Act in 1998, children, born in Estonia after 26 February 1992, whose parents of “undetermined citizenship” who have lived in Estonia for at least five years, have been eligible, at their parents' request, to gain Estonian citizenship through naturalisation without the precondition of passing the citizenship examinations. Such a request can only be made until a child is 15 years of age. Under this scheme, stateless minors under the age of 15 are entitled to a simplified naturalisation procedure – however, they are not recognised as Estonian citizens solely due to the fact that they were born in Estonian territory. Stateless minors between the ages of 15 and 18 cannot benefit from this procedure and there are no special rules to address their access to nationality.

In practice, many stateless parents used this opportunity for acquisition of Estonian citizenship by their children. **According to data from the Police and Guard Board, by 2014, a total of 13,679 stateless minors acquired nationality on this ground.** Nevertheless, in order to present an application for acquisition of nationality, both parents' agreement was needed. This presented an obstacle in cases where one parent could not obtain the consent of the other.

Daria's story

Daria is a student in one of Tallinn's schools. She was born in Tallinn in 1999. Her parents, at the moment of Daria's birth, had aliens' passports reflecting their status as persons of “undetermined citizenship”. Daria was also issued an aliens passport and residence permit. Later, her father obtained citizenship of the Russian Federation, while Daria's mother acquired Estonian citizenship by naturalization.

Daria also wanted to get an Estonian passport and Estonian citizenship. Under the law in force at the time, children under 15 years old, born before their parents acquire Estonian citizenship, have the right to obtain citizenship by naturalization with their parents and without passing the exams at the state language. However, both parents' agreement is needed to present an application. Daria wanted use this opportunity because otherwise, when she is 15, she is required to take the citizenship exam on general grounds. Unfortunately, her father did not support the family and does not communicate with Daria and her mother. Since her father has already got the Russian passport, he should officially confirm that his daughter does not have Russian passport and he is not against Daria being able to obtain Estonian citizenship. “*My father is not interested in our lives*”, - Daria explains the family's situation. “*Factually it was extremely difficult to find him and ask to give this permission*”.

Daria was lucky: lawyers found her father and explained the necessity of getting citizenship for Daria. Daria's father, through a notary, gave his permission for getting Daria Estonian citizenship. She was almost 15 years old when she received Estonian citizenship. Although Daria cannot think of any concrete examples of how statelessness affected her life, she did notice that her mother was regularly worried about her travelling. She didn't visit other countries because without any citizenship no one state will protect her. “*I would like to travel more! But more over I am a student and I study foreign languages (Japanese, Swedish, and German). It is my dream to study abroad*”.

³⁶ December 1998, which entered into force on 12 July 1999

Thiele (1999: 19)³⁷ argues that this domestic regulation was not fully in line with Estonia's international obligations, in particular because stateless minors between the ages of 15 and 18 and other children born before 26 February 1992 missed out under this procedure.³⁸

Later the *Riigikogu* passed several other amendments to the Citizenship Act, among them also some related to the issue of children's right to a nationality: since 2002, a young person graduating from high school or vocational school who successfully passes the social theory exam does not need to take the citizenship test, and the same policy has applied to the Estonian language exam since 2001. On 29 January 2003, the *Riigikogu* took steps to bring the practice of acquisition of Estonian citizenship by adopted stateless minors into line with the Convention on the Rights of the Child, approving new amendments to the Citizenship Act. Upon written application by an adoptive parent who is an Estonian citizen, through a decision of the governmental authority, a stateless minor is deemed to have acquired Estonian citizenship by birth, provided the adoptive parent was an Estonian citizen at the time of the birth of the child and provided that the child is not a citizen of another state, or that the child will be released from the citizenship of another state as a result of him or her acquiring Estonian citizenship³⁹. Nevertheless, none of these reforms fully addressed the underlying problem of securing access to nationality for all stateless children born in the country and intergenerational statelessness has continued to be a problem.

Finally, on 21 January 2015, the *Riigikogu* adopted crucial new amendments to the Citizenship Act relating to children's right to a nationality.⁴⁰ Firstly, **children with undetermined citizenship who were born in Estonia and whose stateless parents have lived in Estonia for at least five years, will acquire citizenship of Estonia immediately after birth. Parents have the right to refuse such granting of citizenship during the period of one year after the child's birth. It is difficult to establish how many people will benefit, but according to the Police and Border Guard Board, each year, an estimated 300 children of persons without citizenship are born in Estonia**⁴¹. Moreover, this provision will also be applied retroactively to deal with existing cases of childhood statelessness, when the law comes into force, although it will be limited in its application to children who are under 15 years of age at that time. **On 18 August 2014, there were still 936 stateless children who were born in Estonia – it is likely that a significant number of these will thereby gain nationality when the new law enters into force through the provision that allows for retroactively.** Finally, persons aged under 18, who have another citizenship in addition to the Estonian one, cannot be deprived of Estonian citizenship until the age of majority. Thus, the law allows minors to possess, in addition to the Estonian citizenship, the citizenship of another country. When they become adults, however, they have to renounce either the citizenship of Estonia or that of the other country within three years. Due to the necessity to first develop Police and Border Guard information system, two amendments will enter into force only on 1 January 2016. At present, there is no information about any campaign or other efforts to disseminate information about this reform.

³⁷ Thiele, C. (1999), 'The Criterion of Citizenship for Minorities: The Example of Estonia', ECMI Working Paper 5, Flensburg

³⁸ The UN Secretary-General and the HCNM recommend that children born in Estonia should acquire the Estonian nationality if they otherwise would become stateless. See Report of the Secretary-General "Situation of Human Rights in Estonia and Latvia", in: UN Doc. A/48/511, para. 89, at 17; van der Stoep, Recommendations, in: HRLJ, 14(1993), 5-6, para. 3, at 218

³⁹ The reason was the application of two Estonian citizens to the Chancellor of Justice. Their adopted daughter have been denied Estonian citizenship because they could not provide information concerning citizenship of the girl's biological parents. During the early stages of the proceedings, it was discovered that there were contradictions between the Police and the Guard Board's enabling practices and provisions of the Family Act.

⁴⁰ The amendments were initiated by the Estonian Reform Party and the Social Democratic Party, whose coalition agenda provided the following points: 1. Do not change the Estonian citizenship policy principles; 2. Minors cannot be deprived Estonian citizenship; ... 4. Stop the reproduction of stateless children.

⁴¹ Explanation note to the amendment to the Citizenship Act (nr737) <http://www.riigikogu.ee/download/ab5f780c-3b11-4bb3-8f5b-d819ec8deaa4/ab5f780c-3b11-4bb3-8f5b-d819ec8deaa4>

Maria's story

Maria was born in Estonia in 1987 and was only a young girl when Estonia became independent. She was left without citizenship. Coached by her parents, Maria very soon showed amazing chess talent. She won the Estonian championship several times, in different age categories. She also obtained high results on a number of international tournaments and qualified for the grandmaster title.

Despite having been born in and lived all her life in Estonia, Maria was stateless. As a result, when she was 15 years old, the Estonian Chess Federation (ECF) determined that she was not allowed to represent Estonia in the international chess championships because of the requirement of citizenship set in the Sport Act – and in spite of open letters to FIDE written by both Maria's parents. Her mother explained how this felt: *"We were not allowed to play. In fact, they cut the chess career for this talented girl. It is not allowed for an alien older than 15 to play for the national team. Our children, in principle, could not be members of the team. Like parents we all pay for all travel in this team, the national team does not have sponsors, only parents. For playing we have to get citizenship first."*

The Estonian Chess Federation had proposed, as a solution, that Maria should apply for Estonian citizenship; but this proposal was rejected by Maria's family. This principled decision by her parents directly affected Maria's rights, as it meant that she remained stateless although she was eligible for nationality. Now, this problem will be resolved within the framework of the new Citizenship Act, which will come into effect in 2016 and will grant citizenship automatically, rather than requiring minor children to have parental permission to obtain Estonian citizenship.

In spite of the above-mentioned amendments, the Citizenship act does not provide a right to nationality for stateless children born on Estonian territory who are already between the ages of 15 and 18, nor for those who have already become adults. Acquisition of citizenship by such persons is subject to the regular naturalisation procedure, the details of which are set out below. In addition, the condition of 5 years residence in the country by the parents, prior to the birth of the child, may act to disqualify some children of stateless parents from obtaining citizenship. Plus, the possibility for parents to "opt out" of Estonian nationality on behalf of their child within the first year of their life may continue to cause situations in which the parents' views on citizenship engender childhood statelessness.

Critically, the law makes no provision for access to Estonian nationality for children born outside of Estonia, to stateless parents (of "undetermined citizenship"), so they will continue to inherit their statelessness from their parents – unless the country of birth has safeguards in place to ensure access to nationality for otherwise stateless children. **Furthermore, even following new amendments to the Citizenship act, other cases of otherwise stateless children born in Estonia are not provided with a solution. For instance, where one or more of the child's parents hold the citizenship of another country but are unable to confer this to the child – exposing the child to statelessness – the law does not offer a special regime for access to nationality.** Acquisition of citizenship by such persons is the subject to the naturalisation procedure.

Article 6 of the Citizenship Act sets the following basic requirements for a stateless person who wishes to acquire Estonian citizenship by naturalization. He/she shall:

- 1) be at least 15 years of age;
- 2) have stayed in Estonia permanently on the basis of a permanent residence permit for at least five years prior to the date on which he or she submits an application for Estonian citizenship and for six months from the day following the date of registration of the application;
- 3) have knowledge of the Estonian language in accordance with the requirements provided for in § 8 of this Act;

- 4) have knowledge of the Constitution of the Republic of Estonia and the Citizenship Act in accordance with the requirements provided for in § 9 of this Act;
- 5) have a permanent legal income, which ensures his or her own subsistence and that of his or her dependents;
- 6) be loyal to the Estonian state;
- 7) take an oath: "Taotledes Eesti kodakondsust, tõotan olla ustav Eesti põhiseaduslikule korrale" (In applying for Estonian citizenship, I swear to be loyal to the constitutional order of Estonia).

From among these conditions, in respect of access to nationality for stateless children between the ages of 15 and 18, or for young stateless adults, the condition of a permanent legal income may, for instance, pose a particular challenge and delay the opportunity for access to nationality in practice. An overview of naturalisation data has already been provided in section 3.

5. Law and practice on loss or deprivation of citizenship

The conditions and procedures for the loss of Estonian citizenship are set out in Chapter 6 of the 1995 Citizenship Act (Articles 22–30). According to these stipulations, a person shall cease to be an Estonian national 1) through renunciation of Estonian citizenship; 2) through deprivation of Estonian citizenship; and 3) upon acceptance of the citizenship of another state (Article 22). Release from Estonian citizenship may be refused to a person if the person would become stateless as a result (Article 26). The deprivation of the citizenship shall be executed by order of the Government (not by a court decision). However, such decision may be disputed in the administrative court.

Article 8 of the Estonian Constitution states that no one could be deprived of Estonian citizenship by birth. However, article 28 (3) of the Citizenship Act establishes an important difference between nationals by birth and by naturalisation. It stipulates that **citizens by naturalisation can be deprived of their citizenship, even if it results in that person's statelessness**. According to data from the Police and Guard Board, between 2004 and 2014, 553 children aged under 17 ceased to be Estonian citizens and 251 children were deprived of citizenship.

Kristina's story

Kristina is a 15-year old student in one of Kohtla-Järve's schools. She was born in Estonia. Her parents had alien passports at the moment of her birth. Kristina obtained Estonian citizenship as a child born in Estonia after 26 February 1992, whose parents of "undetermined citizenship" had lived in Estonia for at least five years. Later, in 2009, her father obtained the citizenship of the Russian Federation. At the same time, he applied for Russian citizenship for Kristina and obtained it – he thought that in future it could be helpful for Kristina if she would like to continue her education in Russia.

In 2013, Kristina's mother applied on behalf of Kristina to the Police and Border Guard Board for a new Estonian passport and presented her Russian passport as an identity document. The officer told her that since multiple citizenship is prohibited in Estonia, they are obliged to deprive Kristina of her Estonian citizenship. Kristina and her parents were shocked because they were unaware of this prohibition. They also thought that Kristina obtained Estonian citizenship by birth, but the Police and Border Guard Board explained that even though her Estonian passport was the first document Kristina received, she had acquired Estonian citizenship through a simplified procedure of naturalization. As such, Kristina should choose only one citizenship.

"We would like to renounce Russian citizenship. Our daughter is living in Estonia. She is the only person in our family who knows the Estonian language. She can't imagine herself without Estonian citizenship," - explained Kristina's mother. "We addressed to the Embassy of the Russian Federation in Estonia and received a refusal. Russian Citizenship Act does not allow the renunciation of Russian citizenship by a minor before 18 years of

age". Given this situation, the Estonian Police and Border Guard Board decided to deprive Kristina Estonian citizenship.

Kristina's family approached the Estonian Parliament and the Chancellor of Justice for help. "Her father obtained the second citizenship for Kristina, and now his daughter suffers from his actions. The child is not guilty," – commented a member of the Parliament (later Minister of Education) Jevgeni Osinovski. The Chancellor of Justice found that Kristina's case could be contrary to the fundamental principle of the UN Convention on the Rights of the Child, which states that in all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration. The Estonian President Henrik Ilves addressed a petition to the Police and Border Guard Board to postpone Kristina's case until she is 18 years old. Kristina is very happy, because now she can make own decision and choose her citizenship.

As noted above, with the 2015 amendment to the Citizenship Act, minors who hold dual citizenship will now be entitled to maintain this until 18 years of age, at which point they have to waive either the citizenship of Estonia or the other country; the decision must be made within three years.

6. Birth registration

The Vital Statistics Registration Act⁴² (Article 2 (1)) describes a vital statistics entry as a set of data entered in the population register concerning birth, death, marriage, divorce and other changes under family law or names law (hereinafter *vital statistics data*).

The following should be submitted to register a birth:

- application for registering childbirth;
- medical agency's certificate regarding the childbirth;
- identity documents certifying the identity of parents (if parent does not have any identity document, before child birth registration he/she should appeal to the court to establishing of personal identification);
- if applicable marriage document if it has not been entered into a register (if the birth is registered by one of the parents, it must be accompanied by an application by the other parent regarding the desired name of the child);
- application for accepting paternity submitted in person or in notarized form.

To register a birth, the official prepares an entry in the birth register and issues, if desired, a birth certificate. The following information is entered onto the report of a birth: as the mother – the woman who gave birth to the child; as the father – a male who is married to the mother of the child, or who has accepted paternity, or whose paternity has been established by a court. No state fee is charged for the birth register entry. The registration of birth is possible even outside of the Vital Statistics Department within the territory of Estonia. In this case the service costs are €76, 69. This procedure can be ordered at the request of the parents in the case of ceremonial birth registration.

The child's birth is registered on the basis of an application by the parent at the Vital Statistics Office within the first month of the child's life. In accordance with Article 23 (1) of the Vital Statistics Registration Act the term for the registration of birth may be extended to up to two months if there is a valid reason. In this case it is necessary to contact the institution of civil status acts, where birth registration will be processed, and report on the cause of the delay. **The law does not contain any information about any penalty, additional fees or different procedure of registration of the child, if the deadlines have been missed (1 or 2 months). There is no legal regulation for these matters, thus all problems should be solved in court.**

⁴² Passed 20.05.2009, RT I 2009, 30, 177, Entry into force 01.07.2010, partially 22.06.2009.

To register a birth abroad in the Population Register, documents that have been translated and legalized or certified by apostil must be submitted to the Vital Statistics Office. Children are not registered a second time at an Estonian Vital Statistics Office. The certificate of birth must be legalized by the respective foreign country or have the certification (apostil) affixed to it.

To get the personal identification code⁴³ for the child, the parents should submit the birth certificate for it to be entered into the population register, irrespective of the residence status of the parents. According to Article 21 (1) of the Vital Statistics Registration Act, every child who was born on the territory of Estonia shall be registered in the Estonian vital statistics office.

According to initial data, nearly 13,700 children were born in Estonia in 2014, which is a few hundred children more than in 2013. Considering that the number of women in childbearing age has decreased, there were more children born per woman in 2014 than the year before, according to preliminary estimates⁴⁴. All these births were registered. The UNICEF Report “Every Child’s Birth Right: *Inequities and trends in birth registration*”⁴⁵ stated that in Estonia the civil registration system is complete and all vital events (including births) are registered⁴⁶. On the website of the Department of Statistics⁴⁷ is possible to find data on birth registration, depending on the request. The most complete and timely data contain information about the number of children born and registered in Estonia. Geographically, you can select data by the regions of Estonia. Data on births separately for boys and girls are available only until 2014. In general, all information on the initial population number is based on initial data on births, deaths and migration. Statistics Estonia will publish the revised population number on 5 May 2015.

Conclusion

The re-enactment in 1992 of the pre-World War II Citizenship Act (of 1938), excluded Soviet-era settlers by granting automatic citizenship almost exclusively to those who were citizens in 1940 (before the Soviet takeover) and their descendants. This caused mass statelessness among the almost 40% of the population who were not ethnic Estonian, including their children. The issue has since been raised regularly in various opinions and recommendations on Estonia by UN and CoE committees, OSCE institutions and by numerous other international actors.

In spite of that, Estonian policy on citizenship has remained conservative, without major domestic debates after the adoption of Citizenship Act of 1992. The rigorous stance of mainstream political parties that the Citizenship Act and the corresponding policies will not be changed, prevented the liberalization of the Law. However, an amendment in 1998 to the Citizenship Act proclaimed that children, born in Estonia after 26 February 1992, whose parents of “undetermined citizenship” have lived in Estonia for at least five years, are eligible, at their parents' request, to gain Estonian citizenship through naturalisation without the precondition of passing the citizenship examinations.

Finally, on 21 January 2015, the *Riigikogu* adopted new amendments to the Citizenship Act, according to which children with “undetermined citizenship” who were born in Estonia and whose stateless parents have lived in Estonia for at least five years, will acquire citizenship of Estonia immediately after birth. Parents have the right to refuse such granting of citizenship during the period of one year. This is an important change that will

⁴³ In Estonia, a *Personal Identification Code* (Estonian: *isikukood* (IK)) is defined as a number formed on the basis of the sex and date of birth of a person which allows the identification of the person and used by government and other systems where identification is required, as well as by digital signatures using the nation ID-card and its associated certificates. An Estonian Personal identification code consists of 11 digits, generally given without any whitespace or other delimiters. The form is GYYMMDDSSC, where G shows sex and century of birth (odd number male, even number female, 1-2 19th century, 3-4 20th century, 5-6 21st century), SSS is a serial number separating persons born on the same date and C a checksum.

⁴⁴ The Department of Statistics, www.stat.ee

⁴⁵ http://www.unicef.org/mena/MENA-Birth_Registration_report_low_res-01.pdf

⁴⁶ Source: United Nations, Department of Economic and Social Affairs, Statistics Division, Population and Vital Statistics Report, Series A, Vol. LXV, New York, 2013

⁴⁷ Ibid.

greatly facilitate access to citizenship for stateless children in the future – and its retroactive application to children under age 15 will also help to resolve numerous existing cases. However, the law will still not guarantee access to nationality for all otherwise stateless children born in Estonia, nor for children born abroad to stateless parents originating from Estonia. For instance, where one or more of the child’s parents hold the citizenship of another country but are unable to confer this to the child – exposing the child to statelessness – the law does not offer special regime for access to nationality.

Annex 1: Key international provisions granting nationality to otherwise stateless children born in the territory

1961 Convention on the Reduction of Statelessness

Article 1

1. A Contracting State shall grant its nationality to a person born in its territory who would otherwise be stateless.

Such nationality shall be granted:

- a. at birth, by operation of law, or
- b. upon an application being lodged with the appropriate authority, by or on behalf of the person concerned, in the manner prescribed by the national law. Subject to the provisions of paragraph 2 of this Article, no such application may be rejected.

A Contracting State which provides for the grant of its nationality in accordance with sub-paragraph (b) of this paragraph may also provide for the grant of its nationality by operation of law at such age and subject to such conditions as may be prescribed by the national law.

2. A Contracting State may make the grant of its nationality in accordance with sub-paragraph (b) of paragraph 1 of this Article subject to one or more of the following conditions:
 - a. that the application is lodged during a period, fixed by the Contracting State, beginning not later than at the age of eighteen years and ending not earlier than at the age of twenty-one years, so, however, that the person concerned shall be allowed at least one year during which he may himself make the application without having to obtain legal authorization to do so;
 - b. that the person concerned has habitually resided in the territory of the Contracting State for such period as may be fixed by that State, not exceeding five years immediately preceding the lodging of the application nor ten years in all;
 - c. that the person concerned has neither been convicted of an offence against national security nor has been sentenced to imprisonment for a term of five years or more on a criminal charge;
 - d. that the person concerned has always been stateless.

[...]

1997 European Convention on Nationality

Article 6 – Acquisition of nationality

[...]

2. Each State Party shall provide in its internal law for its nationality to be acquired by children born on its territory who do not acquire at birth another nationality. Such nationality shall be granted:
 - a. at birth *ex lege*; or
 - b. subsequently, to children who remained stateless, upon an application being lodged with the appropriate authority, by or on behalf of the child concerned, in the manner prescribed by the internal law of the State Party. Such an application may be made subject to the lawful and habitual residence on its territory for a period not exceeding five years immediately preceding the lodging of the application.

Annex 2: List of stakeholders interviewed and/or input received as part of this research⁴⁸

- European Parliament Member, Vadim Polestsuk
- Office of the Chancellor of Justice
- Police and Guard Board

⁴⁸ Full details on file with the author.

ANNEX 3: List of studies that deal with the issue of statelessness in Estonia

- Thiele, C. (1999), 'The Criterion of Citizenship for Minorities: The Example of Estonia', ECMI Working Paper 5, Flensburg.
- Semjonov, A. (2000), 'Estonia: Nation Building and Integration. Political and Legal Aspects', COPRI Working Paper 8, Copenhagen.
- Poleshchuk, V. (2001), *Advise not welcomed. Recommendations of the OSCE High Commissioner to Estonia and Latvia and the Response*, Kieler Schriften zur völkerrechtlichen Wissenschaft, Bd. 9, Münster: Lit Verlag.
- Semjonov, A. (2002), 'Estonia: Nation Building and Integration. Political and Legal Aspects'.//Pal Kolstoe (ed.). *National Integration and Violent Conflict in Post-Soviet Societies. The Cases of Estonia and Moldova*. Boston: Rowman & Littlefield, 2002.
- Poleshchuk, V. (2004), *Non-citizens in Estonia. Report to the 64 session of the UN CERD Committee. LICHR*, (<http://www.lichr.ee/home/wp-content/uploads/2014/05/non-citizens.pdf>).
- Lauristin, M., Uus M., Seppel, K. (2012), 'Kodakondsus, kodanikuühiskond ja rahvussuhted' [Citizenship, Civil Society and Ethnic Relations], in *Integratsiooni monitoring 2011* [Integration Monitoring 2011], Tallinn: Poliitikauuringute Keskus Praxis.
- Järve, P; Poleshchuk, V. (2013). EUDO Report on Citizenship Law, January 2013. Prepared by the Migration Policy Group in cooperation with Institute of Political Science and Governance at the University of Tallinn. <http://eudo-citizenship.eu/country-profiles/?country=Estonia>.
- Siseministerium (2013), "Mitmikkodakondsus: analüüs (Multiple citizenship. Analysis by the Ministry of the Interior, 2013) https://www.siseministerium.ee/sites/default/files/dokumendid/Uuringud/mitmikkodakondsuse_analuus_31.05.2013.pdf

No child chooses to be stateless. It is a fundamental truth that every child belongs – to this world, to a place and to a community – and this should be recognised through the enjoyment of a nationality. Yet statelessness continues to arise because European states are failing to ensure that all children born within Europe’s borders or to European citizen parents acquire a nationality. The European Network on Statelessness (ENS) advocates as one of its central tenets that none of Europe’s children should have to live without a nationality.

This working paper is one of a series that has been drafted in support of the ENS campaign, launched in November 2014, ‘**None of Europe’s children should be stateless**’. It examines the presence or absence, content and implementation of legislative safeguards for the prevention of childhood statelessness at the national level. Working papers have also been prepared by ENS members in Albania, Italy, Latvia, Macedonia Poland, Romania and Slovakia – each as part of a coordinated approach and employing a common research methodology.

The studies each provide: a detailed legal analysis, including of relevant lower-level circulars/policy guidelines; the identification and analysis of relevant jurisprudence; and data from interviews with implementing authorities, lawyers and other service providers about their knowledge and experience of relevant safeguards, as well as with relevant organisations with regard to advocacy around this issue. Each paper also includes a number of case studies to highlight particular issues identified.