

Nationality of 'Foundlings': Are your parents really 'unknown'?

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Valorisation addendum

1. This dissertation is of contemporary relevance, as the number of foundlings – defined as children of unknown parentage in this dissertation - is possibly on increase due to irregular migration, trafficking, armed conflicts and destruction of civil and nationality status documentation systems, displacement, and the pandemic of HIV/AIDS and other diseases, among others.

2. Prevention of statelessness (along with protection of stateless persons) is now recognized an important world-wide agenda. United Nations High Commissioner for Refugees (UNHCR)'s IBelong# campaign to end statelessness 10 years within 2014-2024, which have led to nationality law reforms and drastic increase in State parties to the 1954 Convention on the Status of Stateless Persons and the 1961 Convention on the Reduction of Statelessness (65 to 91 States, and that of the 1961 Convention from 33 to 73 respectively as of the time of writing [December 2018], as compared to the same in 2010) among other things. New regional instruments on statelessness are being drafted and adopted. Prevention and resolution of statelessness is being promoted in relation to the Sustainable Development Goals (SDG), especially in the context of Target 16.9, 'provide legal identity for all, including birth registration'. The Global Compact on Refugees as well as the Global Compact for Safe, Orderly and Regular Migration (GCM) adopted in 2018 call for support to the IBelong# campaign and for the strengthening of measures to reduce statelessness. International human rights mechanisms have also started to more actively engage on statelessness and nationality by issuing resolutions, recommendations, comments and other documents.

3. 'Foundlings' are one of the typical groups of persons who would otherwise be stateless in the absence of a special safeguard granting him/her nationality. They tend to be one of the most vulnerable categories of persons being not only otherwise stateless, but also for lacking caregivers, which makes it all the more difficult for them to access basic human rights.

4. That being said, the scarcity of detailed discussions – and particularly in relation to the practical aspects – of the nationality of 'foundlings' is stark. This is in contrast to historical public interest in the lives of foundlings, demonstrated by novels and dramas - and in issues related to (the prevention of) child abandonment and infanticide which has been vigorously examined in a variety of fields of study. While the scholarly body of knowledge on statelessness in general has expanded in recent years, little has been written on foundlings in general.

5. The dissertation backs up, strengthens and complements the UNHCR's 'Guidelines on Statelessness No. 4: Ensuring Every Child's Right to Acquire a Nationality through Articles 1-4 of the 1961 Convention on the Reduction of Statelessness' (21 December 2012) and other existing guidance, by covering the issues that are not addressed or substantiated (in detail) within these materials. This includes the definition of a 'foundling', having been 'found' in the territory and 'proof to the contrary', the detailed

discussions on the ‘maximum age’ limitation to be considered a ‘foundling’, as well as discussions on the procedural issues such as the applicable burden and standard of proof. Thus, the dissertation will help advance UNHCRs objectives.

6. This dissertation complements databases such as that by the Global Citizenship Observatory (GLOBALCIT). While the GLOBALCIT’s database "Global Database on Modes of Acquisition of Citizenship" was used as a useful starting point, it does not, among others, carry the full text of domestic provisions which would enable detailed analysis, and the database only covers 173 States. Thus in my PhD research, a systematic verification of the text of the law of 193 States was conducted and a wholly new table was developed. Complementary nationality law provisions such as unconditional *jus soli* provisions and provisions that grant nationality to children born in the territory who would otherwise be stateless, or more narrowly children of stateless parents born in the territory, were also added on the same table to enable fair assessment.

7. The findings of this dissertation are also relevant to the interpretation of the 1997 European Convention on Nationality which has a similar provision (article 6[1][b]) i.e. stipulating nationality grant to ‘foundlings found in its territory who would otherwise be stateless’, which is indeed ‘taken from article 2 of the 1961 Convention’ according to its Explanatory Report.

8. While a few existing scholarly and practical materials discuss the prevention of statelessness among foundlings, they generally do not go beyond the text of national legislation. The dissertation contains not only detailed examination of the travaux préparatoires, but also the actual implementation of domestic foundling provisions, including case law and administrative precedents from different jurisdictions. The findings of this dissertation are relevant not only for competent authorities on nationality matters and courts that are responsible for interpreting the domestic foundling provisions in State parties to the 1961 Convention as well as in non-State parties. The dissertation is of practical value for legal practitioners as well as staff members of international organizations such as UNHCR, representing or assisting children and persons of unknown parentage.

9. The ‘model foundling provision’ drawn at the end of the dissertation is inspirational for legislators drafting domestic provisions, and regional legal instruments. The model provision will help ensure a full and inclusive application of article 2 in accordance with its object and purpose, and also prove particularly useful in cases involving States under the effects of armed conflicts, or where documentation of civil and nationality status is not yet systematic, or where migration, displacement and trafficking is widespread.