

# Ending Childhood Statelessness:

## A Study on Poland

Working Paper 03/15



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## Introduction

***“Life without documents is really hard. My insurance was on my foster parents, I could not go abroad. And I was really afraid I was going to be deported”.***

19-year old Agni Caldarar’s story captivated the Polish public after she appeared in the TV talent show “The Voice of Poland”. This is how she looked back on what it was like to grow up without a nationality. Born in Poland to a teenage Romanian mother who then abandoned her at the hospital, she failed to acquire either Polish or Romanian citizenship at birth and it was not until she was 18 that she had the opportunity to apply to the President for Polish nationality through a special procedure. She spent her entire childhood stateless.

This report presents the problem of child statelessness in Poland and analyses its current scope and causes. The first section provides an overview of statelessness in the national context. It explores Poland’s international obligations and the provisions of the Polish law set forth in the Constitution of the Republic of Poland<sup>1</sup> and in the 2009 Act on Polish Citizenship.<sup>2</sup> This section also provides some statistical information related to statelessness in Poland and describes the role of non-governmental organizations and the UNHCR in addressing the issue.

The second section explains practical aspects of the implementation of provisions for granting nationality to otherwise stateless children born in Poland, or born abroad to Polish parents. It describes how *ius soli* is treated as an auxiliary principle with regard to the general *ius sanguinis* rule to determine the citizenship of a child found or born in the Polish territory if the child’s parents are unknown, stateless or their citizenship cannot be determined. This part also presents the main problems and obstacles encountered during the procedure for acquisition of nationality by applicants who lack identification documents.

Section three focuses on the prevention of statelessness in other contexts. It discusses, among others, the gaps in safeguards against statelessness in cases of loss of Polish nationality due to invalidation of decisions confirming nationality and due to renunciation of citizenship before the President.

The last section focuses on birth registration procedures, presenting problems faced by refugees and asylum seekers due to the lack of relevant documents as well as by same-sex couples in obtaining a transcription of birth certificates of their children in Poland necessary to obtain a passport, which is a document proving Polish nationality of a child.

### 1. Statelessness in the national context

Poland is a state party to 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. Poland has not entered any reservation of relevance to the issue of children’s right to nationality with respect to any of these human rights conventions.

**Poland is not a state party to the Convention relating to the Status of Stateless Persons of 1954, the Convention on the Reduction of Statelessness of 1961 or the Council of Europe Convention on the Avoidance of Statelessness in the context of State Succession of 2006.** In its official reply to a letter of Polish Ombudsperson, the Minister of Interior declared that there is political will to ratify the 1961 Convention but that the 1954 Convention will not be ratified because “most of state-parties ratified the convention in 50-ies,

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<sup>1</sup> Constitution of the Republic of Poland of 1997, Journal of Law 1997, 78, 483 [Konstytucja Rzeczypospolitej Polskiej, Dz.U. 1997 nr 78 poz. 483].

<sup>2</sup> Act on Polish Citizenship, Journal of Law 2012, 161 [Ustawa o obywatelstwie polskim z 2 kwietnia 2009, Dz.U.2012.161]

60-ties and 70-ties in a different migratory context”.<sup>3</sup> This is the position of the current Polish government, despite the pledge made by the delegation of the European Union 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”.<sup>4</sup>

Poland has signed, but not yet ratified, the European Convention on Nationality (ECN). At the moment of the signature of the ECN by Poland in 1999, it was considered necessary to adopt a new law on nationality replacing the old law of 1962, to bring it in line with ECN provisions. The new law on nationality was adopted in 2009 and entered into force in 2012. The process of ratification was therefore delayed, but **according to official information, the motion for ratification by Poland of the ECN will be prepared soon.**<sup>5</sup>

The rules on acquisition and loss of nationality are contained primarily in the Constitution of the Republic of Poland of 1997 (Articles 34 and 137) and in the Act on Polish Citizenship of 2009 (which entered into force in 2012).<sup>6</sup> Further details on how the nationality rules are to be applied in practice are set forth in several sub-statutory acts. For example, the template of the application form for an application to confer Polish citizenship, the technical requirements for the photographs appended to the application and the template of the Act of Conferral of Polish Citizenship and the template of the Information concerning the Refusal to Confer Polish Citizenship are set forth in a regulation by the President of the Republic of Poland of 7 August 2012.<sup>7</sup> Details concerning the template of the application form for an application for acknowledgment of Polish citizenship and the technical requirements for the photographs appended to the application are set forth in the Regulation of Minister of the Interior of 3 August 2012.<sup>8</sup>

Polish law provides for several modes of acquiring Polish citizenship, which can be divided into two basic groups according to their legal form. The first group comprises modes of acquiring citizenship *ex lege*: acquisition at birth, acquisition through adoption and acquisition through the repatriation procedure. The second group comprises modes of acquisition through application: acquisition by conferment, acknowledgement and restitution.<sup>9</sup> In the case of stateless children, acquisition of nationality can take place at birth, or at a later stage in their life through adoption, by conferment or acknowledgment.

In the event of disputed application of nationality regulations, a person may in some instances avail him or herself of administrative and judicial review. This is possible in a procedure where the competent authority is

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<sup>3</sup> Chancellery of the Prime Minister, Response to the inquiry of the Polish Ombudsperson (case no VII.600.10.2014.KM), Letter no SEK-171-4(18)/14/T1/GG of 31 December 2014. Further arguments were set forth by the Minister of Interior in the official reply to the letter of the Helsinki Foundation for Human Rights (Minister of the Interior, Response to the inquiry of the Helsinki Foundation for Human Rights, letter of 8 April 2015). In the opinion of the Minister ratification of the 1954 Convention would lead to equalising rights of persons who are not considered nationals by any country with rights of Polish citizens and with rights that other foreigners acquire after many years of legal stay in Poland. According to the Minister, the situation were foreigners would resign from current nationality in order to gain a status of a stateless person and access preferential treatment in many spheres of life eg. social security, public assistance) cannot be excluded; this would generate additional public spending.

<sup>4</sup> See: <http://www.unrol.org/files/Pledges%20by%20the%20European%20Union.pdf>.

<sup>5</sup> See note 3 above.

<sup>6</sup> Specific rules concerning acquisition of nationality via repatriation are contained in the Repatriation Act.

<sup>7</sup> Regulation of the President of the Republic of Poland on the template of the application form for the application to confer Polish citizenship, the technical requirements for the photographs appended to the application and the template of the Act of Conferral of Polish Citizenship and the template of the Information concerning the Refusal to Confer Polish Citizenship, Journal of Laws 2012, 927 [Rozporządzenie Prezydenta RP z dnia 7 sierpnia 2012 r. w sprawie określenia wzoru formularza wniosku o nadanie obywatelstwa polskiego, wymogów dotyczących fotografii dołączanej do wniosku oraz wzorów aktu nadania obywatelstwa polskiego i zawiadomienia o odmowie nadania obywatelstwa polskiego; Dz. U. z dnia 14 sierpnia 2012 r., poz. 927].

<sup>8</sup> Regulation of the Minister of the Interior on the template of the application form for the application for acknowledgment of Polish citizenship and the technical requirements for the photographs appended to the application, Journal of Laws 2012, 916 [Rozporządzenie Ministra Spraw Wewnętrznych z dnia 3 sierpnia 2012 r. w sprawie wzoru formularza wniosku o uznanie za obywatela polskiego oraz fotografii dołączanej do wniosku; Dz. U. z dnia 10 sierpnia 2012, poz. 916]. Note that there are no circulars or instructions that provide any further detail on how the nationality rules are to be interpreted and applied in practice. This was confirmed in replies by all (16) Voivods that we received during this research to our inquiries as well as by the Ministry of the Interior. Similarly the Chancellery of the President replied that there are no such circulars or instructions.

<sup>9</sup> On details concerning different modes of acquiring Polish citizenship see: Górny A., Pudzianowska D., Chapter 4: Same letter, new spirit: Nationality regulations and their implementation in Poland [in:] Citizenship Policies in the New Europe, R. Baubock, B. Perching, W. Sievers (ed.), Amsterdam University Press 2009; Górny A., Pudzianowska D., EUDO Citizenship Observatory. Country report: Poland (RSCAS/EUDO-CIT-CR 2009/14), research paper, European University Institute, available at: <http://eudo-citizenship.eu/country-profiles/?country=Poland>.

the Voivod (the regional representatives of central government). In nationality matters, the Voivod issues administrative decisions which are governed by relevant rules of administrative procedure, the most important of which are the obligation on the part of the administrative authority to issue a justification as well as the allocation of competence for judicial review to the administrative courts. Therefore, if for example the Voivod refuses to confer nationality to a stateless child or refuses to issue a decision confirming the Polish nationality of a child (in cases where the claimed nationality was acquired *ex lege* at birth), it may be subject to administrative and judicial review.<sup>10</sup>

Differently to the Voivods, the President has the power to grant citizenship in any case he or she wishes (no conditions apply whatsoever). There is no administrative or judicial review available in such cases and this conferment procedure is entirely discretionary.

**The exact number of people affected by statelessness in Poland is unknown and there are several concerns related to the reliability and accuracy of the data contained in existing registers.** According to the data of the Central Statistical Office of Poland collected during the last national census (2011), there were 8805 persons with “undefined nationality” and 2020 stateless persons in the country.<sup>11</sup> According to the Office, “undefined nationality” applied mostly to homeless persons who were not interviewed directly but the data was obtained from the administration of shelters and similar establishments. Therefore, as the Office estimates, it should be expected that these persons were, in fact, mostly Polish citizens. However, given the imprecise methodology, it is possible that some stateless persons have been included in the “undefined nationality” category. In addition to that, the reliability of the data on statelessness is limited due to the fact that it was provided on a declaratory basis and no documents were presented to census officers. In relation to stateless persons, the Office estimates that the actual number may be lower, as many respondents “may have just expressed in this way their national and/or state affiliation”.<sup>12</sup> The UNHCR statistics for 2011 – the second available source of data for the same period, reports the number of stateless persons in Poland as 763.<sup>13</sup>

The Office for Foreigners provides information on the number of stateless persons holding a valid residence card (*Karta pobytu*), issued on one of the following bases: refugee status, subsidiary protection, tolerated stay, temporary stay permit, permanent stay permit or long-term EU resident permit. **There were 733 valid residence cards held by stateless persons in 2013 (issued in 2013 or before) and 625 in 2014 (issued in 2014 or before), most of them being permanent stay permits.**<sup>14</sup> In addition to that, there are statistics on the number of stateless persons among registered asylum seekers in Poland. In 2014, 38 applications were lodged by stateless persons (out of the total of 6,621 applications) and 22 stateless persons were granted refugee status, 1 received subsidiary protections. In 2013 and 2012 these numbers were 34 (out of 15,253, with 25 persons granted refugee status) and 41 (out of 10 753, with 1 person granted refugee status) respectively.<sup>15</sup>

**None of the above-mentioned sources provide specific data on the scale of the problem of childhood statelessness.** Some additional information pertaining to children has been received from the Ministry of the Interior. According to this data, 35 stateless minors (persons under 18) lodged asylum applications in the years 2004-2014. 18 of these minors were of Palestinian ethnicity and other ethnicities included Arab, Georgian, Kurdish, Polish, Ukrainian and Armenian. In the same period, 16 stateless children were recognised as refugees and 3 were granted tolerated stay. In addition to that, **in the period 2004-2014 a total of 71 stateless children acquired Polish nationality,**<sup>16</sup> out of which 21 acquired Polish citizenship through a decision by the Voivods.<sup>17</sup>

<sup>10</sup> On different modes of acquiring Polish nationality by otherwise stateless children see Section 2.

<sup>11</sup> Główny Urząd Statystyczny, *Ludność. Stan i struktura demograficzno-społeczna. Narodowy Spis Powszechny Ludności i Mieszkań 2011*, Warszawa 2013.

<sup>12</sup> Ibid.

<sup>13</sup> UNHCR Statistical Yearbook 2011. In the following years, however, the UNHCR statistics report a total of 10,825 persons under UNHCR statelessness mandate, thereby including both stateless and undefined nationality categories from the national census. See: UNHCR Statistical Yearbook 2012 and 2013.

<sup>14</sup> Office for Foreigners – statistics. Available at: <http://udsc.gov.pl/statystyki/>.

<sup>15</sup> Ibid.

<sup>16</sup> Ministry of the Interior, Department of Citizenship and Repatriation, Response to the HFHR letter of inquiry, Letter No. DOI-R-I-0667-4/2015/DC of 23 March 2015.

No research has been carried out on the issue of child statelessness in Poland to date. The only available report related to the problem of statelessness was published in 2013 by the Halina Nieć Legal Aid Centre.<sup>18</sup> However, it did not focus on childhood statelessness. The issue has been raised in Poland as a public matter exclusively in relation to particular cases where individuals were supported by civil society organisations which undertook litigation efforts to grant them Polish nationality.

Information on the reasons and consequences of statelessness in Poland is available mostly through the experience of non-governmental organisations providing legal assistance to immigrants – for example, Helsinki Foundation for Human Rights (HFHR) and Halina Nieć Legal Aid Centre. There is no predominant group of persons affected by statelessness in Poland; however statelessness can be identified as a potential issue among some particular groups. These are, for example, citizens of the former Soviet Union who migrated to Poland before the country disintegration in the early 1990s. Due to their absence in the newly formed republics (for example, Armenia or Azerbaijan) they were not able to officially register as citizens within the established time frame. As a result, none of the countries (neither the Russian Federation nor the republic which emerged on the territory of their former residence) assumed responsibility for their nationality. A second example concerns the cases of Romanian and Bulgarian Roma children abandoned in Poland in the early 1990s in the context of migration of various Roma groups in Central Europe following the dissolution of the communist system, liberalisation of visa regimes and (for the Balkan groups) the conflict in the former Yugoslavia.

### Agni's story

The case of one of such child, the 19-year-old Agni Caldarar received publicity in 2014 after the girl's appearance on one of the Polish TV talent shows.<sup>19</sup> As briefly touched upon in the introduction to this paper, Agni was abandoned at the hospital by a Romanian Roma teenage mother and was subsequently raised by foster parents. Before abandoning her, Agni's birth mother did give her name and nationality to the hospital personnel. As a result, in spite of effectively being a foundling, Agni was not able to acquire Polish citizenship because her mother was not considered "unknown" by the authorities. She was also unable to confirm acquisition of Romanian nationality at the Romanian embassy – the officials said that Agni was not present in Romanian registers and determined that it was impossible to identify where her birth mother was currently

<sup>17</sup> Information received upon inquiry from all 16 Voivods (Mazowiecki Voivod Office in Warsaw (Mazowiecki Urząd Wojewódzki w Warszawie), Response to the HFHR letter of inquiry, Letter No. WSC-VI.1331.2.2015 of 23 March 2015; Dolnośląski Voivod Office in Wrocław (Dolnośląski Urząd Wojewódzki we Wrocławiu), Response to the HFHR letter of inquiry, Letter No. SOC-OP.6121.42.2015.MD of 25 March 2015; Kujawsko-Pomorski Voivod Office in Bydgoszcz (Kujawsko-Pomorski Urząd Wojewódzki w Bydgoszczy), Response to the HFHR letter of inquiry, Letter No. WSOC.I.1331.3.2015.AW of 9 April 2015; Lubuski Voivod Office in Gorzów Wielkopolski (Lubuski Urząd Wojewódzki w Gorzowie Wielkopolskim), Response to the HFHR letter of inquiry, Letter No. SO-IV.1331.1.2015.KCie of 24 March 2015; Łódzki Voivod Office in Łódź (Łódzki Urząd Wojewódzki w Łodzi), Response to the HFHR letter of inquiry, Letter No. SO-III.1331.2.2015 of 24 March 2015; Małopolski Voivod Office in Kraków (Małopolski Urząd Wojewódzki w Krakowie), Response to the HFHR letter of inquiry, Letter No. WO-II.6120.95.2015 of 7 April 2015; Opolski Voivod Office in Opole (Opolski Urząd Wojewódzki w Opolu), Response to the HFHR letter of inquiry, Letter No. SO-II.1331.3.2015AKa of 20 March 2015; Podkarpacki Voivod Office in Rzeszów (Podkarpacki Urząd Wojewódzki w Rzeszowie), Response to the HFHR letter of inquiry, Letter No. O-III.1331.3.2015 of 18 March 2015; Podlaski Voivod Office in Białystok (Podlaski Urząd Wojewódzki w Białymstoku), Response to the HFHR letter of inquiry, Letter No. OB-III.1331.7.2015KM of 12 March 2015; Pomorski Voivod Office in Gdańsk (Pomorski Urząd Wojewódzki w Gdańsku), Response to the HFHR letter of inquiry, Letter No. SO-II.1331.3.2014BK of 24 March 2015; Śląski Voivod Office in Katowice (Śląski Urząd Wojewódzki w Katowicach), Response of 23 March 2015 to the HFHR letter of inquiry; Świętokrzyski Voivod Office in Kielce (Świętokrzyski Urząd Wojewódzki w Kielcach), Response to the HFHR letter of inquiry, Letter No. SO.1.6120.22.2015 of March 2015; Warmińsko-Mazurski Voivod Office in Olsztyn (Warmińsko-Mazurski Urząd Wojewódzki w Olsztynie), Response to the HFHR letter of inquiry, Letter No. SO-V.1331.2.2015 of 19 March 2015; Wielkopolski Voivod Office in Poznań (Wielkopolski Urząd Wojewódzki w Poznaniu), Response to the HFHR letter of inquiry, Letter No. SO.V.6122.1.13.2015.3 of 24 March 2015; Zachodniopomorski Voivod Office in Szczecin (Zachodniopomorski Urząd Wojewódzki w Szczecinie), Response to the HFHR letter of inquiry, Letter No. SO.I.6122.170.2015BM of 19 March 2015). Based on these answers, it can be concluded that in 2004-2014, out of 71 stateless children who acquired Polish citizenship, 24 were recognised as citizens by the Voivods and 50 were granted Polish citizenship by the Polish President. It must be noted, however, that no information as to the number of children granted Polish citizenship was provided directly by the Chancellery of the President of Poland (Response to the HFHR letter of inquiry, Letter No. BOŁ.0701.3.2015 of 26 March 2015).

<sup>18</sup> Halina Nieć Legal Aid Centre, *Niewidzialni. Bezpaństwowcy w Polsce. Raport 2013*, Kraków 2013.

<sup>19</sup> Newsweek Polska, *Ludzie, których Polska nie chce*, 18 October 2014, available at: <http://polska.newsweek.pl/obywatelstwo-w-polsce-naturalizacja-polska-newsweek-pl,artykuly,348559,1.html>.

living. According to unofficial information received from the Romanian embassy in Poland, there are at least 30 similar cases of abandoned children each year in this embassy alone.

Only after she turned 18 did Agni apply for citizenship to the Polish President, which she was granted after waiting for a year for the case to be decided. Her father described what the family had gone through in a very emotional way: *“the situation of such children is extremely difficult because they have no rights here, and the other country doesn’t accept them either (...). Even the PESEL [Personal Identification] number we received only because someone in the office was sympathetic to our situation and found a way to help us (...). Now, fortunately, Agni is already a Polish citizen. I am so proud of her. I cried when she sang in the show, I was so moved. She started singing when she was four and was fascinated by the violin. She really liked that so we sent her to a music school and bought her a violin”*. Agni said that she was extremely grateful to her foster parents for what they did for her: *“I have enormous support from their side (...). Without them I would be nobody, I don’t know where I would be, who I would be. I love them so much”*.

Other reasons behind statelessness in Poland include: conflicting laws on nationality and administrative obstacles related to the confirmation of identity in cases where there are no documents. Lawyers providing assistance to migrants and refugees at HFHR have encountered cases of stateless children or children at risk of statelessness born to foreign parents who failed to officially register the child’s birth in their country within the given time frame, as they could not return to that country or contact its embassy if, for example, they were asylum seekers (e.g. parents of Sri Lankan, Syrian or Cuban nationality). In addition to that, there were also cases of stateless children born to stateless parents (e.g. Palestinians).

**Stateless persons living in Poland experience an array of problems related to their everyday existence.** They cannot obtain travel documents and travel outside Poland. Many face difficulties in applying for a stay permit due to the lack of relevant documents. Undocumented status entails further obstacles in accessing healthcare and social services, getting married, registering birth of children or accessing legal employment. Stateless persons with an undocumented migration status are additionally at risk of being arbitrarily detained.

Alongside the state authorities and non-governmental organisations mentioned above, the other key entity involved in finding solutions to the problem of statelessness is the UNHCR Representation in Poland. According to the information received from its representative, it operates an annual budget of 50,000 PLN (approx. 12,000 euro) for activities related to addressing and preventing statelessness. This amount is not high, however it can be increased from the UNHCR regional budget, according to the needs.<sup>20</sup> Since at least 2005, the UNHCR Representation has been involved in the area of statelessness reduction and prevention, focusing on awareness-raising and advocacy in order to urge the Polish authorities to accede to the 1954 and 1961 Conventions. According to the UNHCR representative, a slowly increasing political will can be observed among the decision-makers.<sup>21</sup> In spite of the lack of knowledge and precise data on the scale of the problem, there is some interest in it among members of the Parliament. Following the release of the Halina Nieć Legal Aid Centre report in October 2013, several MPs submitted parliamentary questions concerning the situation of stateless persons in Poland and the government position on acceding to both conventions. In response to one of the questions, the Undersecretary of State of the Ministry of the Interior stated that the Law on nationality of 2 April 2009 already contains some provisions which act as safeguards against new cases of statelessness, in particular in relation to child statelessness (Articles 14 and 15 - see section 2).<sup>22</sup> He underlined also the need for additional analyses of whether accession to the conventions may potentially lead to the increase of the number of stateless persons in Poland, as the status of a stateless person deriving from the 1954 convention

<sup>20</sup> Interview with a UNHCR Poland representative of 12 March 2014.

<sup>21</sup> Ibid.

<sup>22</sup> Response of the Undersecretary of State of the Ministry of the Interior to the interpellation no. 23914 [Odpowiedź sekretarza stanu w Ministerstwie Spraw Wewnętrznych z upoważnienia ministra z dnia 24 lutego 2014 r. na interpelację nr 23914 w sprawie osób o statusie bezpaństwowca], available at: <http://www.sejm.gov.pl/sejm7.nsf/InterpelacjaTresc.xsp?key=6897E00D>.

would be more favorable than the one of a “foreigner” which is how the stateless persons status is currently defined in the Polish law.

**There is very little information made available to the public on the right to a nationality for otherwise stateless children.** There are no organisations specialised exclusively in the problem of statelessness or childhood statelessness. There is no state-funded legal aid system in Poland at the pre-trial stage, but there are organisations which provide free of charge legal assistance and information to migrants and refugees, through which also stateless individuals can be assisted. These are, for example: Helsinki Foundation for Human Rights, Association for Legal Intervention and Ocalenie Foundation in Warsaw, Halina Nieć Legal Aid Centre in Krakow, Rule of Law Institute in Lublin.<sup>23</sup> These organisations provide legal consultations during duty hours (often several days a week), through helplines and visits to reception and detention centres. It can be estimated that each of these organisations deals with less than 10 cases of stateless individuals yearly. These persons are often asylum seekers and legal assistance primarily concerns their refugee status determination procedure. In 2013 and 2014, the Helsinki Foundation for Human Rights did successfully assist a stateless girl born to Cuban parents and a teenager of Roma descent who was raised by a Polish foster family in the acquisition of Polish citizenship. Direct assistance to stateless persons is provided also by the UNHCR Representation in Poland in the form of duty hours, open to all migrants and other persons. UNHCR representatives provide information, but in contrast to non-governmental organisations, they do not prepare motions or applications in individual cases, nor do they represent individual persons in courts, as this goes beyond the agency’s mandate<sup>24</sup>.

## 2. Grant of nationality to otherwise stateless children

This section considers access to nationality for otherwise stateless children born on Polish territory or born abroad to Polish citizen parents. Acquisition of citizenship at birth is mainly based on the *ius sanguinis* principle. A child acquires Polish citizenship irrespective of the place of birth when at least one parent is a Polish citizen. Children born in Poland to foreign parents do not acquire Polish citizenship except for in cases where the parents are unknown, of unknown citizenship or stateless. However, **Polish law on nationality does not fully comply with the obligations stemming from Article 1(1) of the 1961 Convention on the Reduction of Statelessness or Article 6(2) of the European Convention on Nationality because not all children born in the territory of Poland who would otherwise be stateless acquire Polish nationality.** The general principle of all children enjoying the right to a nationality is not laid down in the Polish law either.

According to Article 14 of the Polish law on citizenship, a child shall acquire Polish citizenship at birth when the child is born within the territory of the Republic of Poland of parents who are unknown, stateless or whose citizenship cannot be determined. According to Article 15 a child of unknown parents shall acquire Polish citizenship when found within the territory of the Republic of Poland.<sup>25</sup> This means that *ius soli* is treated as an auxiliary principle to attribute the citizenship in certain cases of children found or born in the Polish territory. Acquisition of nationality is automatic in case of a child born on the Polish territory whose parents are unknown, stateless or their citizenship cannot be established or if he/she is a foundling. It is not conditional on any additional criteria, such as registration.

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<sup>23</sup> Non-governmental organisations have been providing assistance mostly through projects funded from the European Refugee Fund and the European Fund for the Integration of Third-country nationals. Funding from these sources is available only until June 2015. In 2015, the Asylum, Migration and Integration Fund (FAMI) was supposed to start operating in Poland. A call for projects was issued only in late April 2015 and there is still a risk of discontinuation of free legal assistance provided by non-governmental organisations for all groups of migrants and for the stateless persons as well.

<sup>24</sup> Interview with a UNHCR Poland representative of 12 March 2014.

<sup>25</sup> The foundling provision is dealt in more detail in Section 3.

Polish law does not provide definitions of “stateless persons” or “persons of undetermined citizenship”. According to the information received from Voivod offices, only some of them do differentiate in practice between the two terms. In such cases, the term “stateless” was applied to two groups of persons:

- 1) individuals who have never acquired citizenship of any country by birth (e.g. were born of stateless parents as in the case of the Palestinians, were not registered as required by the law of their country of origin) and
- 2) individuals applying for Polish citizenship who received the so-called promise of citizenship and had already renounced their former citizenship.

The term “undetermined citizenship” concerns the situation where an individual cannot prove his or her citizenship or lack thereof.<sup>26</sup> It is applied in Poland to people who were once citizens of countries that no longer exist (such as the USSR or former Yugoslavia), and who after the disintegration of these states did not register as citizens of newly established republics.<sup>27</sup>

The child has to be born within the territory of Poland to benefit from protection accorded by the Articles 14 and 15 of the Act on Polish Nationality. This Act does not include a provision about access to nationality for children born on a ship or a plane registered with the state. Here the general rule applies that such a ship or plane is considered Polish territory: according to the Aviation Law Act of 2002<sup>28</sup> and Maritime Code of 2001<sup>29</sup> the law of the aircraft's or ship's nationality is applicable on the aircraft or the ship.

As it can be seen from the above, Polish law does not protect children comprehensively against statelessness at the moment of birth. Not all children born on the territory of Poland have the right to nationality under Polish law even if they would otherwise be stateless. **The law does not protect from statelessness children who are born on the Polish territory of parents who are known and their nationality determined, but who are unable to transmit their nationality.**

### Marialina's story

Marialina's parents are Cuban emigrants who had worked for a company based in Moscow and were later transferred to Kutno, Poland where their daughter was born in 2010. She did not acquire Cuban nationality by birth, nor was she able to acquire Polish citizenship. According to Cuban law, in order for a child to become a Cuban citizen, at least one of the parents needs to be present in Cuba and take part in an administrative proceeding which lasts at least 3 months. These conditions were impossible to fulfill for Marialina's parents who are emigrants, and as such are entitled to stay in Cuba for a maximum period of 60 days only. Marialina could not acquire Polish citizenship either, as in her case *ius soli* as an auxiliary principle did not apply due to the fact that her parents were known and held a nationality. As a result, the girl was stateless for a period of 3 years (2010-2013).

This was a difficult time for the family, primarily because their contact with relatives in Cuba was limited: *“Our daughter had no passport and we could not travel anywhere. She could talk with her grandparents in Cuba only over the phone”* – her parents say. Marialina's parents prepared an application to the President for conferment of nationality, which is a purely discretionary procedure. The application was submitted through the Lodzki Voivod. Lawyers assisted by the Helsinki Foundation for Human Rights prepared a letter to the

<sup>26</sup> Poland does not have a statelessness determination procedure which would help such individuals to be recognised as stateless on the basis of a balancing of all forms of available proof. An “undetermined citizenship” is a recognised category whereas many of such people are in fact stateless but this has not been determined through a procedure.

<sup>27</sup> Mazowiecki Voivod Office in Warsaw (*Mazowiecki Urząd Wojewódzki w Warszawie*), Response to the HFHR letter of inquiry, Letter No. WSC-VI.1331.2.2015 of 23 March 2015.

<sup>28</sup> Aviation Law Act of 3 July 2002, Journal of Law 2013, 1393 (consolidated version) [Prawo lotnicze z 3 lipca 2002 r., Dz.U. 2013, 1393 j.t.].

<sup>29</sup> Maritime Code of 18 September 2001, Journal of Law 2013, 758 (consolidated version) [Kodeks morski z 18 września 2001, Dz. U. 2013.758 j.t.].

President supporting her case. Marialina was conferred Polish nationality by the Polish President in October 2013. Her parents say that they were not intending to obtain any privileges based on the particular situation of their daughter: *“At no time we intended to obtain anything through this situation as we know we have not been here long enough (...). Our objective has always been to obtain a legal status for our daughter”*.

**In case a child is stateless and did not acquire nationality at birth he/she can be granted nationality at a later stage: the procedure of granting nationality by the President of Poland or that of recognition by the Voivod can be used.** The procedure before the President is discretionary and there is no formal condition that a child has to be born on the Polish territory. The terms of the 2009 Act on Polish Citizenship are very general and indicate that the President can confer Polish citizenship on aliens (Article. 18). According to one of the officials working at the Chancellery of the President cases of stateless children are given priority when dealing with such applications.<sup>30</sup>

Another possibility for a stateless child who did not acquire nationality at birth is to use the procedure before the Voivod, which is non-discretionary. The Voivod shall recognize as Polish citizen the alien who has resided over a period of at least 2 years within the territory of the Republic of Poland, where such an uninterrupted residence is legal under one of permanent residence permits (a permanent residence permit, a long term resident’s EC residence permit, or a right of permanent residence) and who is a stateless person (Article 30). It is neither determined in the law nor in sub-statutory regulations what “stateless person” means. A child shall be issued a permanent residence permit if he/she is a child of a foreigner who was issued a permanent residence permit or a long term resident’s EC residence permit, if such a child is under parental authority, and a) was born after a foreigner was issued a permanent residence permit or long term resident’s EC residence permit or b) was born during the validity of a temporary residence permit issued to such a foreigner (Article 195.1 (1) of Act on Aliens).<sup>31</sup>

**In both of the above mentioned procedures the main problem for stateless people (also children) constitutes the lack of documents confirming nationality or identity.** The Act on Citizenship of 2009 does not require that a travel document be filed together with the application. However, the Regulation of the President of Poland that sets out the template of the motion to the President of the Republic of Poland lists documents that should be attached to the motion, and documents stating identity and citizenship are required. Applications for naturalisation in the procedure before the President are submitted via Voivods or consuls (for those living abroad). These public authorities issue their opinion in writing and normally pass documents over to the Minister of Internal Affairs who, in turn, gives his/her opinion on the application before passing it over to the President’s office. At each stage the documents attached are verified. The procedure of recognition as a Polish citizen is also premised on presenting documents that confirm information on identity and nationality. The new Act on Aliens of 2013 introduced a possibility that a stateless person who stays on the Polish territory applies for a special identity document called a “Polish identity document of a foreigner”. However it may be issued to such a person only “provided it is justified by the interest of the Republic Poland”.<sup>32</sup> It means that it is not a document that every stateless person can obtain – there is no right to an identity document for stateless persons.

**Acquiring a residence permit that is sufficient to prove nationality or identity necessary to proceed with the application is also not an easy step.** In this procedure, a Voivod also usually requires travel documents to be submitted. A Voivod may omit this requirement if he/she considers that there is a “particularly justified case” [“szczególnie uzasadniony przypadek”]. However, Voivods rarely do so. The problem may be exemplified with a case of a boy who was born in Poland of Ukrainian mother and who lived in Poland for more than ten years

<sup>30</sup> Information received from the representative of the Chancellery of the President of Poland on 26 September 2014 during a conference organised by the UNHCR Representation in Poland celebrating 60<sup>th</sup> anniversary of the 1954 Convention relating to the Status of Stateless Persons.

<sup>31</sup> Act on Aliens, Journal of Law 2013, 1650 [Ustawa o cudzoziemcach z 12 grudnia 2013, Dz.U. z 2013, nr 1650]; English translation is available here: <http://cudzoziemcy.gov.pl/uploads/ngrey/prawo/ACT%20of%2012%20December%202013%20ON%20FOREIGNERS.pdf>.

<sup>32</sup> Article 260.1 (3) of Act on Aliens of 2013.

and never acquired a Ukrainian passport. The court held that insisting on presenting a passport and refusing to take into account other documents confirming identity in a procedure to issue a residence permit for a child constitutes a lack of action which is a flagrant violation of the law.<sup>33</sup> It remains to be seen if this judgement will set a standard for procedures employed by Voivods in this kind of cases.

**All children who are born to a parent who is a Polish national are entitled to Polish nationality.** This is a general rule not premised on the condition that the child is otherwise stateless or on the condition that the child is born on the Polish territory. The acquisition of nationality via this mode is automatic. The legislative provision that formulates the right of all children who are born of at least one Polish parent (irrespective of the place of birth) to Polish nationality sets a better safeguard against statelessness than the standard set out in Article 1.4 of the 1961 Convention and Article 6.1(a) of European Convention on Nationality. **In some instances, however, there are problems with recognition of this entitlement to nationality e.g. in case of children of same-sex partners** (see below).

### 3. Preventing statelessness among children in other contexts

This section looks at other situations in which children in Poland may be at risk of statelessness. As mentioned earlier, foundlings acquire nationality *ex lege* according to Polish law (Articles 14 and 15 of 2009 Act on Polish Citizenship). According to the interpretation provided by the Ministry of the Interior<sup>34</sup>, one can call ‘foundling’ an abandoned child or a child left in a baby hatch (Polish: *Okno życia*, literally ‘window of life’), i.e. a place where mothers can bring babies, usually newborns, and leave them anonymously to be found and cared for. The authority responsible for the implementation of provisions concerning foundlings is the Voivod. According to the information received from one of the Voivods<sup>35</sup>, a ‘foundling’ is understood as an unaccompanied child, unable to identify his/her parents or legal guardians and without any documents containing information on his/her identity or the identity of his/her parents. For the confirmation of the Polish nationality acquired *ex lege* by a foundling, as in all other instances, Voivods require that a birth certificate be presented. In the case of foundlings, such a certificate is issued based on the decision of a guardianship court. If the place of birth of a foundling is unknown, the place where the child has been found is provided in the certificate as the place of birth.

**The practical implementation of the provisions concerning acquisition of nationality at birth by children of parents who are “unknown” is sometimes problematic.** Two cases have come to light in which the mother abandoned a new born child in a hospital after giving her name and place of birth (or nationality) to the hospital personnel.<sup>36</sup> In such cases, the mother was not considered ‘unknown’ by the public officials in later procedures for confirming Polish nationality even though the information in hospital documentation was not verified on the basis of any official document of a mother. It seems that in the case a mother abandons her child and her identity was not confirmed with the documents, she should be considered “unknown”. It is interesting to note that administrative personnel in hospitals insist on establishing the mothers’ identity upon admission to the hospital because it is necessary for a refund of services to be received from the National Health Fund. Therefore, even unverified data is included in documentation, which later results in problems for children with recognition of Polish nationality.

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<sup>33</sup> Judgement of the Regional Administrative Court in Krakow, case no III SAB/KR 52/13; the judgement was upheld by the Supreme Administrative Court, case no II OSK 823/14.

<sup>34</sup> Ministry of the Interior, Department of Citizenship and Repatriation, Response to the HFHR letter of inquiry, Letter No. DOI-R-I-0667-4/2015/DC of 23 March 2015.

<sup>35</sup> Swietokrzyski Voivod Office in Kielce (*Świętokrzyski Urząd Wojewódzki w Kielcach*), Response to the HFHR letter of inquiry, Letter No. SO.I.6120.22.2015 of 13 March 2015.

<sup>36</sup> See Agni’s story in section 1 and Marysia’s story below.

## Marysia's story

Marysia was born in Poland in 1998, to a Romanian Roma mother who abandoned her in the hospital shortly after giving birth. Since the age of 2, Marysia has been living with her foster family in Tarnobrzeg. Marysia's birth certificate stated that she was born of a Romanian mother even though no one could verify this information at the time. This made it impossible for Marysia to claim Polish nationality and her legal guardians were not able to obtain Romanian identity documents for her either. They could not adopt her or give her their last name, with which they intended to make her life easier. They were told by various officials that it was better not to pursue this case as it might lead to Marysia's expulsion to Romania.

Growing up in Poland, Marysia was stateless for over 16 years. She attended a Polish school, spoke perfect Polish, felt Polish and had no ties to Romania whatsoever. Following the advice they had received, her parents did not try to regulate her situation till the time she was a bit older and started asking questions: "Why can't I go on a summer camp abroad? Why can't I visit my father [who temporarily worked in Germany and in Cyprus]?" She had no identity card and no passport. In 2009, Marysia's parents began an administrative struggle for her citizenship. They were first refused by the Voivodeship which stated that Marysia could not receive a confirmation of Polish nationality, because her mother was Romanian.

The family sought help with the Helsinki Foundation for Human Rights. The Foundation joined forces with White&Case law firm and set the procedure in motion. First, via Bucharest office of White&Case attempts to receive Romanian documents for Marysia were undertaken, but they brought unsatisfactory results. Romanian authorities refused to issue her identity documents. Ultimately, after a long struggle, the girl received a Polish permanent residence permit which was a necessary step towards conferment of Polish citizenship. Finally, Marysia's application for Polish citizenship was sent to the Polish President via Podkarpacki Voivod. She was conferred Polish nationality in August 2014. Marysia and her parents feel happy that she had finally received documents confirming her national belonging and that she no longer feels different than her peers in this regard. However, they resent the lack of support from the Polish authorities. They could not understand the attitude of civil servants: "They haven't done a thing, nobody wanted to tell us what to do, how to fight it, where to go (...). Public offices should take care of the best interest of the child (...). Instead, for them a child is a piece of paper moved between the 'pending' and 'resolved' piles. When it comes to Marysia's case, I am ashamed of this country's law and officials who deal with such matters" – Marysia's father says.

According to Article 6(1) of the 2009 Act on Polish Citizenship, a change in the determination of a parent of a child or with regard to the citizenship of one or both parents will be considered in determining the citizenship of a child *only* if they occur within one year from the birth of the child. If the parents of a foundling are identified at a later stage this therefore does not lead to loss of nationality.

A risk of statelessness may arise in the application of provisions concerning the renunciation of nationality. According to Article 34.2 of the Polish Constitution "[a] Polish citizen shall not lose Polish citizenship except by renunciation thereof". According to the 2009 Act on Polish Citizenship the only way to lose nationality is to renounce nationality in a procedure before the President of Poland where the President has to give a permit to such renunciation. There is no straightforward guarantee that a person cannot renounce nationality if as a result she/he becomes stateless. However, such a guarantee can be deduced from the condition that a document proving possession of another nationality or a promise of such nationality is attached to the motion to the President. If such documents are not attached and not supplied after the relevant authority asks for it, the motion will not proceed. Interestingly, however, there is no obligation to include such information in case of children. Therefore **there is a risk of statelessness in case of children under parental authority of those who apply for a permit to renounce Polish nationality**, as they do not necessarily possess another nationality of a parent. Also a promise of nationality is not full guarantee against statelessness.

There are also other ways in which Polish nationality can be lost. In the case of foreigners who were recognized as Polish nationals by a decision of a Voivod, such a decision can be invalidated if for example fraud was involved at the time of the application. The general rules of administrative procedure apply here (e.g. Article 156.1 (2) of the Code of Administrative Procedure which stipulates that a decision can be invalidated if it was issued without the legal basis and in flagrant violation of the law) and there is no special guarantee against statelessness.

There have been cases in which decisions confirming Polish nationality were invalidated on the basis of Article 156.1 (2) of the Code of Administrative Procedure. Even though the decision confirming Polish nationality is a declaratory act, its invalidation has serious practical consequences for a person. It also puts a person at risk of statelessness because there is no special guarantee in the Code of Administrative Procedure against statelessness. **HFHR's lawyers dealt with cases of children of Vietnamese origin where a Voivod invalidated decisions confirming Polish nationality of these children many years after they were issued.** No consideration was given in these cases to the issue of constitutional protection set forth in Article 34.2 of the Constitution of the Republic of Poland,<sup>37</sup> or to the issue of possible statelessness of the children concerned.<sup>38</sup> In 2011, an important ruling was issued by the Supreme Administrative Court,<sup>39</sup> where the Court stated:

“Although the ruling that an individual has Polish citizenship is declaratory in nature, overturning it removes its legal force, and the concrete effects are tantamount to the removal of Polish citizenship. The institution of Polish citizenship, however, is subject to broad constitutional protection, so a ruling confirming that an individual has Polish citizenship may be overturned on the basis of Article 156(1)(2) of the Code of Administrative Procedure only if there are no doubts whatsoever that this decision flagrantly breaches the law.”

According to the judgement the decision confirming Polish nationality can be invalidated not in any case of “flagrant violation of the law” but only if the flagrant violation is beyond any doubt. It means that the standard for invalidation of nationality decisions is more demanding than in other cases.

The 2009 Act on Polish Citizenship does not allow making acquisition of Polish nationality conditional on renunciation of foreign nationality. Under the new legislation, the authorities do not have a possibility that existed under the previous Act on Polish Citizenship of 1962<sup>40</sup> to make acquisition of Polish nationality conditional upon renunciation of foreign nationality which entailed a risk of statelessness (also for children) when the final decision as to Polish nationality was negative.

Surrogacy is not regulated, and surrogacy arrangements are not enforceable. A woman who gives birth is considered the mother according to the Polish law. Article 619 of Family and Custody Code stipulates that “the mother of a child is the biological mother who gave birth”. The statute thus requires that the child-bearing person is to be indicated as the mother in the birth certificate. Therefore, the Polish law does not make any special provision for the nationality of children born in the context of a surrogacy arrangement. **Families legally constituted abroad thanks to surrogacy where parents are of the same sex (both men) and at least one parent is a Polish national encounter problems with confirming Polish nationality of their children in a procedure before a Voivod.** Lawyers of the Helsinki Foundation for Human Rights are currently engaged in a case of two men (one of whom is a Polish citizen) who are bringing up four children born via surrogacy in the USA. Both men are inscribed as parents in birth certificates of these children. The Voivod, instead of confirming Polish nationality of children by applying the provision that a child acquires Polish citizenship (irrespective of the place of birth) when at least one parent is a Polish citizen, requires details of the children’s biological mother’s identity. It remains to be seen what the final decision of the Voivod will be.

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<sup>37</sup> “A Polish citizen shall not lose Polish citizenship except by renunciation thereof”.

<sup>38</sup> See for example the judgement of the Supreme Administrative Court of 21 April 2011, case no II OSK 591/10.

<sup>39</sup> Judgement of the Supreme Administrative Court of 16 June 2011, case no II OSK 1155/10.

<sup>40</sup> Article 8.3 of Act on Polish Citizenship of 1962, Journal of Law 2000, 28, 353 (consolidated version) [Ustawa o obywatelstwie polskim z 12 lutego 1962 r., Dz.U.2000, nr 28, poz. 353 j.t.].

According to the 2009 Act on Polish Citizenship a child can acquire nationality due to adoption. The child also cannot lose nationality due to annulment of adoption (there is no explicit provision in the law but there is no legal ground for such loss of nationality). **Polish nationality is also not lost due to foreign adoption.**

#### 4. Birth registration and statelessness

Birth registration is a right of every child under Article 7 of the Convention on the Rights of the Child. In Poland this issue is regulated under the Act on civil registration certificates of 2014.<sup>41</sup> Registration of a civil status takes place on the basis of evidence confirming the accuracy of the data submitted (Article 22). For example, documents such as the ID of the person who registers a child and birth certificates of the parents are usually required. However, this regulation gives a discretionary power to the authorities in deciding which documents may be considered as confirming the accuracy of data submitted depending on the individual circumstances of a case.<sup>42</sup> The fact that a person stays illegally on the Polish territory is not relevant, and registration can take place provided that the required documents are submitted.

##### **Lack of documents is the most common problem encountered by foreigners trying to register a child's birth.**

One case which exemplifies problems that might be experienced by foreigners is that of a citizen of Belarus who gave birth to a child in 2003. She tried to register her (or the) child's birth in the registry office in Warsaw but was refused because she could not submit her own birth certificate and she had a passport with an expired visa. Only much later, when her daughter was 7 years old, did she seek legal counselling to try to resolve this issue.<sup>43</sup>

The problem of lacking documents is especially relevant in case of parents who were granted international protection and asylum seekers who cannot present their own birth certificates because they have been either lost during the flight or never issued in the country of origin. The experience in practice shows that **registry offices usually accept explanations provided by refugees and asylum seekers as to the reasons why they do not possess any documents and are not able to obtain them and issue requested birth certificates.**

In addition to that, some difficulties are faced in completing birth registration by couples that are married according to religious and not civil laws. According to the Polish law, such a couple needs to register the child as an extramarital one, i.e. a child of a single mother with established paternity. These situations are especially common among Chechen refugees and asylum seekers who are married according to Islamic laws.

Another issue related to birth registration is that **in the case of foreigners who do not speak Polish, it is obligatory that a certified interpreter be present during the registration procedure.** The responsibility for finding an interpreter, as well for financial compensation for his or her services lies with the applicants. It is problematic in the case of persons with limited financial resources (costs of 1 h of interpretation may, depending on the language, amount to 150-200 PLN, i.e. approx. 35-50 EUR).<sup>44</sup>

According to the Polish nationality law nationality at birth is acquired *ex lege*. This means that registration is not a condition for a child to acquire Polish nationality at birth. However, in order for a child to practically avail him- or herself of nationality, the parents have to ask for a passport or Polish ID at the Polish embassy.

Recent cases of children raised in homosexual unions abroad show that obtaining a passport is not always unproblematic. Poland does not regulate homosexual partnerships. Nevertheless, Polish citizens enter into

<sup>41</sup> Act on civil registration certificates, Journal of Law 2014, 1741 [Ustawa o aktach stanu cywilnego z 28 listopada 2014 r., Dz.U.2014.1741].

<sup>42</sup> Information received from representative of the Ministry of Interior on 14 May 2015.

<sup>43</sup> Description of a case from a webpage of Polskie Forum Migracyjne [Polish Migration Forum]: [http://www.forummigracyjne.org/pl/faq\\_powiekszenie.php?faq=1490&lng=](http://www.forummigracyjne.org/pl/faq_powiekszenie.php?faq=1490&lng=)

<sup>44</sup> Information received from the integration counsellor of the HFHR interviewed on 20 April 2015.

such unions abroad and children are also sometimes raised in such unions. One example is a couple of two women (where one is a Polish national) living in UK who raise a child and both are included in a birth certificate as parents. When they asked at the Polish embassy in London for a temporary passport for their child, they were refused. They were told that the reason is that in a birth certificate two women are listed as parents and Polish law does not allow it. According to the officials at the embassy, the Polish Constitution allows only for a woman and a man to be parents. The two women asked for a written refusal, which only says that they have to make a transcription of a birth certificate in Poland.<sup>45</sup>

Another case confirmed that the transcription of a birth certificate where two persons of same-sex are named as parents proves to be impossible. Another couple of two women (one British and one Polish) wanted to make a transcription of a British birth certificate of their child born in UK. In the British document one woman is described as “mother” and one as “parent”. The head of the Registry Office in Lodz refused to make a transcription because it would be contrary to the basic principles of the Polish legal order, in particular Article 18 of the Constitution of Poland (which states that marriage is a union between a woman and a man) and regulations of family law. This decision was upheld by the Voivod of the city of Lodz. The Regional Administrative Court of the city of Lodz rejected the complaint. The Court stressed that in this case the situation would take place where in a birth certificate in a space reserved for a name of the father a woman would be inscribed, which would be contrary to the Polish legal order. The judgement was upheld by the Supreme Administrative Court<sup>46</sup>. Currently, a complaint to the European Court of Human Rights is prepared in this case concerning the violation of Article 8 of the Convention in respect of the child. Together these two cases show that **due to problems in transcription of birth certificates of children born in homosexual unions, their right to Polish nationality is not realised in practice.**

## Conclusions and recommendations

The discussion above shows clearly that Poland is lacking a systemic approach to the problem of statelessness, particularly in relation to children. The country is not a state party to either of the two main international conventions concerning the problem of statelessness (Convention relating to the Status of Stateless Persons of 1954 and Convention on the Reduction of Statelessness of 1961). The exact number of stateless persons in Poland is unknown; the data currently available is unreliable. Therefore, the exact contours of the problem are impossible to draw. No materially-relevant research has been carried out to date on child statelessness and the issue has been publicly raised in Poland exclusively in relation to particular cases, where individuals were supported by civil society organisations. According to these organisations, some groups can be identified as being at risk of statelessness, including the citizens of the former Soviet Union countries who emigrated before the countries’ dissolution, Romanian and Bulgarian Roma children abandoned in Poland in the early 1990s, and children born to stateless parents (e.g. Palestinians).

Some positive changes were introduced by the new Act on Polish Citizenship of 2009 and by the Act on Aliens of 2013. There are nevertheless many problems that still need to be addressed. There are lacunae in the legislation which result in the lack of comprehensive protection of children against statelessness at the moment of birth. If statelessness is not a result of the child being a foundling or of the child born to parents who are unknown or who are stateless or whose nationality cannot be determined, but results from other circumstances (such as conflict of nationality laws), there is no automatic acquisition of nationality at birth. This is a gap that should be remedied. The Polish law also does not provide a definition of “stateless persons” or persons of “undetermined” nationality and there are problems in practice with the interpretation of such

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<sup>45</sup> ‘Polska nie chce Olka’ [Poland does not want Alexander], B. Aksamit, *Gazeta Wyborcza*, Duży Format, 15 January 2015; ‘Polska nie chce swoich obywateli, bo są z tęczyowych rodzin. Uniki i gierki urzędników’ [Poland does not want its nationals because they are born in rainbow families. Ignorance and games of civil servants], E. Siedlecka, *Gazeta Wyborcza*, 14 January 2015.

<sup>46</sup> Judgement of the Regional Administrative Court of the city of Lodz of 14 February 2013, case no III SA/Łd 1100/12. Judgement of the Supreme Administrative Court of 17 December 2014, case no II OSK 1298/13.

terms as parents “unknown” (as in a case when a foreign mother is considered “known” even though she abandoned her child in a hospital and left traces of unverified data).

Regulations concerning registration of children are not strict in terms of documents that parents need to present in order to register a child. However, in practice there were cases in which the lack of documents (such as e.g. birth certificates of parents) resulted in refusal to register a child’s birth. This must be addressed in view of Poland’s commitment under the Convention on the Rights of the Child to ensure that all children have their birth registered.

Legal regulations that provide for the acquisition of nationality by stateless people after birth also require change. In both available procedures (before the President and before the Voivods), the main problem concerns the lack of documents by stateless children. An additional problem in respect of the procedure before the President is that it is entirely discretionary and the outcome is therefore uncertain.

The risk of statelessness due to the loss of Polish nationality is also a problem. There are no guarantees at the statutory level in a procedure before the President against statelessness. This may be only deduced from the sub-statutory regulations where an important missing element concerns children under parental authority of a person who wishes to renounce nationality. In the case of procedures before the Voivod, the rules of administrative procedure apply with no special guarantees against statelessness where the decision concerning nationality is invalidated.

## **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 research<sup>47</sup>**

- UNHCR Representation in Poland
- Helsinki Foundation for Human Rights
- Halina Nieć Legal Aid Centre

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<sup>47</sup> Full details on file with the authors.

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, Estonia, Italy, Latvia, Macedonia, 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.