



Problems related to statelessness as a consequence of the war in Ukraine from the Polish perspective

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Abstract. One of the problems that has become particularly important for Europe in the face of the ongoing war in Ukraine is the problem of statelessness. It concerns not only the imperfections of applicable legal regulations and their interpretation but above all the practice of their application. It is also visible in Poland, a country that, as one of Ukraine's closest neighbors, was strongly affected by the war, among other things, through the influx of people fleeing the war. This Polish perspective has become a point of interest for considerations on problems related to statelessness. The aim of the article is to demonstrate the connection between the ongoing war in Ukraine and the increased risk of statelessness in Poland. Moreover, an indication of the complexity of the topic, which concerns not only the universal problem of creating and avoiding statelessness but also the situation of individual people affected by statelessness. Stateless persons are deprived of the opportunity to enjoy the full catalog of human rights. The author comes to the belief that work related to Poland's ratification of two global instruments on statelessness (the 1954 Convention relating to the Status of Stateless Persons and the 1961 Convention on the Reduction of Statelessness) should be accelerated. It is also necessary to create an internal, comprehensive legal regulation relating to stateless persons, which would ensure their protection. The idea is to create mechanisms to facilitate their acquisition of citizenship as well as to create preventive mechanisms to prevent the problem of statelessness. The basic research methods used were the historical method to describe the beginnings of interest in the problem of statelessness, the dogmatic-legal method to describe the phenomenon of statelessness, and the analysis of applicable legal regulations and other source texts to describe the effects and consequences of statelessness.

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1. INTRODUCTORY REMARKS

On the 24th February 2022, Russian armed forces launched a large-scale invasion of Ukraine. As a result, large parts of Ukraine are now an area of armed conflict from which thousands of people have fled and are still fleeing. The issue of statelessness has become a fundamental issue from the point of view of law and international relations, especially during the ongoing war in Ukraine.

This problem is noticed by Polish government bodies, but also by the Polish Ombudsman and non-governmental organizations, drawing attention primarily to the threat of statelessness, and then to the need to implement mechanisms to protect against this phenomenon and to the problems faced by stateless people. It is therefore worth considering whether there is a connection between the wave of refugees from Ukraine and the increasing number of stateless people in Poland. Next, it should be determined whether the legal regulations in force in Poland provide sufficient guarantees of protection against statelessness, and if so, whether the fact of statelessness is a matter of defective legal regulation, its interpretation or perhaps the practice of public authorities.

The above considerations cannot be conducted without a theoretical analysis of the universal problem of creating and avoiding statelessness and a historical analysis of the actions taken by the international community to avoid the spread of the phenomenon of statelessness. It is also worth noting the specific problems faced by people affected by statelessness in the context of a universal problem. Insufficient legal regulations in practice deprive them of the opportunity to benefit from the full catalog of human rights. From the Polish perspective, this means the need to accelerate work related to the ratification by Poland of two global instruments on statelessness - the Convention relating to the Status of Stateless Persons of 1954 and the Convention on the Reduction of Statelessness of 1961, and to create a comprehensive legal regulation relating to stateless persons. This regulation should ensure the rights and freedoms of persons affected by statelessness and their protection by creating mechanisms facilitating their acquisition of citizenship and taking preventive measures to prevent statelessness in the future. The basic research methods used were the historical method to describe the beginnings of interest in the problem of statelessness, the dogmatic-legal method to describe the phenomenon of statelessness, and the analysis of applicable legal regulations and other source texts to describe the effects and consequences of statelessness.

2. PROBLEMS RELATED TO THE LACK OF A DEFINITION OF A STATELESS PERSON

The term stateless person is a concept that is understood in different ways. For example, there is no definition of a stateless person in Polish law. As a rule, this refers to a person who does not have any citizenship. In practice, however, it may also be a person without a regulated residence document in a given country or who does not have a valid identity document or travel document. There are also differences in the definitions of a stateless person used by different government entities. This makes it difficult to identify stateless persons and results in their low representation and, consequently, poor protection. Official statistics in Poland lack a special procedure for determining statelessness or assessing the existence of citizenship or statelessness, so it most often occurs in connection with immigration procedures. Most often as part of an application for a residence permit or international protection, and not as an official finding that could lead to granting the status of a stateless person. The lack of legal status is an obstacle for people without a state in obtaining a residence card and may be the reason for detention.

Having a tolerated stay permit is not enough for such people to gain access to social benefits and employment, the naturalization process on an equal basis with Polish citizens (Pudzianowska, 2019, p. 61 et seq.).

3. INTERNATIONAL AND POLISH LEGAL REGULATIONS RELATING TO STATELESSNESS

Statelessness was recognized as a significant international problem after the First World War. However, the statelessness situation was then perceived as an anomaly. At the international level during this period, solutions were adopted to counteract statelessness, not to protect stateless persons. It was only the experiences of the Second World War that forced the need to develop legal regulations to ensure the protection of stateless persons and comprehensively regulate the issues of counteracting statelessness.

In 1950, an agency was created under the auspices of the United Nations. Its main tasks were to be focused on refugees. Initially, it was supposed to be an ad hoc organization, but the scale of the refugee problem was so large that the need for its action is still visible today. The United Nations High Commissioner for Refugees (UNHCR) representation in Poland has been operating since 1992. The UNHCR is entrusted with tasks related to identifying, preventing, and limiting the occurrence of statelessness and ensuring protection for stateless persons. As part of this task, UNCHR undertakes many campaigns to eliminate the phenomenon of statelessness, for example under the slogan #IBelong or the campaign to eliminate statelessness by 2024. It collects and analyzes quantitative and qualitative data on the phenomenon of statelessness in Poland, determining the profile of stateless persons, their needs and the scope of protection, and presenting a comprehensive picture of their situation. It is also taking steps towards Poland's accession to international conventions on statelessness.

In Poland, there are a lot of legal regulations applying to stateless persons. These are primarily the provisions of the Act on Polish Citizenship (Act, 2009), and the Act on Foreigners (Act, 2013). In the context of stateless persons from Ukraine it is worth mentioning: the Act on granting protection to foreigners in the territory of the Republic of Poland (Act, 2003) in accordance with the conditions specified in the Council Implementing Decision (EU) 2022/382 (Decision, 2022). Stateless persons who can prove that they were legally residing in Ukraine before the 24th February 2022 on the basis of a valid permanent residence permit and are unable to return to their country or region of origin in safe conditions, as well as stateless persons, are entitled to receive temporary protection, who before the 24th February 2022, benefited from international protection or equivalent national protection in Ukraine.

UNHCR actively participated in the development of two global instruments on statelessness - the Convention Relating to the Status of Stateless Persons adopted on 28 August 1954 and the Convention on the Reduction of Statelessness adopted on 30 August 1961. According to Art. 1 of the 1954 Convention, a "stateless person" is a person who is not considered as a national by any State under the operation of its law. This definition is recognized under customary international law. The provisions of this international agreement are intended to provide stateless persons with treatment that is no worse than that enjoyed by foreigners. The literature emphasizes that the provisions of this convention are ineffective because in practice stateless persons cannot benefit from the right to diplomatic protection from their home state (Szkłanna, 2010, p. 40). The 1961 Convention sets out guidelines that should be taken into account in national laws to ensure the avoidance of statelessness. However, Poland has signed none of these conventions indicated above.

In 1974, UNHCR was designated by the UN General Assembly as the organization to which people claiming the benefits of the 1961 Convention may apply for consideration of their claims and to assist in the presentation of these claims to state authorities. The enormous increase in statelessness following the collapse of the Soviet Union, Yugoslavia and Czechoslovakia and the emergence of additional states in the early 1990s highlighted the need for a more effective international response to statelessness. As a result, the UN General Assembly gave UNHCR a global mandate to prevent and reduce statelessness and protect stateless persons. UNHCR's mandate therefore has two distinct elements: to address situations of statelessness occurring around the world and to help resolve matters that

may arise under the 1961 Convention. UNHCR's efforts to date have been supported by several developments at the international level.

The literature recognizes the different situations of a stateless person who did not receive citizenship automatically or by administrative decision in any country. He or she is then considered a "de jure stateless person". However, a situation is possible when a potential, actual bond can be demonstrated between a person and the state, but for various reasons, the person is unable to prove his or her citizenship or when he or she has waived the protection of the state of which he or she is a citizen. In such a case, one speaks of a "de facto stateless person". A specific example here is people fleeing due to persecution. Such a stateless person may be considered a refugee and be covered by special international protection, including the 1951 Convention Relating to the Status of Refugees (Dyduch, 2014, p. 399). The EU has adopted the concept that statelessness is an external problem - and stateless people are mostly refugees. In 2010, the number of refugees deprived of citizenship of any country applying for asylum in the EU was 2,122 people. A person identified as a stateless refugee usually receives care and assistance within the EU (Dyduch, 2014, p. 411).

4. THE RIGHT TO CITIZENSHIP

It should be remembered that the right to citizenship is emphasized internationally. Article 4a of the European Convention on Nationality contains the principle that states when introducing nationality legislation one should take into account the right of every person to nationality and strive to avoid situations in which statelessness may occur (Czapliński, 1998, p. 50 et seq.). Therefore, the right to citizenship was presented here very broadly (Zdanowicz, 2001, p. 152). The child's right to nationality is provided for in the International Covenant on Civil and Political Rights (Covenant, 1966). Poland ratified it in 1977. According to art. 24.3 every child has the right to acquire a nationality. The Convention on the Rights of the Child (Convention, 1989) also indicates in art. 7 that the child shall be registered immediately after birth and shall have the right from birth to a name, the right to acquire a nationality and as far as possible, the right to know and be cared for by his or her parents. The States Parties shall ensure the implementation of these rights in accordance with their national law and their obligations under the relevant international instruments in this field, in particular where the child would otherwise be stateless (P. Ura, 2014, p. 190). Pursuant to Art. 34 of the Polish Constitution (Constitution, 1997), Polish citizenship is acquired by birth, in accordance with the law of blood, i.e. from parents who are Polish citizens (Kubuj, 2016, p. 873 –874). The so-called, law of land applies exceptionally when the child is born in the territory of the Republic of Poland and its parents are unknown, do not have any citizenship or their citizenship is undefined, but also when the child was found in the territory of the Republic of Poland and its parents are unknown. A big problem is preventing the statelessness of children born in Poland whose parents are known. However, due to differences in the legal systems of the countries of which they are citizens, they cannot transfer their citizenship to such a child.

As previously mentioned, Polish law does not define the concept of a "stateless person", but this term is used by authorities as part of refugee and migration procedures. In accordance with the UNHCR report "The situation of stateless persons in Poland" from September 2019, for statistical purposes the Office for Foreigners registers "stateless persons" or "persons of undetermined nationality", using the definitions of these terms set out in the Convention relating to the Status of Stateless Persons of 1954.

5. THE SITUATION OF REFUGEES FROM UKRAINE IN POLAND AND THE PROBLEM OF STATELESSNESS

According to information published by the Polish Ombudsman, in 2022 UNHCR estimated the number of stateless persons and persons at risk of statelessness residing in Ukraine at 35,000. It also indicated that approximately 69,400 children born in areas not controlled by the Ukrainian government did not receive a Ukrainian birth certificate and are at risk of statelessness. Moreover, due to the armed conflict in Ukraine and the arrival of

war refugees to Poland, many of these people may currently reside on the territory of the Republic of Poland. A group particularly at risk of statelessness in Ukraine is the group of people of Roma origin, which may number from 120,000 to 400,00 people. These data vary so much because many of these people have no documents. That is why it is so difficult to determine their number. It is estimated that about 10-20% of these people do not have the documents required to acquire or confirm Ukrainian citizenship (European Network on Statelessness, 2017, p. 20). Another group of people affected by statelessness are people displaced within Ukraine and people living in regions such as Crimea and parts of the Donetsk and Luhansk regions that were not controlled by the Ukrainian authorities. They have limited access to documents. Their citizenship is questioned. Ukrainian children are particularly at risk of statelessness, especially those unaccompanied and those separated from their parents since the beginning of the war in Ukraine.

Children born in territories not controlled by the Ukrainian authorities have limited access to procedures confirming Ukrainian citizenship, which particularly exposes them to the risk of statelessness. These children often do not have a passport and establishing their citizenship may be difficult because Ukrainian authorities do not currently have access to or may be difficult to access databases of births in the occupied territories. Ukrainian children are particularly at risk of statelessness, especially those unaccompanied and those separated from their parents since the beginning of the war in Ukraine. Additionally, many of these children, after the outbreak of the war, could enter Poland without a passport or other document confirming their identity and origin. Due to limited access to Ukrainian databases and archives or the likelihood of their destruction due to hostilities, they may encounter difficulties in confirming their place of birth and, consequently, in proving their citizenship. Another group of people at risk of statelessness are citizens of the former Soviet Union who, due to the lack of the necessary documentation, were unable to prove permanent residence in Ukraine and therefore did not obtain Ukrainian citizenship, or Ukrainians who had permanent residence in other former Soviet republics at the time of their decay. Additionally, people who live in Ukraine and are refugees undergoing the procedure for obtaining international protection due to refugee status are arriving in Poland from war-torn areas (RPO, 2023).

In 2020, a statelessness determination procedure was introduced in Ukraine, which allows stateless persons, regardless of the legality or illegality of their stay on the territory of Ukraine, to apply for recognition as stateless persons. In such a situation, they receive a temporary residence permit and are then entitled to obtain a permanent residence permit after 2 years. This procedure has been available to applicants since May 2021. However, as the war escalated, the Ukrainian government closed access to population registers, which suspended the newly established statelessness determination procedure. This access has already been restored, but the situation of many people who left Ukraine while their applications are being considered is unclear (RPO, 2023).

6. PROBLEMS RELATED TO LACK OF CITIZENSHIP

It should be remembered that citizenship is an important part of a person's identity, giving him a sense of belonging. It is associated with the state providing effective protection and for the individual with the possibility of exercising basic human rights (Suchocka, 1991, p. 296 et seq.). Treating stateless persons as foreigners does not change the fact that there are rights that are granted only to citizens or the exercise of which is limited due to the fact that they do not have Polish citizenship. This includes, for example, electoral rights, the right to participate in a referendum, the right to submit a citizen's legislative initiative, the right to create and join political parties, the ability to perform certain professions, access to public service, the right to diplomatic protection, the right to purchase real estate, etc. Moreover, stateless persons have difficulties in taking up legal economic activity and accessing social benefits and health care. Statelessness also means the lack of an external connection between an individual and the state. This is the lack of assignment of an individual to a specific country (Spiro, 2004, p. 92). No state has rights and obligations defined by international law towards another state due to a given individual, such as diplomatic protection or the obligation to accept its citizens expelled by another state (Pudzianowska, 2019). Stateless persons

have difficulty obtaining travel documents and traveling abroad. Problems resulting from statelessness are visible at every stage of social life. They are related to, among others, taking up a job, renting an apartment, receiving mail, opening bank accounts, registering a car, and using health care or educational services (UNHCR, 2019). The lack of an identity document makes the exercise of some human rights much more difficult, including, for example, the right to a court. In some European countries, such as Switzerland or France, protection is granted to stateless persons, unless statelessness is a result of their own will, by granting them protection similar to that afforded to refugees. The problems resulting from statelessness also have a psychological basis. Stateless people live in constant tension and fear of services such as border guards and police. They are afraid of being placed in guarded centers for foreigners.

7. CONCLUSIONS

In Poland, there is definitely a clear connection between the ongoing war in Ukraine and the increased threat of statelessness. This is evidenced by statistics and research specified in reports of public authorities, such as the Ombudsman in Poland. The lack of nationality, in turn, has a significant impact on restrictions on the exercise of human rights and freedoms specified not only in Polish legal regulations but also in international regulations. This, in turn, translates into a lower quality of life for specific people affected by statelessness and limited opportunities to assert their rights and freedoms. Therefore, the basic problem that Poland is facing during the influx of refugees from Ukraine, which has an impact on the increase in the phenomenon of statelessness, is the insufficient regulation of these issues in law. The basic action that should be taken to improve the situation is to create appropriate legal regulations and procedures to protect against statelessness in Poland.

It seems that a way to solve this problem of statelessness could be to create a procedure for identifying stateless persons, allowing them to be issued with an identity document and offered access to at least a tolerated stay or some other type of stay that will be created especially for this group of people. It is also desirable to adopt a uniform definition of a stateless person by the 1954 Convention Relating to the Status of Stateless Persons, both for statistical purposes and as part of proceedings conducted by the Border Guard. This could facilitate the proper identification of stateless persons in Poland. A narrow interpretation of the concept of a stateless person could also be prevented. An additional advantage would be working to reduce the phenomenon of statelessness on an international scale. Therefore, work related to Poland's ratification of two global instruments on statelessness should be accelerated - the Convention Relating to the Status of Stateless Persons adopted on August 28, 1954 and the Convention on the Reduction of Statelessness of 1961. In addition, a comprehensive legal regulation relating to stateless persons should be created, which would ensure protecting them or creating mechanisms to facilitate their acquisition of citizenship, but it would also create preventive mechanisms to prevent statelessness in the future.

This postulate is visible both in the documents of UNHCR and the Polish Ombudsman. They see these activities as an opportunity to increase the level of implementation of the basic rights of stateless persons, whose functioning in Poland is significantly difficult. The current procedures provided for in the Act on Foreigners do not fit the specific situation of stateless persons. In practice, they enable them to regulate their legal status as part of the proceedings regarding the foreigner's return obligation. Under this procedure, it is possible to obtain a permit for a tolerated stay due to the impossibility of implementing the return decision. According to Article 351 point 2 of the Act on Foreigners, in such a situation a stateless person is not able to obtain a permanent residence permit and, consequently, is not able to obtain Polish citizenship (RPO, 2015).

The situation should be clearly regulated because granting Polish citizenship to a stateless person is associated with the automatic acquisition of European Union citizenship and its inclusion in the principles of EU law, which guarantee the protection of the subjective rights of Polish citizens (Cieśliński, 2005, pp. 52–53). Citizenship is of fundamental importance for specifying the nature of the relationship between the state and an individual, and, above all, for clearly and legibly distinguishing those units that will be identified as a nation (Jabłoński, 2013, p. 190).

Citizenship finally organizes the legal status of the international community, creating a framework for mutual rights and obligations of states among themselves and towards individuals (Dąbrowski, 2012, pp. 76-78). Citizenship of the European Union strengthens the sense of integrity of individuals in the European community. It adds to Polish citizenship the strengthening of individual rights (Grochalski, 2005, pp. 25-26). Obtaining Polish citizenship is therefore automatically associated with obtaining European Union citizenship, and thus with the rights that EU citizens are entitled to (Dąbrowski, 2005, pp. 71–72).

It is particularly important to create comprehensive legal regulations relating to stateless persons, which would ensure their protection and create mechanisms facilitating their acquisition of citizenship, but also create preventive mechanisms to prevent the problem of statelessness. D. Owen described the scale of statelessness around the world (approx. 10 million) as negligible, amounting to little more than 0.001% of the world's population (Owen, 2017, p. 248). Even if the scale of the problem discussed in this text is not large it is worth recalling that even the Universal Declaration of Human Rights of 1948 stated that "Everyone has the right to citizenship", which largely determines his social status and is a condition for exercising the right to a dignified life.

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