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Unaccompanied Minors? An Analysis of the legal situation of abandoned children born in Hungary

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ROBERT SCHUMAN CENTRE FOR ADVANCED STUDIES
MIGRATION POLICY CENTRE (MPC)

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children born in Hungary**

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1. Introduction

In recent years changes in Hungarian citizenship policy and legislation have aroused public interest. The efforts of the Hungarian government to facilitate the naturalisation of ethnic Hungarians particularly encountered resistance from neighbouring countries,¹ and was also viewed critically by some scholars.² At the same time, the issue of unaccompanied minors has been high on the political agenda in EU Member States, including Hungary. Various EU institutions and bodies have commissioned studies and reports to analyse the situation in the European Union³ and an Action Plan was launched in order to ensure greater coherence and cooperation and to improve the protection offered to this vulnerable group.⁴ Nevertheless, a group of unaccompanied minor children, who do not fit into the traditional definition of unaccompanied minors in Europe, has been neglected. These children were born in Hungary of a foreign national, but of a Hungarian speaking and presumably ethnic Hungarian mother who subsequently abandoned the child in hospital shortly after birth. Despite liberal citizenship policy and an existing legal framework for the protection of unaccompanied minors, these children do not, for various reasons, obtain any nationality at or after birth and remain in a legal limbo for many months or even years.

The aim of this paper is to explore the legal situation of these children in three areas: citizenship, immigration status and reception and care, and to analyse to what extent the current practices of the Guardianship Office and the Office of Immigration and Nationality is in compliance with Hungary's international legal obligations, with Community law and, indeed, with domestic law. Particular attention will be paid to the obligations of Hungary as set out in the Convention of the Rights of the Child, the Convention relating to the Status of Stateless Persons and the Convention on the Reduction of Statelessness. As an unclear citizenship status constitutes the main reason for their peculiar situation, we will also look at the possibility of granting Hungarian citizenship or stateless status.

1.1 Methodology and Definition

The paper at hand is based on desk research. As academic literature on this phenomenon is scarce, the report of the Parliamentary Commissioner on two unaccompanied minors born in Hungary constitutes the main source of reference.⁵ Additionally, international, European and national legislation and documents were consulted, all of which are relevant for the treatment of the children concerned.

For the purpose of this essay, the definition of "unaccompanied minor" provided by the UN Committee on the Rights of the Child is applied, as it constitutes the highest international norm. According to this definition, unaccompanied minors "are children, as defined in article 1 of the

¹ See particularly the reaction of the Slovak Republic: BBC, *Slovaks retaliate over Hungarian citizenship law*, 26 May 2010, available at: <http://www.bbc.co.uk/news/10166610> (consulted on 30 October 2011).

² For further information see: Rainer Bauböck: *Dual citizenship for transborder minorities? How to respond to the Hungarian-Slovak tit-for-tat* EUI, Robert Schuman Centre, European Union Democracy Observatory on Citizenship, <http://eudo-citizenship.eu/citizenship-news/322-dual-citizenship-for-transborder-minorities-how-to-respond-to-the-hungarian-slovak-tit-for-tat> (consulted on 30 October 2011).

³ European Union Agency for Fundamental Rights, *Separated asylum-seeking children: An examination of living conditions, provisions and decision making procedures in selected EU Member States through child centred participatory research, 2008-2009*, available at: http://fra.europa.eu/fraWebsite/research/projects/finalised_projects/proj_separated-asylum_en.htm (consulted on 31 October 2011).

⁴ EU, *Action Plan on Unaccompanied Minors*, available at: http://europa.eu/legislation_summaries/justice_freedom_security/fight_against_trafficking_in_human_beings/jl0037_en.htm (consulted on 31 October 2011).

⁵ Parliamentary Commissioner for Civil Rights, Report Nr. AJB 2629/2010 and AJB 4196/2010, September 2010, available at: www.obh.hu/allam/jelentes/201002692.rtf (consulted on 23 October 2011).

Convention, who have been separated from both parents and other relatives and are not being cared for by an adult who, by law or custom, is responsible for doing so.”⁶ However, it is acknowledged that the definition provided in EU Directives⁷ and in national law is narrower as both are limited to children who have entered Hungary or other EU Member State and who have subsequently been abandoned.⁸ The children in question would not fall under these definitions, as they did not “enter” Hungary, but were born in Hungary and were subsequently abandoned. The implications of the different definitions are explained in the respective chapters.

The terms “nationality” and “citizenship” are used as synonyms for the purpose of this paper.

2. Statistics

Data collection in Hungary on unaccompanied minors, who are not asylum seekers, is fragmentary.⁹ There are no exact statistics on how many children are living or who have lived in Hungary with this insecure legal status. According to the statistics of the Budapest Metropolitan V District Guardianship Office (Guardianship Office), which has been the authority responsible for the guardianship of non-nationals in Hungary since 2004, between 2004 and 15 May 2010 86 children were registered as having no known citizenship. As of 15 May 2010 43 procedures were under consideration. Out of the 43 children 14 were born in 2009.¹⁰

There is no evidence that the children belonged to an ethnic minority.

3. Legal Analysis

The initial situation is the same in all cases: a foreign national, but a Hungarian-speaking mother gives birth to a child in Hungary and then leaves the minor in the hospital without settling the child’s legal status and claiming citizenship for the child. This sets a number of administrative procedures in motion. Depending on whether the identity of the mother can be established and depending too on the presumed nationality of the child, children find themselves in differential legal situations and they receive differential treatment as a result. Children in the following situations will be analysed in this paper:

1. Children whose mothers’ nationality and identity is established where the mother is an EEA national. (Group 1)
2. Children whose mothers’ nationality and identity is established where the mother is a third-country national. (Group 2)
3. 3. Children whose mothers’ nationality is not established because the foreign representation of the country concerned cannot or does not identify the mother. (Group 3)

⁶ UN, Committee on the Rights of the Child, General Comment No. 6 (2005) – Treatment of unaccompanied and separated children outside their country of origin, CRC/GC/2005/6, 1 September 2005, available at [http://www.unhcr.ch/tbs/doc.nsf/898586b1dc7b4043c1256a450044f331/532769d21fcd8302c1257020002b65d9/\\$FILE/G0543805.pdf](http://www.unhcr.ch/tbs/doc.nsf/898586b1dc7b4043c1256a450044f331/532769d21fcd8302c1257020002b65d9/$FILE/G0543805.pdf) (consulted on 24 January 2012).

⁷ EU Directives 2001/55/EC and 2004/83/EC

⁸ According to Art.2 (e) Entry and Residence Act unaccompanied minors are “third-country nationals under the age of 18 years who entered the Hungarian territory without or have been abandoned after their entry by their adult legal representative who was responsible for them according to law or customary law as long as they are represented by such a person.”

⁹ National Contact Point Hungary, Policies on reception, return and integration arrangements for, and numbers of, unaccompanied minors in Hungary, p.9, European Migration Network, 2009, available at: http://emn.intrasoft-intl.com/Downloads/prepareShowFiles.do;jsessionid=76FEEF2E1A37BCAD2D5F40E0C477537B?entryTitle=05_Reception,%20Return%20and%20Integration%20Policies%20for,%20and%20numbers%20of,%20UNACCOMPANIED%20MINORS (consulted on 29 October 2011).

¹⁰ Parliamentary Commissioner for Civil Rights, Report Nr. AJB 2629/2010 and AJB 4196/2010, September 2010, available at: www.obh.hu/allam/jelentes/201002692.rtf (consulted on 23 October 2011).

In all three cases the fathers' identity and citizenship is unknown.

Three legal areas that determine the treatment of the child will be investigated: *citizenship*, as the difficulty in establishing the citizenship of the child seems to be a major obstacle to their integration in Hungary or to transfer to the countries of origin. Second, *immigration* as the peculiar legal status of these children demands a careful assessment of the applicable immigration law and as their immigration status is also influential on whether they can be naturalised as Hungarians. Third, the *care provisions* provided to unaccompanied minors born in Hungary will be assessed as the treatment of children can vary significantly depending on their legal status or presumed nationality. Attention will be drawn, also, to the question of citizenship, as the child's unclear status constitutes the major difficulty in the integration of newborn children in Hungary or in repatriation to the country of origin. In either case, a durable solution can be only reached if the nationality of the child is determined relatively quickly.

3.1. Citizenship

The right to nationality is an inherent human right: it was first included in the Universal Declaration on Human Rights in 1948 and was then reiterated in the Convention on the Reduction of Statelessness from 1961. More specifically concerning children, the Convention on the Rights of the Child (CRC) sets out that every "child shall be registered immediately after birth and shall have (...) the right to acquire a nationality (...)." Furthermore, the Convention obliges State parties to "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." The emphasis on the prevention of statelessness in the second paragraph indicates that it is a particularly important right for the Convention.

According to the 17th Decree-Law on Registers of Births, Marriage Ceremonies and Carrying of Names from 1982, the Hungarian authorities are obliged to investigate the citizenship of the newborn when he/she is registered. Citizenship can be proved with a valid travel document, an identity card or with a confirmation of nationality. A person whose nationality or statelessness has not been proven, for example, due to lack of valid travel document – is registered as a person with "unknown nationality".¹¹ The children concerned have been registered in every case by the Hungarian authorities immediately after birth based on the documentation presented by the mother or, where documentation is lacking, based on any information provided by the same.¹² In many cases there is no guarantee for the correctness and accuracy of the information. As the father is not known and as the mother stated that she is not a Hungarian citizen, the minor is registered as a person of "unknown nationality". Without any official documentation from the mother's or possibly the father's country of origin, the civil registry office is not entitled to establish the child's nationality as it is an attribute of each state's sovereignty and the exclusive competence of each country. Since the mother leaves the hospital without taking any steps to claim citizenship for her child, the Guardianship Office informs the respective diplomatic authority.¹³ There is no law or regulation that determines which foreign representation should be contacted. There is also no guidance on how the authorities should act if the nationality of the mother is unknown.

¹¹ Art 13 para 4 17th Decree-Law on Registers of Births, Marriage Ceremonies and Carrying of Names from 1982.

¹² Parliamentary Commissioner for Civil Rights, Report Nr. AJB 2629/2010 and AJB 4196/2010, September 2010, available at: www.obh.hu/allam/jelentes/201002692.rtf (consulted on 23 October 2011).

¹³ Art 102, 6/2003. (III. 7.) Decree of the Ministry of Interior concerning Registers of Births, Marriage Ceremonies and Carrying of Names.

3.1.1 Citizenship of (presumed) country of origin of the mother

The analysis of the citizenship legislation of the countries of origin goes beyond the scope of this paper, however the re-action or sometimes the silence of the relevant diplomatic authority also influences the treatment of the minor in Hungary, thus a brief overview is provided here.

The Parliamentary Commissioner for Civil Rights found in her report¹⁴ that diplomatic authorities react in different ways depending on the law or practice of the country concerned:

1. The authorities grant citizenship to the minor. As was the case for the minor whose situation was reviewed by the Parliamentary Commissioner for Civil Rights: the Romanian authorities replied to the inquiry of the Hungarian authorities after more than a year and recognized the child as a Romanian citizen, or
2. The foreign representations refuse the request of the Guardianship Office and do not grant citizenship to the child mainly for two reasons: the personal data provided by the mother does not fit any existing person, thus the data is false; or because they consider it the exclusive right of the parents to claim citizenship for their child according to the law of the state concerned.
3. The foreign representation does not react in a reasonable time.

As the experience of the Guardianship Office shows, there is no guarantee that a minor can obtain the nationality of the mother. Even if the mother's country of origin recognises the child as its own national, it often takes a long time during which the child in question is kept in a legal limbo without a clear status. Thus we will examine here, the likelihood that these minors can obtain Hungarian citizenship, if the mother fails to claim citizenship for the newborn.

3.1.2 *Ius soli*

In Hungary *ius sanguinis* is the underlying principle of the LV Act on Hungarian Citizenship from 1993 (Citizenship Act): a child born from Hungarian parents or from at least one parent is automatically Hungarian regardless of the place of birth.¹⁵ In accordance with Art. 2 of the Convention on the Reduction of Statelessness *ius soli* is applied as a complimentary principle: foundlings and children of stateless immigrants with a permanent residence permit are also considered Hungarian citizens until the presumption is rebutted. Indeed, according to the precise terms of Article 3 para 3 of Hungarian Citizenship Act children born to unknown parents and found in Hungary should be considered Hungarian nationals (foundlings).

At first glance, the law seems to cover those minors whose mothers' identity cannot be established by the respective embassy (Group 3). However, in practice the Hungarian authorities do not consider these children as foundlings, first, because the mother is not "unknown", as the hospital staff met the mother – even if the data she provided turns out to be false. Second, it is argued that these children are not strictly speaking found, rather they are abandoned. It remains, however, questionable whether this narrow interpretation reflects the spirit of the law. It should be remembered here that the primary intention of the cited provision of the Convention on the Reduction of Statelessness is to avoid statelessness at birth in those cases where parents cannot be identified¹⁶ and where nobody can establish the child's identity and country of origin. It should, therefore, be irrelevant whether the hospital staff has seen the mother or not, and whether her real identity is unknown. As citizenship is only based on a rebuttable presumption, if/once the status of the child is clarified, Hungarian citizenship can be revised. Hence, there are good reasons to argue that citizenship should be granted following the principle of *ius soli*, however in practice there is no evidence that the Office of Immigration and Guardianship has applied this provision.

¹⁴ Parliamentary Commissioner for Civil Rights, Report Nr. AJB 2629/2010 and AJB 4196/2010, September 2010, available at: www.obh.hu/allam/jelentes/201002692.rtf (consulted on 23 October 2011).

¹⁵ Art. 3 para 1 Citizenship Act.

¹⁶ Art. 1 Convention on the Reduction of Statelessness.

3.1.3 *Ius sanguinis*

The Parliamentary Commissioner identified another possible “loop-hole” in granting Hungarian nationality: for those children, whose mothers’ identity cannot be established by the embassies (group 3), and whose mother is consequently unknown, namely the provisions of the IV Act on Marriage, Family and Guardianship from 1952 (Family Act) could be taken into consideration. Art. 41 Family Act stipulates that if both parents are unknown, then the Guardianship Office has to make sure that immediately after birth imaginary persons are entered on the birth certificate of the child. Arguably, the minors should thus obtain citizenship pursuant to the principle of *ius sanguinis* by having an imaginary mother and/or father entered on their birth certificate.¹⁷

However, in practice the youth welfare authorities refuse the application of the cited regulation for various reasons. On the one hand, it is argued that the “foreign” unaccompanied minors do not fall under the scope of the Family Act, as their personal law is not Hungarian.¹⁸ In order to determine the scope of application of Hungarian law, the personal law of the minors must be established. The 13th Law-Decree on International Private Law defines that the personal law of the person follows from his/her nationality. Yet, in order to avoid situations where the personal law cannot be established based on nationality a back-up clause in Art. 11 para 4 can be applied. This stipulates that “[a] person, whose personal law cannot be established and who does not have a place of residence (*lakóhely*), shall have the personal law of that country in which his/her usual residence (*szokásotartózkodásihely*) is. (...)” In the cases under examination here, the children have their usual residence in Hungary, and do not have a place of residence. A place of residence would require the intention to stay in Hungary permanently or the intention to settle in Hungary for a longer period of time. The unclear immigration status of the children implies, however, the lack of a place of residence. Moreover, the children have been living in Hungary since their birth, which fulfils the requirement of usual residence. Hence, Hungarian law should be considered as their personal law since, otherwise, they would not have any personal law. Nevertheless, the youth welfare authorities refuse such applications, by arguing that Hungarian law cannot be the personal law of an unknown national without analysing further provisions of the 13th Law-Decree on International Private Law.

A second argument brought forward by the authorities is that the mother is not “unknown”. Even if the mother cannot be traced, her data being false, the authorities, nevertheless, consider her a known person. Such a broad interpretation of the word “known” is, to say the very least, questionable. Finally, the youth welfare authorities underline that the Family Act requires “immediate” registration after birth, while it takes, in these cases, several months until the foreign representations reply and refuse to establish nationality.¹⁹ Indeed, in such cases an “immediate” registration is virtually impossible. Thus, the relevant provisions of the Family Act do not provide a solid legal basis for the establishment of citizenship.

Nonetheless, Regulation 6/2003 (III. 7) of the Ministry of Interior could provide grounds for Hungarian citizenship for the minors.²⁰ The regulation stipulates that if the mother is known, but the identity of the father cannot be established at birth, no personal data should be entered in the father section of the birth certificate *for the time being*. Subsequently, the registry office has to contact the mother or the Guardianship Office every six months in order to obtain the father’s data. Ultimately, if the data cannot be obtained within three years, the registry office files a formal request in order to enter the data of an imaginary father on the birth certificate. In this way the unaccompanied minor

¹⁷ Parliamentary Commissioner for Civil Rights, Report Nr. AJB 2629/2010 and AJB 4196/2010, September 2010, available at: www.obh.hu/allam/jelentes/201002692.rtf (consulted on 23 October 2011).

¹⁸ *Idem*.

¹⁹ Parliamentary Commissioner for Civil Rights, Report Nr. AJB 2629/2010 and AJB 4196/2010, September 2010, available at: www.obh.hu/allam/jelentes/201002692.rtf (consulted on 23 October 2011).

²⁰ *Idem*.

should receive Hungarian citizenship based on the retroactive application of the principle of *ius sanguinis*. This provides a solution in particular in those cases, in which the mother can be identified by the embassy, but where the third country refuses to grant citizenship to the child, as was the case with a child described in the report of Parliamentary Commissioner. There Ukraine refused to grant citizenship to an abandoned child upon request of the Guardianship Office as, according to national law, it is the exclusive right of the parents to claim citizenship for their children.²¹

However, this argumentation is not followed by the Guardianship Office as, according to them, the personal law of the child is not Hungarian. Yet, as was noted above, this conclusion is unconvincing. Furthermore, the arguments of the Guardianship Office are even weaker as Regulation does not require the immediate registration of the father, nor does it state that the mother has to be unknown. Nevertheless, this reasoning has two weaknesses: first, the aim of the Regulation 6/2003 (III. 7) is not to grant nationality, but to implement the 17th Decree-Law on Registers of Births, Marriage Ceremonies and Carrying of Names from 1982. Granting and establishing citizenship should be primarily based on the Citizenship Act, which does not refer to the Regulation at stake. On the contrary, the decree has a lower rank in the hierarchy of legal norms compared to laws and in particular to the Citizenship Act and, in fact, the authorities apply the cited provision only for foundlings according to the limited interpretation of Art. 3 para 3 b.

3.1.4 Naturalisation

As the report of the Parliamentary Commissioner for Civil Rights revealed, in many cases the children in question remain for several years at least in Hungary so that naturalisation has to be taken into account.

Normally, Hungarian citizenship can be obtained if the applicant fulfils the following conditions: eight years of continuous residence in Hungary, no criminal record and no criminal procedure pending at the time of the application, livelihood and accommodation is guaranteed, the naturalisation does not endanger public order or the security of Hungary and the person has successfully passed the citizenship test.²² For children born in Hungary, preferential treatment is granted if they have established residence in the country before they reached majority age and if they are stateless.²³ Persons falling in this category can obtain citizenship after five year of residence.²⁴ No matter which provision is taken into account the fulfilment of a five or eight years “waiting period” will constitute the main challenge for most unaccompanied minors born in Hungary, as the waiting period is tied to permanent residency status. (Kovács&Toth, 2010: 7) Thus, the time starts running and the residence only counts once the minor has obtained permanent residency status. (Gyulai, 2010: 49)

Hungarian immigration law establishes three different permanent residence statuses: two of them are based on the EU *aquis*: “the EU permanent residence permit” and the residence permit for third-country nationals who have an EU permanent residence permit from another Member State in accordance with the EU Long-term Residence Directive (2003/109/EC)²⁵ and the third is based on national legislation and was in force already before the transposition of the Long-term Residence Directive. This provision was retained because in some aspects it can be obtained under more favourable conditions. (Gyulai, 2010: 36) The main difference is that the national long-term residence

²¹ Idem.

²² Art. 4 para 1 Citizenship Act.

²³ For the possibilities to obtain stateless status, please see Chapter 3.1.5.

²⁴ Art. 4 para 4 Citizenship Act.

²⁵ Council Directive 2003/109/EC of 25 November 2003 concerning the status of third-country nationals who are long-term residents, available at: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32003L0109:en:NOT> (consulted on 23 October 2011).

permit can be applied for after only three years, while the EU long-term residence permit can only be granted after five years of continuous stay in Hungary. Thus, the naturalisation procedure can only be introduced, at the earliest, after eight or eleven years of stay in Hungary. The child has to stay in Hungary for three years with a temporary residence permit²⁶ until he/she can apply for a long-term residence status, than again he/she has to wait another five or even eight years until the person qualifies for naturalisation.

It will be shown in the next Chapter that in terms of immigration status and care the Office of Immigration and Nationality treats the children according to their presumed nationality. If the mother was registered as an EU national at birth, the child is also treated as an EU national; equally children with mothers who were third-country nationals are seen as third-country nationals. Analogically, the same practice could be applied to citizenship issues. This means that presumed EU national children could benefit from the more favourable conditions of Art. 23 para 1 (c) which sets out that, EU nationals establish their residence when they exercise their right to freedom of movement in Hungary and when they register themselves with the respective authorities.

The other material conditions for naturalisations might not constitute a signification obstacle. The law requires that the livelihood and accommodation of the third-country national is ensured, and that the person has access to health care services, which is given as the children are taken into temporary care.²⁷ Additionally, a criminal record, the existence of an entry ban and any danger to national security would constitute grounds for denying approval: none of these though are relevant in the case of children. Due to their minority age, unaccompanied minors should also be exempted from the language and citizenship test.²⁸

For various historical and ideological reasons Hungarian citizenship policy is characterized by a strong preference for the naturalisation of ethnic Hungarians. (Kovács&Toth, 2010:4) Particularly, the latest amendment of the Citizenship Act from 2010 envisages the facilitation of naturalisation of ethnic Hungarians. Since, it appears that the mothers of the children concerned *do* have Hungarian origins, as the common characteristic of all cases is that the mothers speak Hungarian and come from neighbouring countries (Romania and Ukraine) with a significant Hungarian minority,²⁹ these newly introduced provisions are relevant here.³⁰ According to said provisions, a person who can prove that one of his/her predecessor was or is a Hungarian citizen or a person who can credibly show his/her Hungarian origins and who proves knowledge of Hungarian can be granted Hungarian citizenship even without previous residence and a waiting time in Hungary.³¹ There is no information available as to whether this provision has ever been applied to children; however, it is questionable whether children or their legal representatives would be able to prove Hungarian origin since very little evidence is available on the origin of the children. The application of this regulation is most likely to be successful in those cases, where the mother can be identified.

Very recently, a legislative proposal was submitted to the Parliament to review the naturalisation of abandoned children. According to the proposal, unaccompanied minors born in Hungary with unknown citizenship can be naturalised, provided that the child receives official child care and that the

²⁶ In practice, the children are granted a humanitarian residence permit. See Chapter 3.2.

²⁷ See Chapter 3.3.

²⁸ Art. 4 para 8 and Art.4/a para 2 Citizenship Act.

²⁹ Parliamentary Commissioner for Civil Rights, Report Nr. AJB 2629/2010 and AJB 4196/2010, September 2010, available at: www.obh.hu/allam/jelentes/201002692.rtf (consulted on 23 October 2011).

³⁰ Idem.

³¹ Art. 4 para 3 Citizenship Act. See also Parliamentary Commissioner for Civil Rights, Report Nr. AJB 2629/2010 and AJB 4196/2010, September 2010, available at: www.obh.hu/allam/jelentes/201002692.rtf (consulted on 23 October 2011), p.21.

parents' countries of origin do not recognize the child as their own citizen.³² Although the proposal was submitted by an MP of the governing party, the Government did not support it. Indeed, the Government argued that³³ there is no need for an amendment: first, as 95% of foundlings can receive citizenship under Article 3 para 3 of the Citizenship Act, the children in question are a tiny group. Second, where Art 3 para 3 of the Citizenship Act does not apply, the children can be naturalised as ethnic Hungarians based on Art. 4 para 3 of the Citizenship Act as described above. The surnames of the children on the birth certificate would indicate their Hungarian origin. Yet, the Government makes no reference to situations, in which the mothers' identity and consequently the children's surnames turn out to be false. Furthermore it is argued that the amendment is contradictory to the system because granting Hungarian citizenship according to the proposal would impede the children from obtaining the citizenship of their parents, for example, Ukrainian citizenship. This argument is rather awkward, especially given that the situation would be the same if the children acquire citizenship according to Art.4 para 3 of the Citizenship Act as suggested by the Government. Finally, the government noted that naturalisation of the children would open the door for abuse, if the parent claimed family reunification with his/her abandoned child after naturalisation.

The reasoning of the Government is not convincing, nevertheless it is, at least, clear that, for the time being, there is no political will in facilitating the naturalisation of abandoned children.

3.1.5 Acquisition of citizenship by declaration

Beyond naturalisation, the Citizenship Act provides a further channel for acquiring Hungarian citizenship through declaration (Kovács&Toth, 2010:16). According to Art. 5/A b a person born in Hungary who has not acquired the citizenship of his or her parents by birth according to the citizenship laws applicable for the parents can declare his or her Hungarian citizenship provided that the applicant had a place of residence in Hungary on the day of his or her birth and provided that the applicant has resided in Hungary for at least five years before the declaration. The declaration must be addressed to the President of the State and qualifies the applicant for immediate citizenship. There is no evidence that any minor has declared Hungarian citizenship based on the cited provision, nor has the Parliamentary Commissioner analysed this possibility. However, the minors at stake seem to fulfil all required conditions once they reach their fifth birthday. The advantage of the acquisition of citizenship by declaration over naturalisation is that it does not require permanent residence. Thus, children whose mothers are presumably third-country national can obtain citizenship after a five-year residence.

3.1.6 Statelessness

The interpretation of the different provisions of the Hungarian Family and Citizenship Law and the current practice of the Hungarian authorities results in an unsatisfactory situation that when the third country does not grant citizenship to the child, he/she has very little chance of obtaining Hungarian citizenship within a reasonable time and the minor remains stateless. But even, if the third-country recognizes the minor as its own national, the children do not have citizenship for a considerably time. It was also shown above that determination of statelessness is essential in making use of the favourable conditions for citizenship applications. Experts, however, do not agree whether the children become *de jure* stateless or *de facto* stateless. While the Parliamentary Commissioner for Civil Rights observes several times in her report that the children become *de facto* stateless,³⁴ Gyulai suggests that the children

³² Independent Proposal of a Member of Parliament, available at: <http://www.parlament.hu/irom39/04699/04699.pdf> (consulted on 29 January 2012).

³³ Parliamentary Committee for National Togetherness, Protocol of the Session from 15 November 2011, available at: <http://www.parlament.hu/biz39/bizjvk39/NOB/1111151.pdf> (consulted on 29 January 2012).

³⁴ E.g. page. 18. Parliamentary Commissioner for Civil Rights, Report Nr. AJB 2629/2010 and AJB 4196/2010, September 2010, available at: www.obh.hu/allam/jelentes/201002692.rtf (consulted on 23 October 2011).

are *de jure* stateless. (Gyulai, 2010:45). As the protection offered by the Hungarian Entry and Residence Act only applies to *de jure* stateless persons,³⁵ the determination of status is essential here.³⁶

According to the Convention relating to the Status of Stateless Persons, “a person who is not considered as a national by any State under the operation of its law” is stateless.³⁷ The same definition is provided in the Hungarian Entry and Residence Act.³⁸ It is irrelevant whether the status is formally established by the respective authorities. (Gyulai, 2010:45) On the other hand, *de facto* statelessness is not defined by international law (Gyulai, 2010:13) and there is no internationally binding legal framework for the protection of *de facto* stateless persons. UNHCR ascertains that “sometimes the States with which an individual might have a genuine link cannot agree as to which of them is the State that has granted citizenship to that person. The individual is thus unable to demonstrate that he/she is *de jure* stateless, yet he/she has no effective nationality and does not enjoy national protection. He/She is considered to be *de facto* stateless”³⁹. Historically, the drafters of the Convention relating to the Status of Stateless Persons considered primarily refugees as *de facto* stateless and did not see the need to extend the scope of the Convention to them, as they were granted protection under the Convention relating to the Status of Refugees.⁴⁰ Today, the circle of persons who are *de facto* stateless has broadened. In fact UNHCR stated that most *de jure* and *de facto* stateless persons are not refugees.⁴¹ Meanwhile, according to the Council of Europe “persons [who] do possess a certain nationality, but where either the state involved refuses to give the rights related to it, or the persons involved cannot be reasonably asked to make use of that nationality. In both cases the persons involved do not benefit of an effective nationality and are in fact stateless.” Both definitions imply that these persons lack *effective* nationality.⁴² Certain emphasis is also based on the inability of persons to avail themselves of the protection of a certain country. Inability can include cases where the country of nationality refuses to offer protection, for whatever reason.⁴³ Moreover, irregular migrants without identity documents who cannot be returned to their country of nationality because the country is not willing to cooperate or readmit the person, were also identified as *de facto* stateless migrants.⁴⁴ Certainly, the situation of the unaccompanied minors is, to some extent, similar: they are not able to avail themselves of the protection of their presumed country of nationality because the respective country refuses (at least for a certain period) to offer protection. However, the main difference is that unaccompanied minors born in Hungary never had a nationality, while in the above cases it is presumed that nationality was established, however, due to external factors (lack of identity documents), the person cannot claim their nationality. Hence unaccompanied minors born in Hungary should be rather considered *de jure* stateless. Further material conditions for the recognition of statelessness is legal residence. While it is noted that in many instances the requirement of legal residence constitutes a major obstacle (Gyulai, 2010:17) this is not the case for the minors examined here, for, as shown in the following section, in practice they can obtain a humanitarian residence permit or a registration certificate in accordance with EU Directive 2004/38/EC, even though there is no solid legal base for that.

³⁵ Art. 2 (b) Entry and Residence Act. See also Gyulai, 2010: 13.

³⁶ Even though, the Final Acts of the Statelessness Convention, the Convention on the Reduction of Statelessness recommends and also the Council of Europe recommends that *de jure* and *de facto* should be treated, at least in some aspects, equally, however these constitute only soft laws and are not internationally binding.

³⁷ Art. 1 Convention relating to the Status of Stateless Persons.

³⁸ Art. 2 (b) Entry and Residence Act.

³⁹ UNHCR, *Nationality and Statelessness: A Handbook for Parliamentarians*, August 2008, available at: <http://www.unhcr.org/436774c62.html> (consulted on 29 October 2011).

⁴⁰ *Idem*, p. 11.

⁴¹ *Idem*, p. 13.

⁴² UNHCR, UNHCR and De Facto Statelessness, LPPR/2010/01, April 2010, available at: <http://www.unhcr.org/refworld/docid/4bbf387d2.html> (consulted 11 October 2011).

⁴³ *Idem*.

⁴⁴ *Idem*.

In practice, however, the Parliamentary Commissioner observed that the Guardianship Office fails to notify the Immigration Office about the refusal of the foreign diplomatic authority to grant nationality to the child and impedes the recognition of the child as stateless.⁴⁵ As Hungarian citizenship can be obtained at earliest after five years, the determination of statelessness would be essential for the integration of the children in Hungary, especially in granting access to school, in putting them up for adoption, etc.

3.2. Immigration and Residence

The Hungarian Constitution guarantees that every Hungarian citizen has the right to reside in the territory of the Federal Republic of Hungary.⁴⁶ However, as was noted above, acquiring Hungarian citizenship can take several years for unaccompanied minors born in Hungary. Thus the immigration and residence law must be analysed in order to define the residence status of minors. Non-nationals can enter Hungary with a valid travel document and, depending on the country of origin, they might also need a valid visa. If the stay is intended to be longer than three months they also need a residence permit or a registration certificate. Different laws apply to nationals of the European Economic Area (EEA nationals) than apply to third-country nationals. Persons with unknown citizenship do not fall under the scope of any of these laws which means that their legal status is not regulated. The Parliamentary Commissioner for Civil Rights ascertained that this lack of legal status violates the principle of the rule of law as it is laid down in the Constitution.⁴⁷

In practice, however, minors are treated as citizens of the mother's presumed country of origin. Thus for children with assumed EEA nationality, mostly from Romanian mothers, European Community law is applied. The children are granted a registration certificate in accordance with the EU Directive 2004/38/EC and a residence card that certifies their address. However, the irony of the situation comes out here once again: the registration certificate cannot be handed over to the minors or their legal representatives as the children do not have a valid travel document. The Immigration and Citizenship Office withholds the certificates, then, and issues a confirmation that the person is legally present in Hungary instead.⁴⁸

The situation of those children whose mother is a third-country national or unknown is even more peculiar. The II Act of 2007 on the Entry and Residence of Third-country nationals (Entry and Residence Act) applies specific protection measures for unaccompanied minors and grants special protection for this particularly vulnerable group. However, according to the definition in the Entry and Residence Act unaccompanied minors are "third-country nationals under the age of 18 years who entered Hungarian territory without or have been abandoned after their entry by their adult legal representative who was responsible for them according to law or customary law as long as they are represented by such a person."⁴⁹ As the children at stake did not "enter", but were born in Hungary and are abandoned only subsequently, they cannot be considered unaccompanied minors under the cited act. Notably, this definition corresponds to the definition of the EU Directives 2002/55/EC and 2004/83/EC and is narrower than the definition provided in General Comment Nr. 6 of the Convention on the Rights of the Child. Nevertheless, the immigration law also envisages a specific humanitarian residence permit for third-country nationals born in Hungary who are without a person who is legally

⁴⁵ Parliamentary Commissioner for Civil Rights, Report Nr. AJB 2629/2010 and AJB 4196/2010, September 2010, available at: www.obh.hu/allam/jelentes/201002692.rtf (consulted on 23 October 2011).

⁴⁶ Art. 69 Constitution.

⁴⁷ Art. 2 para 1 Constitution.

⁴⁸ Parliamentary Commissioner for Civil Rights, Report Nr. AJB 2629/2010 and AJB 4196/2010, September 2010, available at: www.obh.hu/allam/jelentes/201002692.rtf (consulted on 23 October 2011).

⁴⁹ Art. 2 (e) Entry and Residence Act.

responsible for them.⁵⁰ The humanitarian residence permit is valid for one year and can be extended annually. After three year of continuous stay in Hungary the minor is entitled to a permanent national residence permit or, after five year of stay, to a long-term EC residence permit.⁵¹

While the legal status of presumed EEA national children is more stable, children of third-country national mothers find themselves in an insecure situation as the humanitarian residence permit has to be renewed annually and because permanent residence status is granted only after three years.

The question of repatriation to the country of origin of the mother is also related to immigration status, as this was also an issue with children whose situation was analysed by the Parliamentary Commissioner. In fact, it is not correct to speak of repatriation or return in the context of unaccompanied minors born in Hungary as the minors have literally never been in the countries concerned, thus the term transfer should rather be used. There are various reasons to argue that a transfer is unlawful: First, it is questionable whether it is in the best interest of the child, as required in Art. 3 of the Convention of the Rights of the Child, to be separated from foster families after a long period and to be then transferred to a foreign country and environment. There is also no guarantee that the minor speaks the language of the country of return. Moreover, the Parliamentary Commissioner highlighted that the Hungarian authorities did not carry out a best interest determination and did not hear the minor or his/her legal representative in order to assess the wishes of the child as set out in Art. 12 of the Convention.⁵² Hence, the repatriation can be seen as a violation of Art. 3 of the Convention.

Second, according to the Hungarian aliens' law a person can only be expelled if he or she has no regular residence status or if they no longer have that residence status.⁵³ Additionally, in terms of unaccompanied minors care must be guaranteed in the country of transfer upon arrival.⁵⁴ For EEA nationals similar rules are in force.⁵⁵ As was shown, regardless of the origin of the children, they could obtain a residence permit or registration certificate, hence the children were legally resident in Hungary. Nevertheless, the responsible Guardianship Office introduced the transfer procedure in cases where citizenship could be established based on a bilateral agreement on legal and administrative cooperation between Hungary and Romania and then transferred the children to Romania.⁵⁶ Similar agreements are in force with other former communist neighbours, thus this practice might not be limited to Romanian children.

There seems to be a contradiction: on the one hand, the aliens' law clearly enumerates under what circumstances foreign nationals can be removed – legally staying third-country national do not fall under any of the categories, on the other hand a bilateral agreements exist that envisage the repatriation of children under very different circumstances. The relation of bilateral agreements to the Entry and Residence Act is not regulated explicitly; however in most cases a bilateral agreement can be seen as *lex specialis* that derogates the general provision, as set out in the Entry and Residence Act. Furthermore, the fact that the Child Protection Act envisages legal and administrative cooperation with third countries indicates also that the bilateral agreements derogate domestic law. However, in terms of EEA nationals, Community law must also be taken into account, especially given that the application of

⁵⁰ Art. 29 para 1 d Entry and Residence Act.

⁵¹ Art. 35 and 38 Entry and Residence Act.

⁵² A Parliamentary Commissioner for Civil Rights, Report Nr. AJB 2629/2010 and AJB 4196/2010, September 2010, available at: www.obh.hu/allam/jelentes/201002692.rtf (consulted on 23 October 2011).

⁵³ Art. 42 Entry and Residence Act. The law also defines additional grounds for expulsion, such as irregular employment and entry, danger to public order and security, etc. which is, however, not relevant for newborn children. For EEA nationals the threshold is even higher.

⁵⁴ Art. 45 para 5 Entry and Residence Act.

⁵⁵ I. Act on the Entry and Residence of Persons with the Right to Freedom of Movement and Residence.

⁵⁶ Agreement between the Peoples' Republic of Hungary and the Peoples' Republic of Romania concerning Legal Cooperation in the Field of Civil, Family and Criminal Law from 7 October 1958.

a bilateral agreement in the area of the freedom of movement might violate the principle of the supremacy of Community law, which was established by the Court of Justice of the European Union (CJ).⁵⁷ The principle of supremacy sets out that Community law, particularly the right to freedom of movement according to the EU Directive 2004/38/EC, should override domestic law if it is contradictory or in this case, the bilateral agreement and the implementing protocols between Hungary and Romania envisaging the “forced repatriation” of an EU citizen lawfully residing in another Member State. At the same time, in case of third-country national children bilateral agreements could be applied.

Third, the Parliamentary Commissioner revealed that the transfer of the children was carried out by officials of the Guardianship Office. However, neither the Child Protection Act nor any other act enables the Guardianship Office to transfer children to Romania or, indeed, to any other country. On the contrary, it is the exclusive competence of the aliens’ authority to expel and to remove EEA and third-country nationals. The Child Protection Act stipulates that the Guardianship Office has to inform the police to settle the residence status, initiate legal or administrative cooperation and/or contact diplomatic representation in order to repatriate the minor;⁵⁸ however the Guardianship Office is not mandated to take further steps. Such an action can be seen as a violation of the rule of law, a fact also noted by the Parliamentary Commissioner.⁵⁹

To conclude, there are good reasons to argue that the repatriation of a child is not only unlawful, but also that it violates the principle of rule of law and that it is in breach of the CRC. Additionally, for EEA national unaccompanied minors we have suggested that the transfer might violate Community law too.

3.3. Child Care and Adoption

Various international and regional human-rights institutions emphasise the notion that “unaccompanied minors must be treated first and foremost as children, not as migrants. (...) The child’s best interests must be a primary consideration in all actions regarding the child, regardless of the child’s migration or residence status”.⁶⁰ The Convention on the Rights of the Child also prohibits in its prominent Art. 2 the discrimination of children based on, *inter alia*, their nationality and obliges states to “ensure the rights set forth in the (...) Convention to each child within their jurisdiction without discrimination”, including the right to special protection and assistance for children who are deprived of their family environment.⁶¹

In the previous section it was shown that, depending on the presumed nationality of the mother, different residence status is granted to minors. Notably, the Child Protection Act does not know the status of “unknown nationality”. Thus it is questionable whether the level of care provided for children should vary depending on the mothers presumed nationality, a fact which might constitute a violation of the prohibition of discrimination in Art. 2 of the Convention of the Rights of the Child.

Regardless of nationality or legal status, children who are left without an adult are entitled to a “measure of a temporary effect” (*ideigleneshatályúelhelyezés*): They can be placed temporarily with foster parents or in a child-care institution and the competent guardianship office is informed.⁶²

⁵⁷ Court of Justice of the European Union, *Flaminio Costa v. ENEL*, CJ 6-64, 15 July 1964.

⁵⁸ Art. 72 para 3 Child Protection Act.

⁵⁹ Parliamentary Commissioner for Civil Rights, Report Nr. AJB 2629/2010 and AJB 4196/2010, September 2010, available at: www.obh.hu/allam/jelentes/201002692.rtf (consulted on 23 October 2011).

⁶⁰ See, for example, Council of Europe, Committee on Migration, Refugees and Population, *Unaccompanied children in Europe: issues of arrival, stay and return*, Doc. Nr. 12539, 21 March 2011, available at: <http://assembly.coe.int/Documents/WorkingDocs/Doc11/EDOC12539.pdf> (consulted on 30 October 2011).

⁶¹ Art. 2 in connection with Art. 20 CRC.

⁶² Art. 71 para 1 (b) in connection with Art. 4 (3) Child Protection Act.

During the temporary placement a case guardian (*esetigondnok*) is responsible for the legal representation of the child.

The care measures provided vary depending on the nationality of the child. The law treats EEA national children as it would Hungarian nationals and provides comprehensive care which goes beyond the measure of a temporary effect.⁶³ In such cases the Guardianship Office must decide within thirty-five days whether the child should receive temporary (*átmeneti* -) or permanent care (*tartóselhelyezés*),⁶⁴ and a guardian (*gyám*) must be assigned to these children. In analogy to the application of the immigration law as explained above, presumed EEA national children who possess a registration certificate should also be given temporary or permanent care; however, the Parliamentary Commissioner observed that in the case of two presumed Romanian national children, only measures of temporary effect were provided.

Different provisions apply, however, to third-country national children: the scope of the Child Protection Act for third-country national children is limited only to “measure of temporary effect” (*ideiglenes hatályú elhelyezés*). In their case the Guardianship Office has to contact the police and the relevant diplomatic representation for the minor or it can also introduce legal cooperation in order to arrange the guardianship or adoption of a child. However, the children have to remain in temporary placement while legal status is being clarified; the necessity of temporary placement has to be reviewed every six months. Where the third country grants citizenship to the minor, the child remains in temporary placement until he/she can be repatriated. As it can take several years until the minor is transferred to the country of nationality, such a measure cannot be qualified as temporary. The lack of competence of the Guardianship Office to give the children into temporary or permanent care impedes the possibility of giving the child up for adoption in Hungary.⁶⁵ In general, adoption is only possible once the status of the child is clarified: either in Hungary if the child received Hungarian citizenship or if the child becomes stateless status or eventually in the country of origin of the mother, if it is granted nationality there.

As explained above, there are also situations where the minor is not able to obtain the citizenship of his/her mother and in practice there is very little chance that these children will obtain Hungarian citizenship or receive stateless status. Hence, the child remains in temporary care until he/she reaches majority age or receives Hungarian citizenship or becomes stateless, something which is aggravated by the fact that the law does not define the maximum timeframe for temporary placement.⁶⁶

Such treatment infringes, without any doubt, the prohibition against discrimination in the Convention as was also noted by the Parliament Commissioner.⁶⁷

4. Conclusions

Acquiring citizenship (at birth) constitutes a fundamental human right, something that is essential for every human being. However it is of particular importance for children who are abandoned after birth by their foreign national parents, children who do not have any guardian and who are, therefore, in a vulnerable situation. Granting citizenship can be seen here as the only durable solution for unaccompanied minors born in Hungary, as only a clear legal status enables them to integrate into Hungarian society and to protect them from repatriation after several years of residence.

⁶³ Art. 4 Abs 1 (b) Child Protection Act.

⁶⁴ Art. 73 para 1 b Child Protection Act.

⁶⁵ Parliamentary Commissioner for Civil Rights, Report Nr. AJB 2629/2010 and AJB 4196/2010, September 2010, available at: www.obh.hu/allam/jelentes/201002692.rtf (consulted on 23 October 2011).

⁶⁶ Parliamentary Commissioner for Civil Rights, Report Nr. AJB 2629/2010 and AJB 4196/2010, September 2010, available at: www.obh.hu/allam/jelentes/201002692.rtf (consulted on 23 October 2011).

⁶⁷ Idem.

Even though the present paper has argued that the Hungarian Citizenship Act and other related laws provide some room for interpretation in the interests of children, the authorities fail to prevent statelessness at birth and do not grant Hungarian citizenship to unaccompanied minors born in Hungary. Ironically, in terms of residence status, the authorities treat the children according to their presumed citizenship without any legal base, while at the same time they refuse to consider the granting of Hungarian citizenship or a stateless status. On the contrary, the children are kept in temporary placement, sometimes for several years until the presumed country of nationality is willing to receive the children. Moreover, the temporary placement itself is discriminatory and is in breach of the Convention of the Rights of the Child. Depending on the nationality of the minors – EEA national minors receive preferential treatment – which violates the prohibition of discrimination and the notion that children should be primarily treated as children and not as migrants. The current practice of the Guardianship Office and the Office of Immigration and Nationality is even more striking in light of Hungarian citizenship policy that promotes the naturalisation of persons of Hungarian ethnicity.

As suggested also by various experts, the legal insecurity caused by the lack or incorrect interpretation of the law, could be overcome by the adoption of a legal framework that reduces the period during which children are registered as “unknown national” and ideally that grants citizenship at birth according to the principle of *ius soli*.

Sources

- Bauböck, Rainer: *Dual citizenship for transborder minorities? How to respond to the Hungarian-Slovak tit-for-tat* EUI, Robert Schuman Centre, European Union Democracy Observatory on Citizenship, <http://eudo-citizenship.eu/citizenship-news/322-dual-citizenship-for-transborder-minorities-how-to-respond-to-the-hungarian-slovak-tit-for-tat> (consulted on 30 October 2011).
- EU, Action Plan on Unaccompanied Minors, available at: http://europa.eu/legislation_summaries/justice_freedom_security/fight_against_trafficking_in_human_beings/jl0037_en.htm (consulted on 31 October 2011).
- EU Agency for Fundamental Rights, Separated asylum-seeking children: An examination of living conditions, provisions and decision making procedures in selected EU Member States through child centred participatory research, 2008-2009, available at: http://fra.europa.eu/fraWebsite/research/projects/finalised_projects/proj_separated-asylum_en.htm (consulted on 31 October 2011).
- Ciky, Ottó & Filó Erika: *Magyar családjog*, 2003, Budapest.
- Council of Europe, Committee on Migration, Refugees and Population, Unaccompanied children in Europe: issues of arrival, stay and return, Doc. Nr. 12539, 21 March 2011, available at: <http://assembly.coe.int/Documents/WorkingDocs/Doc11/EDOC12539.pdf> (consulted on 30 October 2011).
- Gyulai, Gábor: *Hontalanság Magyarországon – Jelentés a Hontalanok Védelméről, a hontalanság megelőzéséről és csökkentéséről*. Magyar Helsinki Bizottság, 2010, Budapest, available at: http://helsinki.hu/dokumentum/Hontalansag_Magyarorszag_2010.pdf (consulted on 4 October 2011).
- Independent Proposal of a Member of Parliament, available at: <http://www.parlament.hu/irom39/04699/04699.pdf> (consulted on 29 January 2012).
- Kovács, Mária M. & Tóth, Judith: *Country Report Hungary – EUDO Citizenship Observatory*, June 2010, available at: <http://eudo-citizenship.eu/docs/CountryReports/Hungary.pdf> (consulted on 23 October 2011).
- Kovács, Mária M. & Tóth, Judith: *Update: Changes in the Hungarian Citizenship Law and adopted on 26 May 2010*, June 2010, available at: <http://eudo-citizenship.eu/docs/CountryReports/recentChanges/Hungary.pdf> (consulted on 23 October 2011).
- National Contact Point Hungary, Policies on reception, return and integration arrangements for, and numbers of, unaccompanied minors in Hungary, European Migration Network, 2009, available at: http://emn.intrasoft-intl.com/Downloads/prepareShowFiles.do;jsessionid=76FEEF2E1A37BCAD2D5F40E0C477537B?entryTitle=05_Reception,%20Return%20and%20Integration%20Policies%20for,%20and%20numbers%20of,%20UNACCOMPANIED%20MINORS (consulted on 29 October 2011).
- Office of the United Nations High Commissioner for Human Rights (OHCHR), The Rights of Non-citizens, New York and Geneva, 2006, available at: <http://www.ohchr.org/Documents/Publications/noncitizensen.pdf> (consulted on 11 October 2011).
- Parliamentary Commissioner for Civil Rights, Report Nr. AJB 2629/2010 and AJB 4196/2010, September 2010, available at: www.obh.hu/allam/jelentes/201002692.rtf (consulted on 23 October 2011).

Parliamentary Committee for National Togetherness, Protocol of the Session from 15 November 2011, available at: <http://www.parlament.hu/biz39/bizjvk39/NOB/1111151.pdf> (consulted on 29 January 2012).

UN, Committee on the Rights of the Child, *General Comment No. 6 (2005) – Treatment of unaccompanied and separated children outside their country of origin*, CRC/GC/2005/6, 1 September 2005, available at [http://www.unhcr.ch/tbs/doc.nsf/898586b1dc7b4043c1256a450044f331/532769d21fcd8302c1257020002b65d9/\\$FILE/G0543805.pdf](http://www.unhcr.ch/tbs/doc.nsf/898586b1dc7b4043c1256a450044f331/532769d21fcd8302c1257020002b65d9/$FILE/G0543805.pdf) (consulted on 24 January 2012).

UNHCR, *Nationality and Statelessness: A Handbook for Parliamentarians*, August 2008, available at: <http://www.unhcr.org/436774c62.html> (consulted on 29 October 2011).

UNHCR, *UNHCR and De Facto Statelessness*, LPPR/2010/01, April 2010, available at: <http://www.unhcr.org/refworld/docid/4bbf387d2.html> (consulted 11 October 2011).

International law sources

UN, Convention relating to the Status of Stateless Persons, 28 September 1954, available at: <http://www.unhcr.org/3bbb25729.html> (consulted on 23 October 2011).

UN, Convention on the Reduction of Statelessness, 30 August 1961, available at: http://untreaty.un.org/ilc/texts/instruments/english/conventions/6_1_1961.pdf (consulted on 23 October 2011).

UN, Convention on the Rights of the Child, New York, 20 November 1989, available at: <http://www2.ohchr.org/english/law/crc.htm> (consulted on 4 October 2011).

UN, Universal Declaration of Human Rights, 10 December 1948, available at: <http://www.un.org/en/documents/udhr/index.shtml> (consulted on 4 October 2011).

EU law sources

Council Directive 2001/55/EC of 20 July 2001 on minimum standards for giving temporary protection in the event of a mass influx of displaced persons and on measures promoting a balance of efforts between Member States in receiving such persons and bearing the consequences thereof, available at: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32001L0055:EN:NOT> (consulted on 25 January 2011).

Council Directive 2003/109/EC of 25 November 2003 concerning the status of third-country nationals who are long-term residents, available at: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32003L0109:en:NOT> (consulted on 23 October 2011).

Directive 2004/38/EC of the European Parliament and of the Council of 29 April 2004 on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States amending Regulation (EEC) No 1612/68 and repealing Directives 64/221/EEC, 68/360/EEC, 72/194/EEC, 73/148/EEC, 75/34/EEC, 75/35/EEC, 90/364/EEC, 90/365/EEC and 93/96/EEC (Text with EEA relevance), available at: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32004L0038:en:NOT> (consulted on 25 January 2011).

Council Directive 2004/83/EC of 29 April 2004 on minimum standards for the qualification and status of third country nationals or stateless persons as refugees or as persons who otherwise need international protection and the content of the protection granted, available at: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32004L0083:EN:HTML> (consulted on 25 January 2011).

Case law of the Court of Justice of the European Union

Court of Justice of the European Union, CJ 6-64, Flaminio Costa v. ENEL, 15 July 1964.

National law sources

Agreement between the Peoples' Republic of Hungary and the Peoples' Republic of Romania concerning Legal Cooperation in the Field of Civil, Family and Criminal Law from 7 October 1958.

The Constitution of the Republic of Hungary

IV Act on Marriage, Family and Guardianship from 1952 (Family Act)

LV Act on the Hungarian Citizenship from 1993 (Citizenship Act)

I Act on the Entry and Residence of Persons with the Right to Freedom of Movement and Residence from 2007

II Act on the Entry and Residence of Third-Country Nationals from 2007 (Immigration Act)

13th Decree-Law on International Private Law from 1979

17th Decree-Law on Registers of Births, Marriage Ceremonies and Carrying of Names from 1982

6/2003 (III 7) Decree of the Ministry of Interior concerning Registers of Births, Marriage Ceremonies and Carrying of Names.

Other sources

BBC, *Slovaks retaliate over Hungarian citizenship law*, 26 May 2010, available at: <http://www.bbc.co.uk/news/10166610> (consulted on 30 October 2011).