

**CONFERENCE REPORT**  
**EMN Luxembourg (Online) Annual National conference**  
**« CITIZENSHIP AS A VALUE »**  
**1st October 2020**



### Welcome speeches

Speaking from personal experience, **Prof. Stéphane Pallage** (Rector of the University of Luxembourg) stated that citizenship is a set of legal values to which one chooses to adhere to, and a legal status that comes with rights and duties. Choosing citizenship is of course a privilege that is not accessible to everyone. Many migrants find their dreams of a new departure, a new life or a new citizenship crushed by walls and boundaries, even though they have chosen to live in the country that, in return, refuses to take them in. Prof. Pallage expressed the wish that adopting the values of a nation and contributing to it were enough for citizenship to be granted.

**Jean Asselborn** (Minister for Immigration and Asylum) greeted the participants via a video greeting and thanked the University of Luxembourg for organising the conference. The pandemic highlighted the importance of the value of citizenship, what it means to belong to a community and of the rights and the protection that it comes with. Citizenship is often linked to national identity, although it is more complex than that and can have various dimensions. Minister Asselborn considers himself not only as a Luxembourgish national, but also as a European citizen. EU citizenship grants a series of rights and opportunities, but it also allows for peace between European countries.

The concept of EU citizenship has on occasion been misconstrued in order to create division (us versus them). Nationalist parties across Europe often narrow the notion of citizenship down to nationality by birth, and thus use citizenship as a means of exclusion. However, with citizenship only being one part of the social identity of a person, it should be a means of inclusion and regarded as an opportunity.

The legal recognition of the status of a person as a member of a particular country encourages people to become active citizens of the community they belong to. This is even more pertinent when

people come from different backgrounds and ways of thinking. Diversity should be welcomed as it strengthens the social fabric of a country. Luxembourg can serve as an example in this regard, with over 170 nationalities residing in the country and with nearly half of the country's population being of foreign origin.

While embracing diversity, the new Nationality Law facilitated the acquisition of Luxembourgish citizenship for those residents who chose to do so. A significant increase in people who applied for Luxembourgish citizenship was observed in the last three years (from 7.000 in 2016 to 11.500 in 2019). There are surely different reasons for the rise in naturalisations: some may see it as the completion of an integration process in their host country, while others, namely British citizens, also filed applications to retain European citizenship. Throughout the whole process of negotiation of the withdrawal of the United Kingdom from the European Union, the rights of citizens have been a central issue and a major concern for Luxembourg. The withdrawal agreement ensures rights independently of the future relationship. The Minister concluded by stating that Luxembourg ensured that British citizens can secure their rights provided by the withdrawal agreement by applying for a new residence status since 1 July 2020.

## Keynote speech – “Citizenship in a diverse Europe”

- **Prof. Marc Hooghe, Centre for Citizenship and Democracy, KU Leuven**

The topic of citizenship has been subject to heated debate. Citizenship was taken for granted in the 19<sup>th</sup> and 20<sup>th</sup> century, when it was not seen as problematic. Because of migration, the issue has become more salient. The issue has mostly been discussed in relation to immigration, a fact that is regrettable according to Prof. Hooghe. At the same time, he acknowledged that the relation between citizenship and migration is relevant from the point of view of identity and the markers that we use to establish them. Every country and identity is based on borders; for example, EU citizenship is possible because there are countries that are not European. Cosmopolitanism exists, of course, but most people are attached to a land or an identity.

The debate on citizenship should not only be limited to immigration, because citizenship also reflects the question of what type of society we want to live in. In addition to the various legal elements related to citizenship, there is also a very symbolic element to it, which is why this is such a heated debate. Acquiring citizenship means that you become a full member of society. In most legal systems, there is only one category: One cannot be a full citizen or a half citizen, or a first or second grade citizen. Rather, one either is a citizen of a certain country or not. Consequently, there is also a moral aspect tied to the notion of citizenship: People want to become citizens in order to be able to vote and actively participate in society, for example.

Prof. Hooghe presented three forms of citizenship, which all have their sets of limitations:

- Ethnic citizenship: based on ancestry, ethnic status, religious background, historical developments. This is a very stable form of citizenship and it does not offer an escape because it is determined at birth.
- Cultural citizenship: based on a sharing common culture. It is the most diffuse form of citizenship, since it is never made exactly clear what kind of culture is that we share. We do invent new forms of cultural tradition and we stress some aspects of culture, sometimes strategically to exclude other groups.
- Civic citizenship: based on respect of law and language. In other words, if you play by the rules, then you are part of the group. The most common example is France. In terms of the language, an often asked question is if one can become a citizen without speaking the language. Most of the time, learning the language of the host society is part of civic citizenship because people can learn a new language. At the same time, learning a language would exclude certain categories of people who may not be able to acquire a new language, such as the elderly, for example.

Which of these three can function in the Europe that we know today? The idea of homogeneous nation-states has become obsolete. Luxembourg is an example, where 45% of the population has been

born outside of the Grand Duchy. In other nations, this trend is also experienced, except from Eastern European countries who have less experience with diversity and who are often sending countries. In the current Europe, up to 20% of the population lives in a different country to the one in which they were born.

Diversity is not solely linked to migration, but it is also rising in other aspects: religious diversity, lifestyle diversity, sexual identities, relational status, etc. This means that regulations need to become reviewed to adapt to new social realities. From the perspective of lawmakers, this means that social life will become more diverse and more difficult to govern. There is of course a political debate about this increase in diversity, which is often taken from a one-sided perspective. From a demographic point of view, Europe is an ageing, shrinking society. The only way to counter this trend is an increase in the fertility rates, a circumstance that is currently not observed in Europe. Consequently, because of these economic and demographic reasons, there is a strong need for immigration. Therefore, we cannot only consider the push factors. Pull factors are to be considered as well. Europe is and will continue to be in need of people coming in. At the same time, increasing diversity is not an easy process because there is a possibility for people not to be accepted and a risk for political backlash.

All three presented forms of citizenship have their problems and challenges, with ethnic citizenship maybe being the most problematic and archaic one. Cultural citizenship has also several problems given that the notion of the main culture ("*Leitkultur*") of a country was invented as a reaction to the arrival of new groups with different cultures. What kind of culture do we want people to adhere to? In terms of the civic citizenship, if we define civic by abiding by the rules, we need to consider that there are limitations to the capacity of the state to organise public life.

In consequence, Prof. Hooghe argued that there is a need to update the traditional notion of citizenship that we have known in Europe for centuries while avoiding confrontations at the same time. As a possible response to the identified need for an update of the notion of citizenship, Prof. Hooghe referred to the notion of 'nation' according to the French writer and historian Ernest Renan ("*What is a nation?*"). According to Renan, it is the 'present consent', the wish to live together. In other words, there is no such thing as the nation being a destiny based on history, language or religion. These criteria are not considered to be decisive. Instead, it is rather a voluntary choice of people wanting to live together. This notion might be more salient than ever, and is, to some extent, a mixture of the three forms of citizenship. For example, civic citizenship is not only a legal notion, but there is also a will to live together (limits of multiculturalism). 'Living together' is also a requirement for (formerly) majoritarian groups to express the desire to live together and not perpetuate discriminatory practices.

Prof. Hooghe concluded by arguing that this more open form of citizenship is the only possible way forward. At the same time, as previously mentioned, there is a potential for political backlash, but what we know from research is that cracking down on immigration has mainly negative effects on the countries that chose to go down that route. Furthermore, there is a risk of developments of dual societies because there can be a split between more diverse urban communities and more traditionally homogenous rural communities (see, for example, the current situation in the United States). Moreover, this can also pose a challenge for the education system. In conclusion, in order to make a country successful and attractive and to foster a high quality of life, it is necessary to embrace migration. As an example, Germany has taken in more than 1 million new people, but you cannot say that Germany has become a less pleasant country to live in. Societies change and there are not that many alternatives.

## Panel 1: Citizenship in the Greater Region

Moderator: Ralph Petry, EMN Luxembourg

- **Prof. Patrick Wautelet, University of Liège, Belgium**

Prof. Wautelet focused on Belgian citizenship policy, highlighting some of the peculiarities of the Belgian system. Third-country nationals represent the main group of foreigners acquiring Belgian citizenship. There are two pathways for migrants to acquire Belgian citizenship: a) the declaration, and b) naturalisation. The decision related to the acquisition by declaration is decentralised, as it is the local authorities (local municipality, local public prosecutor and local court) who decide who becomes a

citizen. Consequently, there are differences with regard to the understanding and the procedures applied in the matter. In contrast, the decision related to naturalisation is taken by the Parliament, a fact that is quite uncommon in the European context. A look at the statistics of acquisitions over the past years illustrate that the declaration is much more commonly used in Belgium when compared to naturalisation.

The requirements for declaration are as follows: a certain residence period, an integration requirement, and good conduct. For naturalisation, 'exceptional achievements' have to be fulfilled, such as being an exceptional artist or sportsperson for instance, which means that only very few qualify for this (700 in 2019).

There are three scenarios of how a person can acquire Belgian citizenship via declaration:

1. Person born in Belgium + residence in Belgium since then (until application). No further integration requirement needs to be fulfilled.
2. 5 years of (legal) residence (main scenario). In this scenario, the language requirement is quite lenient (A2 CEFRL). Furthermore, integration needs to be demonstrated via 'social integration' (education, work) and via 'economic integration' (work, education), and not via a citizenship or integration test.
3. 10 years of (legal) residence. The language requirement in this scenario is also set at A2 CEFRL, and applicants need to demonstrate integration via 'participation in life of community'. This latter requirement has not been clearly defined and is thus difficult to interpret for applicants. In addition, the condition of good conduct is a requirement for all three scenarios.

In summary, Belgium is to be considered very much 'middle of the road' when it comes to the residence and language requirements, but not so much when it comes to other integration requirements. Prof. Wautelet explained that the integration requirement is more of a portfolio system where you need to demonstrate integration through what you have done in the period prior to application.

In 2012, the citizenship legislation underwent substantial changes, inter alia reflecting a change in understanding of the role of citizenship. Between 2000 and 2012, integration was presumed upon application. Since 2012, citizenship has been considered the 'cherry on top of the integration cake' that needs to be demonstrated by the applicant. The driver for this substantial change was a purely inward looking, Belgian debate in Parliament and in the media (no evaluation of previous legislation, no comparative benchmarking, and no attention to international law or to European citizenship).

Prof. Wautelet concluded by stating that so far, no research has been carried out on the perception of the acquisition of citizenship by the Belgian society. However, an ongoing project currently analyses newspaper articles to explore related issues, such as dual citizenship,

- **Agnes Fontana, Director for the Reception, Accompanying foreign nationals and Nationality, General Directorate for Foreign Nationals in France, Ministry of the Interior, France**

Agnes Fontana presented the French policy regarding the acquisition of citizenship. Citizenship can be obtained through various avenues, such as naturalisation, reintegration, marriage to a French citizen, if you have French parents or have French children, or if you are born abroad and went to school in France, etc.

As regards ordinary naturalisation, this is the most common way of acquiring French citizenship. 5 years is the minimum residence requirement, although this can be reduced to 2 years for certain categories of people (for example, for persons who went to high school in France or for persons who provided special services to France). Furthermore, no residence period is required for persons originating from a French speaking country or for refugees. With regard to the language requirement, a language proficiency of B1 is required for most persons (oral and writing, the latter since April 2020). There is no written citizenship test but instead an assimilation interview to ensure that the applicant is knowledgeable about the culture and the history of France, about the rights and duties attached to citizenship and that s/he adheres to the principles of the republic. There are also good conduct requirements, similar to other Member States. As regards economic resources, the applicant needs to

earn at least the minimum wage and not be dependent on social assistance. The person also needs to prove that they actually live in France on a permanent basis and is integrated in French society.

The most common procedure for third-country nationals to acquire French citizenship is the ordinary naturalisation procedure, representing 49.671 acquisitions in 2019. On average, between 55.000 and 60.000 foreigners are granted French citizenship annually.

Recent changes in legislation include, firstly, in the French overseas department of Mayotte, the addition of the condition that one of the parents needs to be in a regular situation in view of combatting irregular migration. Secondly, a general provision was modified, namely applicants have to prove their ability to write in French (B1 level, see above). Furthermore, with regard to the citizenship procedure, 42 platforms for the acquisition of citizenship ('special prefectures') have been established since 2015 to process applications.

Lastly, Agnes Fontana explained that the access to citizenship is not really subject of much debate in France, as the legislation in this context is considered as being very stable for a long time. The pillars of French citizenship law, namely the residence in France, the knowledge of the French language, the respect of the law and the knowledge of society and culture, are object of a consensus. The sole exception to this is the debate on the deprivation of French citizenship, for example for citizens who carried out terrorist attacks and who are dual citizens. In conclusion, Agnes Fontana stated that many Member States, including France, consider citizenship the end of the integration process and disagreed with a recently published article by Thomas Huddleston that states that French Citizenship Law is rather restrictive. Compared to some other Member States, she explained, the French system is quite lenient in some regards, for example requiring a short residence period.

- **Torben Anschau, Institute for Social Pedagogical Research Mainz, Germany**

Torben Anschau presented the main elements related to the acquisition of citizenship in Germany. As a starting point, Anschau presented the main rights that come with German citizenship, including the right to vote and run for election, unlimited freedom of residency within Germany and the EU, the right to undertake certain occupations, protection against extradition, and extraterritorial protection through German and European diplomatic facilities. Anschau elaborated on the main principles related to the acquisition of German citizenship (*Jus sanguinis*, *Jus soli* and citizenship by naturalisation) and pointed out that by law, dual citizenship is to be avoided. There are exceptions to this rule, as dual citizenship is indeed only possible for citizens of EU countries or Switzerland, of countries that do not allow their nationals to renounce their citizenship or make this very difficult or expensive, as well as in individual cases. In fact, these listed exceptions apply in the majority of acquisitions of citizenship in Germany. As a result, the biggest foreign population in Germany (Turkish nationals) lose their original citizenship when they acquire German citizenship.

Anschau explained the legal structure of German citizenship and elaborated on the fact that the processing of applications is carried out by local authorities (counties) via naturalisation offices, which are separate from foreigners' offices. The federal *Länder* provide coordination and support among the local authorities.

With regard to legislative changes, Anschau stressed that the rationale and the perception of German citizenship have changed drastically in the course of history. Up until the 1990s, only Germans were entitled to naturalisation. Among the most significant changes in the last two decades were, in 2000, the introduction of the *Jus soli* principle, the reduction of the residence period from 15 to 8 years and the possibilities of exceptions with regard to dual citizenship. Furthermore, Germany saw a reform of the citizenship law in 2005, the introduction of a citizenship exam in 2008 that included social integration as a condition, as well as changes to the dual citizenship policy in 2014 with regard to the so-called 'option-duty'.

Controversial debates regarding the changes in naturalisation policy took place between 1999 and 2008, in particular with regard to dual citizenship and integration, which were partly also driven by racism. As of yet, naturalisation is commonly understood as a reward for efforts of people to integrate. Anschau closed by stating that naturalisation should be made as easy as possible because a democratic society may not exclude a relevant part of its people from political participation.



- **Ralph Petry – EMN Luxembourg**

Ralph Petry presented the citizenship acquisition procedures in Luxembourg. The ordinary naturalisation procedure, the option procedure (for persons with a particularly close link to Luxembourg), and the reclamation procedure (for persons who lost Luxembourgish citizenship) are all channels through which Luxembourgish citizenship can be acquired. The legal requirements for ordinary naturalisation are: a period of residence of 5 years (last year must be uninterrupted), the successful completion of a language test (spoken test A2), a citizenship course or citizenship test (applicants have the choice) and a condition of good conduct.

Over the last five years, the reclamation procedure has been the most common procedure for third-country nationals to acquire Luxembourgish citizenship (43%), followed by the option procedure (37%) and ordinary naturalisation (20%).

Luxembourg saw two major legislative changes in recent years. First, the Citizenship Law of 2008 introduced, among other changes, the principle of multiple citizenship and the reclamation procedure for descendants of an ancestor who held Luxembourgish citizenship on 1 January 1900. Second, in 2017, Luxembourg adopted the new Citizenship Law, which was driven by the aim to promote societal and political integration of foreigners, as well as to accelerate and simplify the application procedure. Furthermore, the demographical situation of the country played an important role, as there is a high share of foreign resident population and high yearly net migration. In the framework of the legislative changes in 2017, the residence period was brought back from 7 to 5 years, adjustments were made to the language test, the hours of the citizenship course were increased, and the option procedure was reintroduced.

Both legislative changes had a significant effect on the number of acquisitions of Luxembourgish citizenship, passing from around 1.000 before 2008 to over 4.000 in the period between 2009 and 2013. Since 2015, the acquisitions increase even more significantly each year, reaching over 11.000 acquisitions in 2018 and 2019.

The acquisition of citizenship is subject to public debate on a regular basis, most notably around the question whether the right to vote should be decoupled from citizenship. The language requirement was also subject to political debate, with some arguing for stricter and higher requirements, while others argue for less stringent criteria to avoid exclusion due to insufficient knowledge of the language. The new citizenship law of 2017 was the result of these latest debates.

## **Panel 2: Luxembourgish citizenship and Brexit**

Moderator: Florence Hallack-Wolff, EMN Luxembourg

- **John Marshall, British Ambassador to Luxembourg**

Brexit has occupied a very prominent place on the agenda, before and after the referendum took place. According to Ambassador Marshall, most UK nationals living in Luxembourg would have preferred the United Kingdom to remain in the EU. The outcome of the referendum came as a huge shock to the community. There were around 6 000 UK nationals in Luxembourg at the time of the referendum in 2016, a proportion of whom worked or used to work in the EU institutions. People had to deal with that in an emotional and in a practical way with regard to the implications on their lives. The loss of the EU citizenship was one of the big issues that concerned UK nationals, but also other concerns such as their access to education, healthcare, and other services. In other words, there was a great deal of uncertainty. Out of this unrest, a group was born in Luxembourg formed by UK nationals. This organisation (British immigrants living in Luxembourg - BILL) was founded because of a meeting with the Ambassador Marshall.

The rights of the British citizens were a priority in the early stages of the negotiations, with an agreement having been reached in December 2017 (18 months after the referendum). Despite this agreement, there was always uncertainty whether the withdrawal agreement was going to be ratified by both parliaments. In such a situation, people look at the different options that are available to them. Many UK nationals have applied for Luxembourg citizenship. For some people, this has been an easy decision and for others, it has been a very emotionally troubling decision, even if they were eligible to

apply. Ambassador Marshall highlighted that many British nationals successfully applied for Luxembourgish citizenship, as well as for other EU Member State citizenship, particularly Irish citizenship.

Meanwhile, the withdrawal agreement was eventually ratified by both parliaments and came into force on 1 February 2020. Since then, the UK and the EU have been focused on the effective implementation of that agreement. In the UK, the EU settling scheme was established which has been completed by 3.5 million of EU citizens to secure their status. Luxembourg has also released its own scheme in July 2020. The embassy is encouraging British nationals residing in Luxembourg to apply for that scheme (deadline end of June 2021), which will hopefully eliminate people's concerns about their legal status in Luxembourg.

Within the British community in Luxembourg, there are many who have accepted the result of the referendum, but there are others who remain very unhappy. The focus now will be on ensuring an effective implementation across the UK and EU Member States. Ambassador Marshall closed by thanking the Luxembourgish authorities for the support, the good communication and the cooperation.

- **Jonathan Pereira Neves, Head of the EU Unit and the Brexit Unit, Directorate of Immigration, Ministry of Foreign and European Affairs, Luxembourg**

Jonathan Pereira Neves presented the approach taken by the Luxembourgish authorities towards the rights of residence for British citizens and their family members. The withdrawal agreement gave the two parties the possibility to choose between a constitutive (mandatory) system and a declaratory (voluntary) system. The constitutive system foresees a mandatory application as a condition for the enjoyment of rights under the withdrawal agreement. Under the declaratory system, persons that complied with the conditions automatically become beneficiaries of the withdrawal agreement.

Luxembourg opted for the constitutive system, in particular in view of providing UK citizens and their families with a physical proof of the fact that they benefit of the right of residence under the withdrawal agreement, and thereby giving them legal security. The withdrawal agreement secures the rights of British citizens who currently reside in Luxembourg or who migrate to Luxembourg before the end of 2020. The rights are almost identical to those granted by the UK to EU nationals.

Regarding the procedure, it consists of an application form jointly with an identity document. In accordance with the withdrawal agreement, this scheme has to start at the end of the transition period (1 January 2021). However, Luxembourg opted to start its scheme already before this deadline, as provided by the withdrawal agreement. By starting the scheme already on 1 July 2020, the Luxembourgish authorities wanted to give British citizens and their family members enough time to apply for the scheme. In practice, UK citizens and their family members must apply for their document at the Directorate of Immigration. This document is a biometric document that will be valid as of 1 January 2021. Until then, they will also have to keep their current EU residence document as a proof of residence. In other words, they will have two documents until 1 January 2021 (current EU residence document + the newly issued residence document). This also applies for UK citizens who come to Luxembourg before 1 January 2020, who have to complete the standard registration process at the local authorities of residence.

Pereira Neves highlighted that British nationals can apply for this scheme until 30 June 2021, which should give everyone enough time to secure their residence status. Those who have applied after 1 January 2021 will have to keep their current EU residence document as a proof of residence until they receive their new document. UK nationals who come to Luxembourg after this period will need to apply for the new document. The introduced procedure proved itself very smooth and simple so far because the Directorate of Immigration had already received a significant number of applicants (around 600 since 1 July 2020) and no particular challenges had been encountered so far.

In closing, Pereira Neves also thanked the British embassy for the joint work in view of encouraging British citizens to apply for the scheme in order to secure their rights in Luxembourg. Lastly, he highlighted that there will be two types of British nationals coming to Luxembourg after 1 January 2021: 1) those who fall under the withdrawal agreement (still eligible to apply for the scheme; i.e. family member of a British national residing in Luxembourg); 2) those who do not have a previous links to Luxembourg and who will be considered as third-country nationals. This is due to the uncertainty with

regard to the negotiations between the EU and the UK and the future relationship between the two parties.

- **Laurent Peusch, Deputy Head of the Employer Services at the National Employment Agency, Luxembourg (video presentation)**

Laurent Peusch highlighted that those UK citizens who currently have a legal residence in Luxembourg and continue to reside in Luxembourg after the transition period can still register with the National Employment Agency without any restriction (same rights as before Brexit). As for active jobseekers (e.g. those registered with the Employment Agency before 1 January 2021), they will stay registered without any restrictions and, if they receive unemployment benefits, will continue to receive such benefits as initially granted.

For UK citizens who are moving to Luxembourg after the end of the transition period, they will need to have a residence permit granted by the Luxembourgish authorities, not only in order to live in Luxembourg but also to be registered as a jobseeker at the National Employment Agency and benefit from the support and services provided by the administration.

- **Joëlle Gilles, Nationality Office of the Ministry of Justice, Luxembourg**

Joëlle Gilles presented the Luxembourgish citizenship in further detail. The first part of the presentation focused on the attribution of Luxembourgish citizenship via jus soli. The new citizenship law, which entered into force on 1 April 2017, introduced the pathway of jus soli for the first generation born in Luxembourg. This means that Luxembourgish citizenship is granted to all children born in Luxembourg before 1 July 2013 with non-Luxembourgish parents when they turn 18 if they have legally resided in the country for the last 5 years before their 18<sup>th</sup> birthday. A further jus soli disposition concerns the disposition that a person born in Luxembourg before 19 April 1939 is considered a Luxembourgish national. It is important to note in this context that the date relevant to this clause is increased every year on 1 January, meaning that in 2020, the person needs to have been born in Luxembourg on 19 April 1942.

In the second part of her presentation, Joëlle Gilles provided an in-depth presentation of the various procedures foreseen in the Luxembourgish citizenship law, namely:

- Option
- Naturalisation
- Recovering Luxembourgish citizenship
- Renunciation

For more information on the various requirements and documents that have to be fulfilled and provided in the various procedures, please consult the [power point presentation of the panellist](#).

Some additional precisions were also made in this context, namely in relation to the fact that the applicant will have the name that they have in the country of origin, that the procedure is free of charge, and that the required documents will need to be translated to one of the national languages, if applicable (Luxembourgish, German or French). The Ministry of Justice has elaborated a so-called 'decision tree'<sup>1</sup>, which indicates to applicants which procedure is the most appropriate in their individual case. More information can be found on the official portal of the Government: <https://guichet.public.lu/en/citoyens/citoyennete/nationalite-luxembourgeoise.html>.

### **Panel 3: Stateless children's right to nationality**

**Moderator:** Adolfo Sommaribas, coordinator of the EMN Platform on Statelessness, EMN Luxembourg

- **Pascal Schumacher, Ministry of Foreign and European Affairs – Permanent Representation of Luxembourg to the EU**

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<sup>1</sup> Available in English under: <https://guichet.public.lu/dam-assets/citoyens/en/citoyennete/nationalite-luxembourgeoise/acquisition-recouvrement/option/schema-decisionnel.pdf>



Many lawyers would say that the EU has no competence to deal with the topic of stateless children's right to nationality. EU Member States alone are competent to regulate access to nationality. Is there really no room for manoeuvre at the EU level? Pascal Schumacher noted that in the current times of the Covid-19 pandemic, it is quite unlikely that stateless children cross any borders in the EU, seeing that there are also obstacles for many EU citizens to move freely throughout the EU. Schumacher continued by discussing the challenge that the fires in the refugee camp in Moria (Greece) currently poses. Moria hosted many children with different statuses, including some beneficiaries of international protection, other were asylum seekers, again others were under a status to be returned but who were not removable. However, Moria also hosted a number of stateless children who are particularly vulnerable.

In this context, Pascal Schumacher discussed the role that the EU should have in helping these most vulnerable to get access to a nationality, namely by focussing on the best interest of the child as the first principle at EU level. In other words, access to citizenship is needed for these children if indeed the best interest of the child is pursued. The EU could establish such a legal basis for these children if it would like to act on this particular challenge.

Schumacher also touched upon the European Commission's newly released Pact on Migration and Asylum and highlighted that the new pact indeed includes a few special protective rules for children. At the same time, he expressed disappointment at the fact that stateless children are not really mentioned in this pact. The European Commission emphasises that the pact will introduce stricter rules to prevent abuses to asylum, while at the same stressing that these measures will be balanced with more protective rules for the most vulnerable. To conclude, Schumacher highlighted that stateless children are the most vulnerable in the EU and that the best interest of the child could therefore be a leverage in the negotiations at the EU level to improve the situation of those children.

- **Dorothy Estrada-Tanck, University of Murcia, Spain**

Dorothy Estrada-Tanck shared the experience in the University of Murcia (specifically the Legal Clinic of Faculty of Law) that collaborates with the NGO 'Fundación Cepaim'. The two institutions worked together on a project on the reduction of statelessness. Initially the project aimed at amending the Spanish constitution, but after examining the current constitutional framework, the project partners concluded that this framework is sufficient to promote the proposed reform of the Spanish Civil Code.

Article 22 of the Civil Code specifies that for foreigners to access Spanish nationality, they need a legal residence of 10 years in Spain. Certain people can enjoy exceptions to this general legal regime (e.g. refugees 5 years, Latin Americans 2 years). In other words, the project observed that, according to the legal regime, the smallest amount of time for people to wait before they can apply for Spanish nationality is 2 years. Based on a number of obligations under human rights instruments<sup>2</sup>, and particularly including Article 32 of the 1954 Convention relating to the Status of Stateless Persons<sup>3</sup>, the project proposes an amendment to reduce the waiting time for stateless persons to request Spanish nationality to 2 years.

In addition to this legal basis for the proposed amendment, Estrada-Tanck noted that there is currently also a political momentum because Spain ratified the 1961 Convention on the Reduction of Statelessness in 2018, which would provide for a precious moment to push forward for this amendment.

Spain is one of the few countries in the EU that has a specific legal procedure to acquire the legal status of stateless person, and thus enjoy certain protection that derive from that. For this reason, the project argues that this proposed amendment would be the next logical step to be able to accede nationality in the fastest way possible and thereby eradicate statelessness people in Spain. This would affect around 2.000 persons in Spain that are recognised as stateless persons.

In conclusion, Dorothy Estrada-Tanck noted that the proposal has officially been sent to the Deputy Director on Nationality at the Ministry of Justice where it is currently discussed. Furthermore, and as a next step, she highlighted that currently there seems to be the political will to send an official proposal from the Ministry of Justice to the Congress of deputies and then to the Senate to reform Article 22 of

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<sup>2</sup> Article 15 (right to enjoy a nationality) of the Universal Declaration of Human Rights (UDHR), Article 26 (rights to a nationality for children) of the International Covenant on Civil and Political Rights (ICCPR), Article 7 of the UN Convention of the rights of the Child (CRC).

<sup>3</sup> Which obliges states to reduce as far as possible the time of statelessness and facilitate access to nationality.

the Civil Code in Spain and to enable this human right of stateless persons, and in particular of stateless children, as a lived reality.

- **Khadija Badri, Advocacy and Communications Officer, European Network on Statelessness**

Khadija Badri began her intervention by recalling the importance of the definition of a stateless person, as well as the importance of the application of that definition in practice by the competent authorities. In addition, it is also important to stress that there are children in migration that are at risk of statelessness. Statelessness is relevant to children in migration because states have an obligation to ensure that every child has a right to nationality, regardless of the migration status of the child or the parents. The right to nationality is important in order to protect children from trafficking and other kinds of abuses, while, at the same time, allowing people to access their entitlements/key rights (education, health care, other key services).

Badri highlighted a number of different categories of children in migration that are either affected by or at risk of statelessness, namely: undocumented children; children born en route to Europe; children from countries with large stateless populations (e.g. Syria, Iraq, Myanmar, Kuwait, Iran); children who cannot inherit their parents' nationality (e.g. Syria, Iran, Iraq); children from families with complex histories of displacement (e.g. Afghan refugees in Iran); unaccompanied or separated children.

Khadija Badri further elaborated on the current gaps and challenges in addressing statelessness among children in migration in Europe, which are:

- Lack of legal safeguards to prevent childhood statelessness;
- Barriers to birth registration;
- Lack of provisions for children born en route to Europe;
- Lack of awareness and poor identification of statelessness among migration and asylum actors;
- Lack of (child rights-based) statelessness determination procedures (SDPs);
- heightened risk of immigration detention.

After the identification of these gaps and challenges, Badri highlighted a number of actions that are needed to protect children in migration from statelessness. The first action mentioned relates to the introduction, improvement and implementation of safeguards to prevent childhood statelessness, applied to all children without discrimination. Badri sees in this context that the EU could have a role to play on a regional level in view of promoting and sharing knowledge exchange, and by encouraging the ratification of the 1961 convention. The removal of barriers related to birth documentation is also an important action (e.g. flexible documentation requirements and procedures, removing reporting requirements), with, again, the EU possibly playing a significant role in promoting universal access to birth registration, both among Member States and with partner countries (through the European External Action Service (EEAS)). Further important actions include: more capacity building and awareness raising activities among migration and asylum actors to better identify, respond to and prevent future cases of statelessness among children in migration (important role for national authorities, as well as for FRONTEX and EASO); improvement in the identification and recording of statelessness (potential in the context of the EU Pact on Migration and Asylum); and the introduction or improvement of dedicated, child rights-based statelessness determination procedure to ensure appropriate referral.

- **Aikaterini Ouli, Head of the Central Citizenship Directorate, Greece**

Aikaterini Ouli addressed the Greek law on the acquisition of nationality by stateless children. Beyond the right of blood (*Jus sanguinis*), it is also possible to acquire the Greek nationality by the right of soil (*Jus soli*) in case of the following circumstances:

- one of the parents was born and resides in Greece by the time of birth;
- the child did not acquire and cannot obtain the respective nationality of the parents;

- the nationality of the child is unknown, provided that it is impossible to verify the foreign citizenship, a situation which should not be as a consequence of the lack of cooperation of the parents.

The burden of proof of statelessness includes a number of requirements: the registration of a birth certificate by the competent authorities; the verification of the parents' nationality; the check of the nationality law of the country of nationality of the parents in order to verify if the child has the possibility to acquire their nationality; and *facto* statelessness. Other ways of acquiring the Greek nationality for refugee or stateless persons include nine years of schooling in Greece or three years of legal residence in the country (instead of seven years for ordinary foreigners).

Aikaterini Ouli then addressed the question whether a refugee child can be stateless, and highlighted that the asylum procedure is independent of the nationality of the asylum seeker. The recognition of the refugee status, however, is a prerequisite to the issuance of a legal residence permit. Once the asylum procedure is carried out, the statute of nationality of the child shall be examined, upon which the nationality of the parents is taken into consideration.

The current situation shows, however, that there are no precise data on the reduction of stateless among children in Greece because of the fact that many of them are not registered by the competent authorities. The legal framework attempts to facilitate the access of children to Greek nationality, but administrative procedures that should be followed in these circumstances are missing and need to be established.

## Closing remarks

**Prof. Birte Nienaber** (coordinator of EMN Luxembourg) closed the conference by thanking the speakers and participants for joining the conference, which gave the opportunity to discuss a wide range of different topics, from procedures to acquire citizenship in various countries, the impact of Brexit on citizenship, and finally, the right to nationality stateless children.