

COMMENTARY

ADDRESSING STATELESSNESS THROUGH THE HUNGARIAN CITIZENSHIP ACT

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TABLE OF CONTENTS

I	Introduction.....	202
II	The Act LV of 1993 on Hungarian Citizenship.....	203
	A General Overview.....	203
	B Acquisition of Citizenship by Birth.....	205
	C Naturalisation	206
	D Renunciation, Revocation and Restoration of Citizenship.....	208
	E Evaluating the Hungarian Citizenship Act in Light of the Prevention of Childhood Statelessness	208
III	Concluding Remarks.....	209

I INTRODUCTION

In Hungary, four legislations regulating citizenship-related issues in detail had been enacted starting from the second half of the 19th century. The Hungarian legislation recognises the legal status of statelessness and the concept of a stateless person. Hungary has ratified both the 1954 *Convention relating to the Status of Stateless Persons* ('1954 Convention')¹ and the 1961 *Convention on the Reduction of Statelessness* ('1961 Convention').² Consequently, there was an intention to find a solution for persons who submit an application for stateless status in its territory.

In this commentary, I introduce the Hungarian citizenship legislation in force, particularly focusing on the articles concerning the acquisition of Hungarian citizenship and how these relate to statelessness. I examine whether statelessness is adequately addressed in the legislation governing the acquisition of Hungarian citizenship and whether the legislation in force is able to provide appropriate safeguards in order to prevent statelessness, especially childhood statelessness. Comprehensive analysis regarding this matter is currently lacking. I argue that the situation in Hungary could be viewed as a 'glass half empty', as the citizenship legislation does provide some safeguards against statelessness, but significant flaws remain in the legislation regarding the prevention of statelessness, especially childhood statelessness. The National Assembly should address these gaps to enable Hungary to fulfil its international obligations under the *1961 Convention* to prevent and eradicate childhood statelessness. This commentary only focuses

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¹ *Convention relating to the Status of Stateless Persons*, opened for signature 28 September 1954, 360 UNTS 117 (entered into force 6 June 1960).

² *Convention on the Reduction of Statelessness*, opened for signature 28 September 1954, 989 UNTS 175 (entered into force 13 December 1975).

on the examination of the citizenship law and its safeguards against statelessness. I do not extend the analysis to the Hungarian statelessness determination procedure.

II THE ACT LV OF 1993 ON HUNGARIAN CITIZENSHIP

A General Overview

Before reviewing the relevant provisions of *Act LV of 1993 on Hungarian Citizenship* ('*Hungarian Citizenship Act*'),³ I first situate the *Hungarian Citizenship Act* within broader Hungarian legal frameworks, including the history of citizenship legislation in Hungary, the constitutional framework related to the basic principles of citizenship law regulated in *Act XX of 1949 of the Constitution of the Republic of Hungary* ('*Constitution*')⁴ and the *Fundamental Law of Hungary* ('*Fundamental Law*').⁵

In Hungary, three acts on citizenship had been adopted before the entry into force of the current *Hungarian Citizenship Act* in 1993. At first, *Act L of 1879 on the Acquisition and the Loss of Hungarian Citizenship* laid down the principle of *jus sanguinis*⁶ and regulated the legal status of foundlings as a way to prevent childhood statelessness.⁷ According to this legislation, a foundling should have been considered a Hungarian citizen.⁸ However, the Act included gender-discriminatory nationality provisions. For example, a married Hungarian woman could not pass on her citizenship to her child. That is, in the case of a valid marriage, only the father could pass on his citizenship to the child.⁹ At the time of codification, this first citizenship law was considered modern, reflecting the circumstances of the time.¹⁰ However, amending this citizenship law after World War I was necessary in light of a change to one of the constituent elements of the State, namely its territory. The law was amended in this respect by *Act XVII of 1922*,¹¹ which provided for the preferential reacquisition of citizenship for people living in annexed territories.¹²

As a result of World War II it became necessary to replace the first citizenship law with a new law reflecting the new circumstances of Hungary's political situation and the changed legal bond between the individual and the State. A new constitution was adopted in 1949, establishing a new administrative structure; the

³ *Act LV of 1993 on Hungarian Citizenship* (Hungary) ('*Hungarian Citizenship Act*').

⁴ *Act XX of 1949, The Constitution of the Republic of Hungary*, Magyar Közlöny [Hungarian Gazette] (No 84, 24 August 1990) Official Journal of the Hungarian Republic (Hungary) ('*Constitution*'). This Act was repealed by art 31(3)(a) of the *Transitional Provisions of the Fundamental Law* and is no longer in force as of 1 January 2012: *Transitional Provisions of the Fundamental Law*, Magyar Közlöny [Hungarian Gazette] (No 166, 31 December 2011) Official Journal of the Hungarian Republic, art 31(3)(a) (Hungary).

⁵ *The Fundamental Law of Hungary*, Magyar Közlöny [Hungarian Gazette] (No 43, 25 April 2011) Official Journal of the Hungarian Republic (Hungary) ('*Fundamental Law*').

⁶ *Act L of 1879 on the Acquisition and the Loss of Hungarian Citizenship*, art 3 (Hungary).

⁷ *ibid* art 19.

⁸ *ibid* arts 13, 19.

⁹ *ibid* arts 7, 34.

¹⁰ See Károly Kisteleki, 'Regulation of the Legal Institution of Hungarian Nationality from the Beginnings to Act L of 1879' (1998) 38 *Annales Universitatis Scientiarum Budapestinensis de Rolando Eötvös Nominatae: Sectio Juridica* [Annals of the Budapest University of Sciences Named after Roland Eötvös: Legal Section] 41, 44–8.

¹¹ *Act XVII of 1922* (Hungary).

¹² *Act XVII of 1922* (n 11) s 24; Lóránt Csink, 'Az állampolgárság szabályozása 1945 és 1950 között Magyarországon' ['The Regulation of Citizenship between 1945 and 1950 in Hungary'] (2004) 4(2) *Acta Universitatis Szegediensis: Acta Juridica et Politica* 37, 139.

second citizenship law of *Act LX of 1948 on Hungarian Citizenship*¹³ which was not in force for long.¹⁴ In the light of the political changes in the late 1940s, the Act was amended, in particular regarding preferential reacquisition of citizenship and the avoidance of statelessness.

The change in the political situation made it necessary to undertake a more far-reaching law reform than the amendment of the second citizenship act. A new legal framework was provided by *Act V of 1957 on Hungarian Citizenship*¹⁵ which eliminated the aforementioned discriminatory provisions previously in force.¹⁶ In the context of the prevention of statelessness, the Act innovatively regulated the possibility of renouncing citizenship, and can be seen as a precursor to the current *Hungarian Citizenship Act* in this respect.¹⁷

Article 69 of the *Constitution* provided the basic principle of citizenship law,¹⁸ prohibiting arbitrary deprivation of citizenship in accordance with the *Universal Declaration of Human Rights* ('UDHR'),¹⁹ and the expulsion of a Hungarian citizen from the territory of Hungary. Furthermore, the right of a Hungarian citizen to return from abroad and the right to diplomatic protection were regulated at a constitutional level.²⁰

Under the current constitutional framework, the rules of citizenship are laid down in art G of the *Fundamental Law*.²¹ This enshrines the principle of *jus sanguinis* as the main rule, which was not previously present in the *Constitution*. Article G of the *Fundamental Law* also stipulates in s 3 the prohibition of the deprivation of citizenship in cases where citizenship was acquired by birth or during the naturalisation procedure.²²

The 1993 *Hungarian Citizenship Act* largely complies with the right contained in art 15 of the *UDHR*, according to which every person has the right to citizenship. The Act articulates the principle of equality, as well as the basic principles of citizenship per international rights standards, such as the universal character of citizenship independent of means by which it was obtained,²³ the prohibition of limiting the right to change citizenship according to art 15(2) of

¹³ *Act LX of 1948 on Hungarian Citizenship* (Hungary).

¹⁴ It was in force only for 9 years (1948–57).

¹⁵ *Act V of 1957 on Hungarian Citizenship* (Hungary).

¹⁶ *Act V of 1957 on Hungarian Citizenship* has replaced the aforementioned discriminatory elements of the previous acts by not making a distinction between men and women in their ability to transfer their nationality to their children.

¹⁷ *Act V of 1957 on Hungarian Citizenship* (n 15) s 12.

¹⁸ According to art 69(1) of the *Constitution*, '[i]n the Republic of Hungary no one shall be denied of [their] Hungarian citizenship against [their] will and no Hungarian citizen may be expelled from the territory of the Republic of Hungary': *Constitution* (n 4) art 69(1).

¹⁹ Article 15(2) states that no one shall be arbitrarily deprived of their nationality nor denied the right to change their nationality: *Universal Declaration of Human Rights*, UN Doc A/810 (10 December 1948) art 15(2).

²⁰ *Fundamental Law* (n 5) art 69(2)–(3).

²¹ 'The child of a Hungarian citizen shall be a Hungarian citizen by birth. A cardinal Act may specify other instances of the origin or acquisition of Hungarian citizenship': *ibid* art G(1).

²² 'No one shall be deprived of Hungarian citizenship established by birth or acquired in a lawful manner': *ibid* art G(3).

²³ Article 1(1) of the *Hungarian Citizenship Act* makes no distinction between Hungarian citizens as to whether citizenship was acquired at birth or by naturalisation at a later stage of life: *Hungarian Citizenship Act* (n 3) art 1(1).

the *UDHR*²⁴ and the prohibition of retroactive effect.²⁵ Similar to the previous citizenship legislation, the *Hungarian Citizenship Act* stipulates that citizenship can be acquired through descent²⁶ in accordance with the relevant provisions of *Act V of 2013 on the Civil Code*.²⁷ Thus, the *jus sanguinis* principle still applies in relation to the acquisition of citizenship, which takes into account the traditions of Hungarian citizenship law.

It is important to point out that the citizenship law in force reflects the *1961 Convention*, the latter of which was brought into Hungarian domestic law by *Act XV of 2009 on the Promulgation of the Convention on the Reduction of Statelessness Adopted in New York on August 30, 1961*,²⁸ according to which no distinction is made between adoption and a biological relationship with regard to the child and parent.²⁹

This account has shown the steps undertaken in the history of Hungarian citizenship legislation and the current legislative framework to reduce statelessness. In the following section, I will examine how the prevention of statelessness is realised in the *Hungarian Citizenship Act*, focusing on the acquisition of citizenship by birth, naturalisation, renunciation, revocation and restoration of citizenship. Moreover, I will propose a *de lege ferenda* (what the law ought to be) amendment to ensure that the *1961 Convention* can be properly executed.

B *Acquisition of Citizenship by Birth*

In relation to childhood statelessness, the *Hungarian Citizenship Act* also regulates the acquisition of Hungarian citizenship in accordance with international human rights law, thus taking into account the *1961 Convention* and the *Convention on the Rights of the Child*.³⁰ Accordingly, both children born in Hungary to stateless parents residing in the country and foundlings must be considered Hungarian citizens until proven otherwise.³¹ With this provision the *Hungarian Citizenship Act* brought something new in the history of Hungarian citizenship legislation, mentioning the children of stateless persons for the first time in the context of acquisition of citizenship.

These provisions seem to indicate that Hungary is committed — at least partially — to reducing and eliminating cases of childhood statelessness, given that in the already mentioned legislation, the acquisition of Hungarian citizenship is ensured based on the application of the territorial principle, ie, the *jus soli* principle.

²⁴ See *Hungarian Citizenship Act* (n 3) art 1(2). The prohibition of restricting the change of citizenship also expresses the respect for the individual's free will regarding the change of citizenship, and also includes the right to retain citizenship: Judit Tóth, 'Principles and Practice of Nationality Law in Hungary' (2005) 8 *Regio: Kisebbség Kultúra Politika Társadalom* [Regio: Minorities, Culture and Politics] 21, 32.

²⁵ Blanka Ujvári, 'The Relationship Between the Right to Citizenship and Statelessness in Hungary' (2021) 17(1) *Iustum Aequum Salutare* 287, 294.

²⁶ *Hungarian Citizenship Act* (n 3) art 3(1) (Hungary).

²⁷ *Act V of 2013 on the Civil Code*, s 4, s 132(1) (Hungary).

²⁸ *Act XV of 2009 on the Promulgation of the Convention on the Reduction of Statelessness adopted in New York on August 30, 1961* (Hungary).

²⁹ In art 3(1) of the *Hungarian Citizenship Act*, as a general rule, the provisions of the *Civil Code* on descent and paternal and maternal status apply to the determination of the acquisition of nationality at birth. The *Hungarian Civil Code* does not distinguish between adopted children and children by blood, so there is no distinction regarding the nationality of these children: *Act V of 2013 on the Civil Code* (n 27) s 4, s 132(1).

³⁰ *United Nations Convention on the Rights of the Child*, opened for signature 20 November 1989, 1577 UNTS 3 (entered into force 2 September 1990) arts 7, 8.

³¹ *Hungarian Citizenship Act* (n 3) art 3(3)(a).

C Naturalisation

An important element of the *Hungarian Citizenship Act* is the possibility of a specific form of naturalisation, which more or less seems to be a re-naturalisation procedure given that, only people who had and subsequently lost Hungarian citizenship are eligible to apply for status. According to art 5 of the *Hungarian Citizenship Act*, such a person can be re-naturalised if they have: no criminal record under Hungarian law, no pending criminal proceedings against them before a Hungarian court at the time of application, lost their Hungarian citizenship, proven knowledge of Hungarian language, and if their naturalisation does not harm the public order and national security of Hungary. This form of naturalisation provides an opportunity to those persons who found themselves in a situation where they became stateless, for example through administrative struggles caused by renouncing Hungarian citizenship and being naturalised in another country. Consequently, this provision provides a solution to persons whose Hungarian citizenship has been lost but due to certain reasons, such as being stateless, would like to re-acquire it.

In this context, it is worth highlighting art 5/A(1)(b) of the *Hungarian Citizenship Act*, which provides the opportunity to obtain citizenship by means of a declaration addressed to the President of the Republic. This way of acquiring Hungarian citizenship is open to those who were born in Hungary and did not acquire the foreign citizenship of their parents upon birth due to the foreign law governing the citizenship of the parents. This is on the condition that the applicant's parents had a place of residence in Hungary on the day of the applicant's birth and had lived in Hungary for at least five years immediately before making the declaration.³² Consequently, the *Hungarian Citizenship Act* provides the opportunity to submit a declaration based on the residence of the parents and sets additional requirements for acquiring citizenship. However, it is a stricter condition than the wording of art 1(2) of the *1961 Convention* which does not oblige the parents to have residence on the given territory. Thus, while this provision can be considered a way to solve statelessness and reduce the number of stateless people through the acquisition of Hungarian citizenship, it also introduces additional conditions and requirements to fulfil, making this solution only partly appropriate. However, the application of art 5/A(1)(b) has been extended as a result of a legislative amendment in 2023 and s (d) has been added to the same article.³³ According to this extended version of the article, a person who is born in the territory of Hungary and has become stateless shall acquire Hungarian citizenship by written declaration addressed to the President of the Republic, provided that they have resided in the territory of Hungary for at least five years immediately prior to the date of making the declaration.³⁴ This amendment allows persons born in Hungary but who later became stateless to acquire Hungarian citizenship, which is crucial in helping reduce the number of stateless people.

The *Hungarian Citizenship Act* also provides the opportunity to obtain Hungarian citizenship through a naturalisation procedure initiated upon application.³⁵ Compared to the previous three acts regulating citizenship law, the nationality

³² *Hungarian Citizenship Act* (n 3) art 5/A (1)(b).

³³ *Act XXI of 2023 on the Amendment of Certain Laws related to the Development of Public Administration*, s 2 (Hungary) ('Act XXI of 2023').

³⁴ *Act XXI of 2023* (n 33) s 2; *Hungarian Citizenship Act* (n 3) art 5/A (1)(d).

³⁵ *Hungarian Citizenship Act* (n 3) art 4(1).

law in force expands the categories of those eligible for naturalisation.³⁶ The *Hungarian Citizenship Act* establishes a total of five categories, which are related to the time elapsed before the initiation of the naturalisation procedure upon application.³⁷ Accordingly, the *Hungarian Citizenship Act* provides an opportunity for naturalisation after ten, eight, five or three years,³⁸ subject to the joint compliance of certain conditions.³⁹ There is also an opportunity for naturalisation where it is not necessary to meet the criteria related to one of the already listed time intervals, where it is sufficient to prove (or at least demonstrate that it is probable) that the individual has knowledge of the Hungarian language, or has Hungarian ancestors.

In connection with the steps taken by Hungary to reduce and possibly eliminate statelessness, art 4(2)(e) of the *Hungarian Citizenship Act* provides facilitated naturalisation for stateless persons if they: have lived in Hungary continuously for at least three years before submitting their application for naturalisation,⁴⁰ have a clean criminal record according to Hungarian law, have no pending criminal proceedings against them before a Hungarian court when the application is being evaluated, their livelihood and housing are guaranteed in Hungary, their naturalisation does not harm Hungary's public order and national security and they have certified that they have successfully passed the citizenship exam in Hungarian language on basic constitutional principles.

³⁶ The history of Hungarian citizenship legislation consists of four citizenship acts which entered into force in the years of 1879, 1948, 1957 and 1993.

³⁷ Article 4 of the *Hungarian Citizenship Act* governs the conditions of naturalisation. For an application for naturalisation, it is necessary to differentiate between the different opportunities for naturalisation according to the length of residence required by the *Hungarian Citizenship Act*. A person who has continuously resided in Hungary for eight years prior to submitting the application may initiate the naturalisation procedure. A non-Hungarian citizen who has been married for at least ten years to a person who is a Hungarian citizen at the time of submitting the citizenship application can also apply for facilitated naturalisation. A non-Hungarian citizen who has been married for five years to a person who is a Hungarian citizen at the time of submitting the citizenship application and has a child together with that Hungarian partner can also be subject to facilitated naturalisation. The *Hungarian Citizenship Act* requires a three year residence for those who have lived continuously in Hungary prior to the submission of their application and if they have been married to a Hungarian citizen for at least three years. A three year residence is also required if: their marriage ended with the death of their spouse, their child (a minor) is a Hungarian citizen, their child is adopted by a Hungarian citizen and of legal age, or if the person concerned is recognised as a refugee by Hungarian authorities or the person concerned is stateless.

³⁸ *Hungarian Citizenship Act* (n 3) art 4(2)(e).

³⁹ The principle of *jus nexi* based on the *Nottebohm* judgment is embedded in the aforementioned list of criteria: *Nottebohm Case (Liechtenstein v Guatemala) (Judgment)* [1955] ICJ Rep 131, [23–4]. According to this principle, mere physical presence in the territory is not sufficient to acquire citizenship, as this also requires the existence of a connection between the given person and the state.

⁴⁰ However, it is important to draw the attention to the fact that the criteria of living in the territory of Hungary does not only mean to be resided in Hungary, but to have established residence/domicile. Accordingly, it creates an unnecessary burden as establishing residence prolongs the so called 'waiting time' to be naturalised since establishing residence may only be applicable after having granted a settlement permit for which at least three years of residing in Hungary and a number of criteria shall be fulfilled. However, in this commentary this question is not being examined in detail.

D *Renunciation, Revocation and Restoration of Citizenship*

Hungarian citizenship is terminated by renunciation or revocation.⁴¹ Article 8 of the *Hungarian Citizenship Act* defines the rules related to renunciation. According to this article, Hungarian citizenship can be renounced with a statement addressed to the President of Hungary in the event that: foreign citizenship is also held or is likely to be acquired and the person concerned is not listed in the personal data and residential address register, or the person has left the territory of Hungary with the intention of settling abroad, or a Hungarian citizen living abroad does not have a registered place of residence in Hungary. This wording provides guarantees to prevent statelessness. A person can only renounce their Hungarian citizenship if it does not render them stateless, so the *Hungarian Citizenship Act* requires that the person concerned either be a dual national or make it likely to acquire another nationality.

Furthermore, art 8(4) of the *Hungarian Citizenship Act* provides the opportunity to restore Hungarian citizenship within three years from the date of renunciation if foreign citizenship has not been acquired. This provision therefore serves to avoid former Hungarian citizens becoming stateless, if for whatever reason the person concerned has not acquired foreign nationality.

E *Evaluating the Hungarian Citizenship Act in Light of the Prevention of Childhood Statelessness*

After presenting the rules concerning the acquisition of Hungarian citizenship, I now examine the *Hungarian Citizenship Act* in relation to its shortcomings regarding the prevention of statelessness, specifically childhood statelessness. While the legislators' efforts to avoid and eradicate childhood statelessness have visible results at the level of legislation, as previously explained, the extent and depth of these efforts are not completely satisfactory; they are not fully in line with obligations under the *1961 Convention*. For instance, if foreign parents are unable to pass on their citizenship to their child born in Hungary, the child becomes stateless, because there is no legal guarantee for the child to acquire citizenship. This can be illustrated by the case of a child of a Syrian woman born out of wedlock in the territory of Hungary who was rendered stateless.⁴² Furthermore, in order to fully implement the obligation of elimination of childhood statelessness, it would be necessary for legislators to take into account the situation of children born in Hungary and whose parents are recognised stateless persons with stateless status, but at the same time do not have 'domicile' (*lakóhely*) in Hungary.⁴³ The current legislation does not ensure the avoidance of childhood statelessness and the acquisition of Hungarian citizenship when these conditions exist together. At the same time, the *1961 Convention* places an explicit obligation on the contracting states, according to which they shall ensure citizenship *jus soli* if the

⁴¹ Article 9 of the *Hungarian Citizenship Act* provides for the revocation of citizenship from a person who obtained it by breaking the laws, such as by providing false data and misleading the authority with false facts or data: *Hungarian Citizenship Act* (n 3) art 9. However, the *Hungarian Citizenship Act* also sets a time limit of 10 years for such a revocation at art 9(1).

⁴² *Legislative Decree 276/1969 'Nationality Law'*, s 3(a) (Syrian Arab Republic). According to this Syrian nationality law, a woman cannot confer her nationality on the child if the child was born abroad and the father cannot confer his nationality on the child either (for instance, if the father does not acknowledge the child).

⁴³ 'Thematic Joint Submission on the Right of Every Child to Acquire a Nationality under Article 7 CRC' (Committee on the Rights of the Child, 84th Pre-Sessional Working Group, Hungary, 1 September 2019) 7–8.

person concerned would otherwise become stateless. Considering this and the aforementioned, the *Hungarian Citizenship Act* partially ignores the implementation of the *jus soli* principle applied to avoid statelessness as a quasi-complementary principle. This is done by reducing the personal scope of the *1961 Convention* not to incorporate everyone born on Hungarian territory who would otherwise become stateless. Consequently, the essence of the phrase ‘who would otherwise be stateless’ under art 1 of the *1961 Convention* is lost.

III CONCLUDING REMARKS

In view of all this, I have argued that when it comes to Hungary’s legislative safeguards against statelessness, the glass is half empty. In order to further enhance these safeguards, it would be necessary to amend the legislation to ensure that no child would be stateless if they were born in Hungary, could not acquire the citizenship of their parents and could not fulfil the additional conditions for their parents. For instance, the immigration status or the marital status of the parents should be completely independent from the child and the child’s acquisition of citizenship. Considering Hungary’s international legal obligations and the wording of the *1961 Convention* (in particular, the expression of ‘otherwise become stateless’), it is time to amend the *Hungarian Citizenship Act* regarding the acquisition of citizenship in art 3(3) in accordance with this criterion. To fully comply with the *1961 Convention*, it is either necessary to take the phrase ‘otherwise become stateless’ literally and amend the current law with this wording, or another technical legal solution is needed which does not exclude any of the persons discussed in this commentary.