



LEGAL BRIEFING

STATELESSNESS AND THE PROHIBITION ON DISCRIMINATION AGAINST ROMANI COMMUNITIES



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Network on
Statelessness



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CONTENTS

CONTENTS.....	1
INTRODUCTION	2
1. INTERNATIONAL AND REGIONAL OBLIGATIONS ON THE PRINCIPLE OF NON-DISCRIMINATION AND THE PREVENTION AND REDUCTION OF STATELESSNESS.....	3
1.1. Discrimination in nationality rules.....	3
1.2. Discrimination in the enjoyment of fundamental rights.....	4
1.3. Affirmative measures to combat discrimination	6
2. INTERNATIONAL AND REGIONAL CASELAW	7
3. STATELESSNESS OF ROMANI POPULATIONS IN THE WESTERN BALKANS	10
4. GOOD PRACTICES FROM OTHER COUNTRIES RELATING TO ROMA AND OTHER MINORITY GROUPS.....	13
4.1. Countries of the former Yugoslavia: successful collaboration efforts to prevent and reduce statelessness	13
4.2. Countries of the former Soviet Union: successful campaigns to reduce statelessness	15
4.3. Other countries	16
CONCLUSION.....	18

INTRODUCTION

According to international law, a stateless person is someone who has no nationality, someone who is “not considered as a national by any state under the operation of its law”.¹ For the millions of stateless people around the world, statelessness can result in denial of their human rights, including the universal human right to a nationality.² Stateless people often do not have access to basic and fundamental rights, such as the right to access education, health care, employment, and other social protections such as the right to marry or register the birth of their children - to legally ‘exist’. As well as migrants, statelessness also affects those who have lived in the same place for generations (known as *in situ* statelessness), often as a result of discriminatory laws or practices against certain communities trapped in intergenerational statelessness.³

There are many widely recognised causes of statelessness including gender or race discrimination in nationality laws, State succession, lack of documentation, poor administrative procedures, conflicts in citizenship laws and the inheritance of statelessness, but a closer look at each of these reveals that discrimination often plays a role.⁴ Nationality laws may be written or (more often in Europe) implemented in such a way as to exclude certain groups or make it more difficult for them to acquire or prove a nationality. As a result of this, 75% of the world’s stateless populations belong to ethnic, racial, religious, or linguistic minority groups,⁵ and Roma are among Europe’s most marginalised ethnic minorities which is also significantly affected by (a risk of) statelessness.⁶ It is crucial that States put in place mechanisms to meaningfully address discrimination, protect stateless people, and prevent statelessness, in line with their international obligations.

¹ United Nations Convention Relating to the Status of Stateless Persons, 360 U.N.T.S. 117, 1954, Article 1(1).

² Universal Declaration of Human Rights, Article 15.

³ European Network on Statelessness, *Statelessness determination and protection in Europe: good practice, challenges, and risks* (2021): https://index.statelessness.eu/sites/default/files/ENS-Statelessness_determination_and_protection_in_Europe-Sep_2021_0.pdf.

⁴ Ibid; Institute on Statelessness and Inclusion, *The World’s Stateless* (2014), pp. 23–27: <http://www.institutesi.org/worldsstateless.pdf>.

⁵ UNHCR, ‘IBELONG Campaign to End Statelessness by 2024, Stateless minorities’: <https://www.unhcr.org/ibelong/stateless-minorities/>.

⁶ The term ‘Roma’ usually refers to a variety of groups, including to people who do not identify as Roma – such as Ashkali and Egyptians – but who are nevertheless the targets of antigypsyism. In this briefing, we speak of ‘Roma’ to include groups in the Western Balkans who are subject to antigypsyism, including Roma, Ashkali, Egyptian, and Sinti communities, amongst others. See Institute on Statelessness and Inclusion, European Network on Statelessness, and European Roma Rights Centre, *Statelessness, Discrimination and Marginalisation of Roma in the Western Balkans and Ukraine* (2017):

<https://www.statelessness.eu/sites/www.statelessness.eu/files/attachments/resources/roma-belong.pdf>, p. 8. See also Council of Europe Strategic Action Plan for Roma and Traveller Inclusion (2020–2025): https://search.coe.int/cm/Pages/result_details.aspx?ObjectId=0900001680998933.

1. INTERNATIONAL AND REGIONAL OBLIGATIONS ON THE PRINCIPLE OF NON-DISCRIMINATION AND THE PREVENTION AND REDUCTION OF STATELESSNESS

Several international and regional instruments recognise the right to a nationality and construe an obligation for States both to reduce statelessness and to protect stateless persons.⁷ The core international instruments are the 1954 Convention Relating to the Status of Stateless Persons (1954 Convention) and the 1961 Convention on the Reduction of Statelessness (1961 Convention). The 1954 Convention grants stateless people a set of rights depending on their degree of attachment to the State, including the right to work, freedom of movement, identity and travel documents, facilitated naturalisation, and economic and social rights such as housing, education and social security. The 1961 Convention sets out safeguards for the prevention of statelessness, including in the context of conferral or withdrawal of nationality (loss, renunciation or deprivation). It seeks both to prevent statelessness, and to ensure access to remedies. Underlying the 1961 Convention is the notion that while States maintain the right to elaborate the content of their nationality laws, they must do so in compliance with international norms relating to nationality, including by respecting the principle of avoidance of statelessness.

The European Convention on Human Rights (ECHR) and its protocols do not explicitly guarantee a right to nationality, but the European Court of Human Rights (ECtHR) considers that interferences with the right to a nationality may breach the right to respect for private and family life, enshrined in Article 8 ECHR.⁸ This interpretation is also applicable within the European Union legal framework.⁹

1.1. Discrimination in nationality rules

The prohibition on discrimination is also enshrined across several human right instruments. In the context of nationality and statelessness, there are provisions that specifically prohibit discrimination in the acquisition, change, loss, or deprivation of nationality, including:

⁷ See, e.g., the Universal Declaration of Human Rights (Article 15), the International Covenant on Civil and Political Rights (Article 24), the Convention on the Rights of the Child (Articles 7-8).

⁸ ECtHR, [Genovese v. Malta](#), application no. 53124/09, judgment of 11 October 2011; [Karassev v. Finland](#), application no. 31414/96, decision of 12 January 1999; [Ramadan v. Malta](#), application no. 76136/12, judgment of 21 June 2016, § 85; [Ghoumid and others v. France](#), applications no. 52273/16, 52285/16, 52290/16, 52294/16 and 52302/16, judgment of 25 June 2020; [K2 v. the United Kingdom](#), application no. 42387/13, decision of 7 February 2017.

⁹ Article 7 of the Charter of Fundamental Rights of the European Union (CFR) guarantees the right to respect for private and family life and the Court of Justice of the European Union (CJEU) has clarified that Article 7 CFR shall have the same meaning as Article 8 ECHR. See e.g. CJEU, Case C-490/20, [V.M.A. v. Stoliczna obshtina, rayon 'Pancharevo'](#), judgment of 14 December 2021, EU:C:2021:1008, §60: "as is apparent from the Explanations relating to the Charter of Fundamental Rights [...], in accordance with Article 52(3) of the Charter, the rights guaranteed in Article 7 thereof have the same meaning and the same scope as those guaranteed in Article 8 of the European Convention for the Protection of Human Rights and Fundamental Freedoms, signed in Rome on 4 November 1950".

- The 1961 Convention protects people from being discriminatorily deprived of their nationality “on racial, ethnic, religious or political grounds”, which applies regardless of whether statelessness results or not from the deprivation;¹⁰
- The European Convention on Nationality provides that nationality rules must not contain distinctions or include any practice which amount to discrimination on the grounds of sex, religion, race, colour or national or ethnic origin, and establishes the principle of non-discrimination between nationals;¹¹
- The International Convention on the Elimination of All Forms of Racial Discrimination (ICERD) has an explicit reference to the prohibition on discrimination with regard to the right to nationality.¹² Deprivation of nationality based on race is also prohibited under customary international law;¹³
- The Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) also stipulates that States must “grant women equal rights with men to acquire, change or retain their nationality” as well as equal rights regarding their children’s nationality;¹⁴
- The Convention on the Rights of Persons with Disabilities (CRPD) sets out an obligation for States to guarantee the right of persons with disabilities to acquire a nationality and not be deprived of it on account of their disability;¹⁵
- The Convention on the Rights of the Child (CRC) provides that the rights set forth in the Covenant, including a child’s right to a nationality, must be exercised regardless of the children’s or their parents’ race, colour, or ethnic or social origin.¹⁶

1.2. Discrimination in the enjoyment of fundamental rights

The principle of non-discrimination may also apply to ensure that stateless people have equal access to and enjoyment of their fundamental rights, and that they are not discriminated against on the basis of their statelessness, or of any protected grounds. Some of the relevant provisions in international law include:

- The 1954 Convention refers to the principle of non-discrimination and provides that its provisions must be applied without discrimination on the grounds of race, religion or country of origin;
- The International Covenant on Civil and Political Rights (ICCPR) requires States to respect and ensure that individuals enjoy the rights contained in the Covenant without distinction on the basis of several protected grounds, including race, sex, language, or social origin. It “not only entitles all persons to equality before the law as well as equal protection of the law but also prohibits any discrimination

¹⁰ UNHCR, *Guidelines on Statelessness No. 5: Loss and Deprivation of Nationality under Articles 5-9 of the 1961 Convention on the Reduction of Statelessness* (2020), HCR/GS/20/05, §77.

¹¹ European Convention on Nationality, Article 5.

¹² International Convention on the Elimination of All Forms of Racial Discrimination, Article 5(d)(iii).

¹³ UNHCR, *Handbook on Protection of Stateless Persons* (2014), §55.

¹⁴ Convention on the Elimination of All Forms of Discrimination against Women, Article 9.

¹⁵ Convention on the Rights of Persons with Disabilities, Article 18.

¹⁶ Convention on the Rights of the Child, Articles 2, 3, 7 and 8.

under the law and guarantees to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status;¹⁷

- The International Covenant on Economic, Social and Cultural Rights (ICESCR) requires that States ensure that its rights are exercised without discrimination;¹⁸
- The ICERD defines discrimination on the basis of race as any difference in treatment based on race, colour, descent or national or ethnic origin which aims at or has the effect of nullifying or impairing the recognition, enjoyment or exercise of human rights in any field of the public life;¹⁹
- The Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities emphasises the obligation to ensure that minorities are equal before the law and can exercise their rights without discrimination.²⁰

The European Convention on Human Rights also contains a non-discrimination clause in Article 14, which provides a non-exhaustive list of grounds for finding discrimination, including race and membership of a national minority. It must be applied in relation to another substantive right protected by the ECHR.²¹ Article 1 of Protocol 12 also contains a general prohibition on discrimination in the enjoyment of all rights “set forth in law”, although it only applies to States that have signed this Protocol.

Importantly, the European Court of Human Rights addresses discrimination on account of nationality status by reading Article 8 ECHR (right to respect for private and family life) in conjunction with Article 14 ECHR. If an unjustified difference in treatment places the individual at a disadvantage or has a disproportional prejudicial effect on their private and family life, it may amount to a violation of Article 8.²² The Court has held that a difference of treatment based exclusively on the ground of nationality would require “very weighty reasons” to be considered compatible with the ECHR,²³ thus a difference in treatment between stateless persons and nationals or other non-nationals resident of the same country may amount to discrimination. Stateless persons might also face discrimination on the basis of their nationality status if they are being denied the possibility to regularise their situation when the measures adopted by the State do

¹⁷ UNHRC, ‘General Comment No. 18. Non-Discrimination’ (1989), UN Doc HRI/GEN/1/Rev.9 (Vol. I), §1.

¹⁸ International Covenant on Economic, Social and Cultural Rights, Article 2. The Committee on Economic, Social and Cultural Rights declares that the ground of nationality cannot impede access to the rights guaranteed in the ICESCR. It further states that “all children within a State, including those with an undocumented status, have a right to receive education and access to adequate food and affordable health care. The Covenant rights apply to everyone including non-nationals, such as [...] stateless persons” (‘General Comment No. 20: Non-discrimination in economic, social and cultural rights’, E/C.12/GC/20, 2 July 2009).

¹⁹ International Conventions on the Elimination of All Forms of Racial Discrimination, Article 1.

²⁰ Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities, Article 4.

²¹ ECtHR, *Genovese v Malta* (n 8), §31.

²² ECtHR, *Biao v. Denmark*, application no. 38590/10, judgment of 24 May 2016, §130.

²³ ECtHR, *Gaygusuz v. Austria*, application no. 17371/90, judgment of 16 September 1996, §42; *Koua Poirrez v. France*, application no. 40892/98, judgment of 30 September 2003, §46; *Andrejeva v. Latvia*, application no. 55707/00, judgment of 18 February 2009, §87.

not pursue a legitimate aim²⁴ and the means are not proportional to the aims pursued.²⁵ In addition, stateless individuals might face discrimination on account of their nationality status as a result of arbitrary detention and expulsion, or in restrictions to their economic, social, and civil and political rights. This interpretation is also applicable in the context of Article 7 CFR.

In addition, European Union Member States must comply with the European Union legal framework on non-discrimination. Article 21 of the Charter of Fundamental Rights of the European Union provides that discrimination in the enjoyment of EU protected rights on several grounds, such as race, colour, ethnic or social origin, language, membership of a national minority, or birth, shall be prohibited. Member States are also bound by the Racial Discrimination Directive.²⁶

In accordance with the above provisions, discrimination on the grounds of statelessness is prohibited in the enjoyment of most fundamental rights, and States must ensure that stateless persons can fully and effectively enjoy their rights without discrimination based on their nationality status.

1.3. Affirmative measures to combat discrimination

The identification of statelessness is an essential step to prevent stateless persons from being discriminated against in the enjoyment of their fundamental rights, followed by targeted measures to eliminate legal, administrative, and practical barriers that prevent people from accessing those rights.

The principle of equality might sometimes require affirmative measures to reduce or abolish the conditions that perpetuate discrimination.²⁷ A person's statelessness, addressed through the lens of discrimination, may require the State to treat the person differently from other non-nationals, because their situation is factually different.²⁸

According to ICERD, the prohibition on racial discrimination must be interpreted broadly since it aims at achieving formal equality as well as de facto equality.²⁹ Thus States must undertake measures to eliminate racial discrimination, review public policies and laws or regulations that perpetrate racial discrimination, and ensure that everyone can access rights without discrimination.

Specifically in relation to the Romani population, the Committee on the Elimination of Racial Discrimination recommends that States "ensure that legislation regarding

²⁴ For examples, see Council of Europe, *Guide on Article 14 of the European Convention on Human Rights and on Article 1 of Protocol No. 12 to the Convention*, updated 31 August 2021, pp.18-19.

²⁵ ECtHR, *Kurić and Others v. Slovenia* [GC], application no. 26828/06, judgment of 26 June 2012, §386; *Gaygusuz v. Austria* (n 23), §42.

²⁶ Council Directive 2000/43/EC of 29 June 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin.

²⁷ UN Human Rights Committee, 'CCPR General Comment No. 18: Non-discrimination', 10 November 1989, §10.

²⁸ ECtHR, *Thlimmenos v. Greece* [GC], application no. 34369/97, judgment of 6 April 2000, §44.

²⁹ UN Human Rights Council, 'Report of the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance', 25 April 2018, §18.

citizenship and naturalization does not discriminate against members of Roma Communities".³⁰ To combat discrimination based on ethnic origin, the European Commission against Racism and Intolerance recommends that "legislation concerning citizenship is not discriminatory towards Roma".³¹

Furthermore, since differentiation between groups in materially different positions is deemed legitimate, States can adopt positive discrimination measures to help vulnerable groups of stateless individuals.³² In this line, the European Commission against Racism and Intolerance recommends that States register all Roma children at birth, that all Roma are issued identity documents, and facilitate access to citizenship for Roma to obviate all cases of statelessness.³³

2. INTERNATIONAL AND REGIONAL CASELAW

Discrimination is defined by the European Court of Human Rights as "*treating differently, without an objective and reasonable justification, persons in relevantly similar situations*".³⁴ As a general principle, for a violation to be found under Article 14 in conjunction with another provision of the ECHR, there must be a disproportionate interference which is prejudicial to a particular group, regardless of whether the impact is aimed at that group.³⁵ For example, the Court has found that circumstances in which an individual was excluded from accessing a public service solely on the basis of their nationality, while satisfying all other substantive requirements, amounted to discrimination.³⁶

It is also noted that there is no explicit right to a nationality under the ECHR.³⁷ However, the ECtHR has confirmed on several occasions that interferences with a person's right to a nationality may engage Article 14 together with Article 8 ECHR because of the impact on the private life of the individual.³⁸ In **Genovese v. Malta**, the Maltese authorities denied Maltese nationality to a child on the basis that they were born out of wedlock to a Maltese father and a British mother. Domestic legislation only conferred nationality to children born out of wedlock if the mother was Maltese. The ECtHR found that the distinguishing factor in this case was that the applicant was born to parents out of wedlock and that no reasonable grounds were adduced to justify such a

³⁰ Committee on the Elimination of Racial Discrimination, 'General recommendation XXVII on discrimination against Roma', 16 August 2000, §4.

³¹ European Commission Against Racism and Intolerance, 'General Policy Recommendation on combatting antigypsyism and discrimination against Roma', CRI(2011)37rev, December 2020, §17.

³² UNHCR, *Handbook on Protection of Stateless Persons* (2014), §140.

³³ European Commission Against Racism and Intolerance, 'General Policy Recommendation on combatting antigypsyism and discrimination against Roma', CRI(2011)37rev, December 2020, §17.

³⁴ ECtHR, [Kurić and Others v. Slovenia](#) [GC] (n 25), §386; [Andrejeva v. Latvia](#) (n 23), §81.

³⁵ ECtHR, [Kurić and Others v. Slovenia](#) [GC] (n 25), §388.

³⁶ ECtHR, [Andrejeva v. Latvia](#) (n 23), §88; [Gaygusuz v. Austria](#) (n 23), §47.

³⁷ ECtHR, [Petropavlovskis v. Latvia](#), application no. 44230/06, judgment of 13 January 2015, §73.

³⁸ ECtHR, [Ghoumid and others v. France](#), applications no. 52273/16, 52285/16, 52290/16, 52294/16 and 52302/16, judgment of 25 June 2020, §43-44; [Mennesson v. France](#), application no. 65192/11, judgment of 26 June 2014, §97.

difference in the treatment, amounting to a violation of Article 14 in conjunction with Article 8 ECHR. The Court affirmed that the prohibition of discrimination under Article 14 ECHR "*extends beyond the enjoyment of the rights and freedoms which the Convention and the Protocols thereto require each State to guarantee. It applies to additional rights, falling within the general scope of any Convention Article, for which the State has voluntarily decided to provide*".³⁹ Moreover, the ECHR must be construed in light of present-day conditions. As such, in the context of non-discrimination, the ECtHR has indicated that it will consider the evolving domestic law of member States of the CoE and the relevant international instruments relevant in cases.⁴⁰

In **Kurić and Others v. Slovenia**, the ECtHR also ruled on a case concerning former nationals of Yugoslavia who failed to request Slovenian citizenship within the deadline for permanent residents to apply following Slovenia's independence, leading to their 'erasure' from the register of permanent residents. The applicants argued that they were treated less favourably than others who had not been subject to 'erasure' of names. The Court's Grand Chamber noted the importance of discrimination in the case and considered that there had been a difference in treatment between two groups, which was based on national origin of persons, which did not pursue a legitimate aim, and moreover lacked an objective and reasonable justification.⁴¹ The Court held that the domestic legal system had failed to clearly regulate the consequences of the 'erasure' and to regularise the applicants' residence status, resulting in a violation of Articles 8(2), 13, and 14 ECHR. Furthermore, the Court said that the 'erased' were discriminated against as they were disadvantaged when compared to other non-nationals in Slovenia. The Court particularly noted that the 'erasure' led to insecurity, legal uncertainty, and a number of other adverse consequences, such as the destruction of identity documents, the loss of job opportunities and the loss of health insurance.⁴²

In **Andrejeva v. Latvia**, the applicant was previously a national of the former USSR, before becoming a "permanently resident non-citizen" of Latvia, where she had resided since age 12. Latvia refused to take the applicant's 17 years of employment in the former USSR into account when calculating her pension entitlement because she did not have Latvian citizenship. The Grand Chamber accepted in this case that the difference in treatment pursued at least one legitimate aim that was broadly compatible with the ECHR, but it was evident that nationality was the sole criterion for the difference in treatment. In such cases, the Court has held that "very weighty reasons would have to be put forward before it could regard a difference of treatment based exclusively on the ground of nationality as compatible with the Convention".⁴³ The Grand Chamber further noted that Article 14 ECHR will only be meaningful if the applicant's personal situation is taken into account exactly as it stands. To do otherwise is "dismissing the victim's claims on the ground that he or she could have avoided the discrimination by

³⁹ ECtHR, [Genovese v. Malta](#) (n 8), §32.

⁴⁰ ECtHR, [Genovese v. Malta](#) (n 8), §44.

⁴¹ ECtHR, [Kurić and Others v. Slovenia](#) [GC] (n 25), §386-392.

⁴² ECtHR, [Kurić and Others v. Slovenia](#) [GC] (n 25), §267, 334, 356, 396.

⁴³ ECtHR, [Andrejeva v. Latvia](#) (n 23), §87.

altering one of the factors in question – for example, by acquiring a nationality – would render Article 14 devoid of substance”.⁴⁴

In **Szolcsán v. Hungary**, an applicant of Roma ethnic origin argued that the refusal to allow them to transfer from a segregated school (almost exclusively attended by Roma children) to a non-segregated school was a result of racial discrimination and the State had failed to comply with its obligation and ensure the right to inclusive education. According to the judgment, “even in the absence of any discriminatory intent on the part of the State authorities in the present case, the Court considers that the difference in treatment which the applicant was subjected to in his education cannot be regarded as having been objectively and reasonably justified by any legitimate aim”.⁴⁵ While this case does not address discrimination in the context of nationality, the ECtHR recognised that “Roma have become a specific type of disadvantaged and vulnerable minority and therefore require special protection. Their vulnerable position means that special consideration should be given to their needs and their different lifestyle both in the relevant regulatory framework and in reaching decisions in particular cases”.⁴⁶

UN Treaty Committees have also adopted views on the principle of non-discrimination against Roma communities, which can be applied in the context of citizenship and nationality. The Committee on the Elimination of Racial Discrimination (CERD) has made it clear that States are required to prohibit and end, by all appropriate means, racial discrimination and guarantee effective protection and remedies against such discrimination.⁴⁷ It has also clarified that a State Party must provide persuasive arguments to justify any differential treatment, including for example with regards to employment.⁴⁸ In this context, the CERD indicates that non-discrimination obligations are not fulfilled merely by providing a legislative and regulatory framework against racial discrimination but must include the obligation to provide for effective monitoring of the implementation of non-discriminatory recruitment policies in practice.

In a case before the CEDAW Committee concerning access to healthcare by Romani women, the Committee gave weight to the authors' complaints that the State had failed to take positive measures to eliminate discriminatory practices and provide adequate remedies in the event of violations. The Committee recommended, *inter alia*, that the State Party adopt and implement effective policies and measures to combat intersecting forms of discrimination in relation to Roma women and girls. It further recommended that the State Party increase the awareness of judges of non-discrimination and the need for women to have access to effective, affordable, and timely judicial remedies.⁴⁹

⁴⁴ ECtHR, [Andrejeva v. Latvia](#) (n 23), §91.

⁴⁵ ECtHR, *Szolcsán v. Hungary*, application no. 24408/16, judgment of 30 March 2023, §58.

⁴⁶ ECtHR, *Szolcsán v. Hungary* §47. See also *D.H. and Others v. the Czech Republic* [GC], application no. 57325/00, judgment of 13 November 2007, §175-181.

⁴⁷ CERD, *Jallow v. Denmark*, 1 December 2022, CERD/C/108/D/62/2018, §7.10.

⁴⁸ CERD, *V.S. v. Slovakia*, 4 December 2015, CERD/C/88/D/56/2014, §7.3.

⁴⁹ CEDAW, *S.B. and M.B. v. North Macedonia*, 2 November 2020, CEDAW/C/77/D/143/2019.

The CEDAW Committee similarly adopted views in the context of forced evictions which affected an entire community, finding that the potential consequences or the particular needs of young Roma women were not adequately addressed.⁵⁰ The Committee subsequently recommended, *inter alia*, the State Party to adopt and pursue specific policies to combat intersecting forms of discrimination against Roma women; to engage actively with civil society to strengthen advocacy against intersecting forms of discrimination; and ensure that Roma women and girls have access to information about their rights under the Convention.

There is a strong nexus between statelessness and discrimination on the basis of race, descent, national or ethnic origin. As such the general principles outlined in the judgments of the ECtHR and views of the UN Treaty committees should apply to discrimination in the context of access to a nationality, routes to regularisation, and access to economic and social rights for stateless persons and people at risk of statelessness. Differences in treatment in such contexts often result in the reduced participation of stateless persons in social and political life, and reduced access to healthcare, work, social security, and housing.

It is therefore essential that States protect against arbitrary differential treatment and implement non-discriminatory policies to prevent the further marginalisation of persons already in a position of vulnerability. The obligation on States to effectively monitor the implementation of non-discriminatory policies and take positive measures to eliminate discriminatory practices should apply in other social, economic, and political contexts. This is required for individuals to enjoy their rights freely without distinction as to race, ethnicity, nationality status or other protected grounds. As in the above mentioned cases, States should adopt and implement effective policies and measures to combat intersecting forms of discrimination, including in relation to Romani people who are also stateless or at risk of statelessness.

3. STATELESSNESS OF ROMANI POPULATIONS IN THE WESTERN BALKANS

Many people affected by (the risk of) statelessness in the Western Balkans belong to Roma, Ashkali, and Egyptian communities. Roma are among Europe's oldest, largest and most marginalised ethnic minorities.⁵¹ They are victims of human rights violations, including police brutality, segregation in education, and hate crime, and are subject to

⁵⁰ CEDAW, *L.A. et al. v. North Macedonia*, 24 February 2020, CEDAW/C/75/D/110/2016, §9.4.

⁵¹ The term 'Roma' usually refers to a variety of groups, including to people who do not identify as Roma – such as Ashkali and Egyptians – but who are nevertheless the targets of antigypsyism. In this briefing, we speak of 'Roma' to include groups in the Western Balkans who are subject to antigypsyism, including Roma, Ashkali, Egyptian, and Sinti communities, amongst others. See Institute on Statelessness and Inclusion, European Network on Statelessness, and European Roma Rights Centre, *Statelessness, Discrimination and Marginalisation of Roma in the Western Balkans and Ukraine* (2017): <https://www.statelessness.eu/sites/www.statelessness.eu/files/attachments/resources/roma-belong.pdf>, p. 8. See also Council of Europe Strategic Action Plan for Roma and Traveller Inclusion (2020-2025): https://search.coe.int/cm/Pages/result_details.aspx?ObjectId=0900001680998933.

poverty, inequality, antigypsyism and discrimination in nearly all areas of life, spanning from employment to housing and health.⁵²

The scope of the problem and of the issues affecting Roma is hard to quantify as there is **a lack of reliable and disaggregated data**. According to official statistics from census data, the percentage of Roma living in the Western Balkans ranges from 0.4 to 2.7,⁵³ but other sources estimate significantly higher numbers ranging from nearly 2 to 9.7 percent.⁵⁴ This leads to a de-amplification of the scope of the impact of Roma discrimination and has consequences on policy solutions and resource allocation.⁵⁵

The main causes of statelessness in the Western Balkans include State succession after the dissolution of the former Yugoslavia, forced displacement as a consequence of the conflicts in the 1990s, and gaps and conflicts in nationality laws. Statelessness is also caused by a lack of civil registration due to the non-registration of births and the destruction of civil registries during conflicts. These issues are exacerbated for Romani people due to deep-rooted discrimination and antigypsyism, as officials are more likely to challenge their belonging. Roma were often excluded through **direct discrimination or through low civil registration rates** from nationality policies designed to ensure continuity, often requiring proof of permanent residence or citizenship and privileging a dominant ethnic group. In wider contexts – and for a complex combination of reasons – people from these communities have a reluctance to engage with the authorities in any context, largely because of their historical and present negative experiences. Complex bureaucratic processes and administrative systems have made civil registration procedures difficult and increase the risk of statelessness. This, in turn, often discourages or prevents the registration of the birth of children, which results in statelessness being passed on intergenerationally and perpetuates the (risk of) statelessness among Roma communities.⁵⁶

Stringent and lengthy bureaucratic procedures increase **barriers to birth registration**, access to documentation, and other rights.⁵⁷ In Serbia, immediate birth registration is not accessible where parents are undocumented as they need to possess birth certificates and identity documents, and late birth registration is a complex and lengthy procedure. There are credible reports that children are prevented from registering in practice because of parents' lack of documentation, and that this issue

⁵² ISI, ENS, ERRC, *Discrimination and Marginalisation of Roma in the Western Balkans and Ukraine* (n 51), pp. 8-9.

⁵³ Regional Cooperation Council, *Roma Integration 2020, Roma in the Region, The size of the Roma community in the region*, available at: <https://www.rcc.int/romaintegration2020/pages/3/roma-in-the-region>.

⁵⁴ Ibid. This report estimates the percentage to be between 1.98% and 9.74%, based on Roma civil society or Roma leaders sources collected by the Council of Europe. See also World Bank, *Breaking the Cycle of Roma Exclusion in the Western Balkans* (2019): <https://www.worldbank.org/en/region/eca/publication/breaking-cycle-of-roma-exclusion-in-western-balkans>.

⁵⁵ ISI, ENS, ERRC, *Discrimination and Marginalisation of Roma in the Western Balkans and Ukraine* (n 51), pp. 17-18.

⁵⁶ ISI, ENS, ERRC, *Discrimination and Marginalisation of Roma in the Western Balkans and Ukraine* (n 51), pp. 11-12, 21.

⁵⁷ Ibid, pp. 14-15.

disproportionately impacts on the Romani population.⁵⁸ In North Macedonia, formal proof of the civil status and identity of both parents is required by law to complete the registration of the child's personal name at the registry office, but there are no detailed legislative provisions defining the documentary evidence to be produced by parents, so requirements vary at the discretion of the registry officer. The law allows officials to require evidence for administrative procedures as they see fit, and evidential requirements for unmarried parents are particularly cumbersome. Late birth registration is also a very complex procedure subject to fees. These extremely difficult requirements disproportionately impact Roma, and credible reports show that births are not being registered due to a lack of documentation.⁵⁹ In Montenegro, late birth registration is subject to a paid procedure and identity documents and proof of birth from the hospital, but if the child is born outside a health institution, a non-contentious court procedure may be initiated to determine relevant facts related to the birth. In practice, undocumented parents face bureaucratic barriers to birth registration and some families have reportedly not registered their children's births because they thought they needed documentation or evidence that they did not have. As in other countries, these barriers disproportionately affect Roma families.⁶⁰

Additional challenges face those who wish to **access nationality**. Evidence of permanent residence at the time of independence was often required at the collapse of the former Yugoslavia to determine nationality of the newly formed States, which is challenging for Roma populations who often live in informal settlements. The lack of such evidence still represents an obstacle for Roma in confirming or acquiring a nationality in the Western Balkans, as permanent residence is a condition for naturalisation, with no or limited exceptions for stateless people.⁶¹

While many Western Balkan countries have taken steps in recent years towards reducing *in situ* statelessness, in particular Roma statelessness, significant gaps remain. For example, in North Macedonia, the Government introduced a regularisation route in 2019 under the Law on Foreigners for citizens of the former Yugoslavia who continued to live in the country after 1991 without acquiring any nationality to acquire permanent residence. Following a 2018 Government-led public call which identified 750 individuals without personal documentation, a new Law on Persons without Regulated Civil Status came into force in 2020 to enable those people, and children born thereafter who cannot obtain a birth registration certificate, to apply for a 'special registration' to allow them to access social, health and employment rights. However, the new law does not facilitate access to nationality for this group, nor does it resolve the remaining gaps

⁵⁸ ENS, Statelessness Index on Serbia, available at: <https://index.statelessness.eu/country/serbia>; Praxis reports: <http://praxis.org.rs/index.php/en/reports-documents/praxis-reports>.

⁵⁹ ENS, Statelessness Index on North Macedonia: <https://index.statelessness.eu/country/north-macedonia>; MYLA, Regional research on Statelessness (2016); UNHCR, Access to Civil Documentation and Registration in South Eastern Europe: Progress and Remaining Challenges since the 2011 Zagreb Declaration (2013): <https://www.refworld.org/pdfid/5280c5ab4.pdf>.

⁶⁰ ENS, Statelessness Index on Montenegro: <https://index.statelessness.eu/country/montenegro>; Phiren Amenca, <http://phirenamenca.me/?content=docs&mod=publics>.

⁶¹ ISI, ENS, ERRC, Discrimination and Marginalisation of Roma in the Western Balkans and Ukraine (n 51), pp. 38-40.

in the legal framework for civil registration to prevent new cases from arising. It also fails to comprehensively address the issue, as the true number of people without documentation is in fact likely to be higher than the number of people identified during the public call. This leaves anyone who was not identified as undocumented during the public call at risk of statelessness and with limited routes to resolve their status.⁶²

These challenges contribute to further marginalisation of Roma populations, as they prevent them from accessing rights, including education, healthcare, employment, and housing in addition to the right to a nationality. This, in turn, perpetuates a vicious cycle of discrimination. For example, low literacy rates may hinder understanding of bureaucratic procedures and a lack of health insurance prevents women from giving birth in hospitals. Access to justice is more difficult without documentation, especially where systems provide limited legal avenues to regularise documentation, registration and nationality status, and lack of access to justice prevents the exercise of other rights. Therefore, beyond being a cause of statelessness, discrimination also contributes to maintain stateless Roma in poverty and marginalisation.⁶³

4. GOOD PRACTICES FROM OTHER COUNTRIES RELATING TO ROMA AND OTHER MINORITY GROUPS

Initiatives from several countries show that solutions for reducing barriers to acquisition of nationality and birth registration exist and are varied, ranging from collaboration between diverse stakeholders to deploying mobile teams, and introducing flexibility in documentary evidence, all of which may help protect Roma and other minority groups from discrimination, and prevent and reduce statelessness.

4.1. Countries of the former Yugoslavia: successful collaboration efforts to prevent and reduce statelessness

Despite some ongoing challenges with implementation of the commitments made under the frameworks of the Poznan Declaration on Roma Integration and the EU enlargement processes, there are some examples of good practice from Western Balkan countries.⁶⁴

⁶² ENS, Statelessness Index on North Macedonia, available at: <https://index.statelessness.eu/country/north-macedonia>. The European Roma Rights Centre (ERRC) and Macedonian Young Lawyers Association (MYLA) have submitted a collective complaint against the Directorate for Keeping the Registers of Births, Marriages and Deaths, a state organ within the Ministry of Justice of North Macedonia, for discrimination against Romani people who are at risk of statelessness in North Macedonia: <http://www.errc.org/press-releases/north-macedonia-errc--myla-sue-authorities-for-discrimination-of-roma--other-unregistered-persons>.

⁶³ ISI, ENS, ERRC, *Discrimination and Marginalisation of Roma in the Western Balkans and Ukraine* (n 51), pp. 13-15, 45-46.

⁶⁴ ENS, Zoe Gardner, 'Breaking the cycle of anti-gypsyism and statelessness in Roma communities: Recent progress and the road ahead' (April 2023), available at: <https://www.statelessness.eu/updates/editorial/breaking-cycle-anti-gypsyism-and-statelessness-roma-communities-recent-progress>.

- **Serbia:** To address issues related to birth registration in Serbia for which many Romani people and other marginalised groups could not meet criteria, organisations have come together to draft a new model law with a simplified late birth registration procedure that was more accessible to marginalised groups. The law was adopted in 2012, and resulted in increased birth registrations, although challenges remain.⁶⁵ Regarding access to nationality, a provision introduced through an amendment to the Law on Nationality in 2018 allows for facilitated acquisition of nationality for people who were born in the former-Yugoslavia and are long-term residents of Serbia.⁶⁶
- **Montenegro and Kosovo:**⁶⁷ In the past decade, Montenegro has initiated several legislative changes to improve legal and administrative procedures to reduce the risk of statelessness through improved access to civil registration and protect the rights of stateless persons through the introduction of a Statelessness Determination Procedure. It has also improved cooperation with neighbouring countries (primarily Serbia and Kosovo) to facilitate civil registration.⁶⁸ For example, Kosovo and Montenegro, along with various organisations, jointly organised mobile teams to register births of Kosovan children living in Montenegro, which allowed them to regularise their status in Montenegro without needing to travel across the border to Kosovo, which was impossible as they lacked travel documents, and access healthcare, education and employment.⁶⁹
- **North Macedonia:** Thanks to legislative amendments, between 2004 and 2012, after the Law on Citizenship was amended to include the transitional provision for facilitated access to naturalisation, around 5,000 long-term habitual residents in North Macedonia were naturalised. In 2011, thanks to the collaboration of three ministries and other organisations, mobile teams composed of public officials, social workers and Roma organisations were deployed to identify and assist people to register as citizens and facilitate access to legal aid. Following these efforts, many individual cases were resolved and the government adopted measures to promote registration and facilitate access to documentation.⁷⁰ Despite these efforts, many Roma remain trapped in a cycle in which the lack of documentation of one

⁶⁵ Ibid, pp. 15, 31-36. See also OSCE and UNHCR, Handbook on Statelessness in the OSCE Area: International Standards and Good Practices (2017) <https://www.osce.org/files/f/documents/5/1/302201.pdf>, pp. 55-56.

⁶⁶ ENS, Statelessness Index on Serbia: <https://index.statelessness.eu/country/serbia>.

⁶⁷ This designation is without prejudice to positions on status, and is in line with UN Security Council Resolution 1244 (1999) on the situation relating Kosovo and the International Court of Justice's Accordance with International Law of the Unilateral Declaration of Independence in Respect of Kosovo, Advisory Opinion, I.C.J. Reports 2010, p. 403.

⁶⁸ ENS, Statelessness Index on Montenegro: <https://index.statelessness.eu/country/montenegro>.

⁶⁹ UNHCR, An end to two decades of uncertainty for the Elsani family and over 1,000 others in Montenegro <https://www.unhcr.org/ibelong/an-end-to-two-decades-of-uncertainty-for-the-elsani-family-and-over-1000-others-inontenegro>.

⁷⁰ OSCE and UNHCR, Handbook on Statelessness in the OSCE Area: International Standards and Good Practices (2017) <https://www.osce.org/files/f/documents/5/1/302201.pdf>.

generation creates obstacles for the registration of the next. As mentioned in Section III above, significant challenges remain, as the new law introduced in 2020 to enable adults and children at risk of statelessness to obtain personal documentation does not facilitate their access to a nationality and does not resolve the remaining gaps in civil registration to prevent new cases of statelessness arising.⁷¹

4.2. Countries of the former Soviet Union: successful campaigns to reduce statelessness

In former Soviet countries, statelessness is mostly caused by the dissolution of the Soviet Union, related to the failure to exchange Soviet identity documents for newly formed States' documents, border disputes, forced displacement, and inadequate civil registration systems.⁷²

- **Kyrgyzstan:** In 2007, a new nationality law granted nationality to former Soviet citizens with permanent residence in Kyrgyzstan, allowing for flexible documentary evidence to prove residence and entitlement to nationality, and included a simplified and flexible naturalisation procedure for non-former-Soviet people. UNHCR and partner organisations then conducted field studies to identify stateless people and collaborated with national authorities and experts to develop a National Action Plan in 2009, which provided a legal framework for reducing statelessness and identifying challenges. Mobile teams composed of government officials and civil society lawyers travelled in the country to remote areas to help people apply for documents that confirm their Kyrgyz nationality. Its nationality laws now include a definition of statelessness, the government issues residence cards upon recognition of statelessness, and some children of stateless parents can obtain nationality. Thanks to collaborative efforts, between 2009 and 2020, over 13,000 people have been granted Kyrgyz nationality, with the last known stateless persons being registered as nationals in 2019. By 2020, the birth of 99% of children under five was registered and the law improved prevention of statelessness at

⁷¹ ENS, Statelessness Index on North Macedonia, available at: <https://index.statelessness.eu/country/north-macedonia>. The European Roma Rights Centre (ERRC) and Macedonian Young Lawyers Association (MYLA) have submitted a collective complaint against the Directorate for Keeping the Registers of Births, Marriages and Deaths, a state organ within the Ministry of Justice of North Macedonia, for discrimination against Romani people who are at risk of statelessness in North Macedonia: <http://www.errc.org/press-releases/north-macedonia-errc--myla-sue-authorities-for-discrimination-of-roma--other-unregistered-persons>.

⁷² ENS, Azizbek Ashurov, Tackling statelessness in Kyrgyzstan and the wider Central Asia region – the importance of networking (2019): <https://www.statelessness.eu/updates/blog/tackling-statelessness-kyrgyzstan-and-wider-central-asia-region-importance-networking>; UNHCR, *Good practice papers, Action 1, Resolving Existing Major Situations of Statelessness* (2022): <https://www.refworld.org/docid/54e75a244.html>.

birth.⁷³ Therefore, while Kyrgyzstan has not ratified the core statelessness conventions, its nationality laws now largely comply with their obligations.

- **Moldova:** In 2012, over 220,000 people held expired Soviet identity documents as their only identity documents, which did not grant access to basic citizenship rights. Many were also unable or unwilling to pay the cost of a new identity document, especially elderly people for whom the fee amounted to a fifth of their pensioners' monthly income. In 2014, the Government launched a campaign offering identity documents for free, accompanied by a series of supporting measures with the support of UNHCR. All pensioners received information leaflets, the authorities sent mobile teams to those who were unable to visit the Passport Office so they could acquire new documents, and a hotline for free legal information was established. The campaign was a success as most of the people affected benefitted from it.⁷⁴
- **Turkmenistan:** The government led a registration campaign to verify the nationality status of undocumented former Soviet citizens in Turkmenistan. Those identified as having undetermined nationality, including stateless people, were registered and gradually granted nationality by decree. A first registration campaign was launched in 2007-2010 and found 4,000 people with undetermined nationality. The campaign was launched again in 2011, together with other actors, with mobile registration teams.⁷⁵

4.3. Other countries

Beyond Europe, there have also been examples of countries successfully addressing issues with documentation or risk of statelessness of particular minority groups, which could be a basis to develop similar initiatives to address (risk of) statelessness among Romani communities.

- **Sri Lanka:** The stateless population in Sri Lanka mostly belongs to the Hill Tamil community, who were discriminated against when the country became independent and citizenship and residence laws were passed, with requirements to prove long residence periods and birth in the country over

⁷³ UNHCR, *Good practice papers, Action 1, Resolving Existing Major Situations of Statelessness* (2022): <https://www.refworld.org/docid/54e75a244.html>, pp. 21-30; Eurasianet, *Perspectives: A model for Ukraine: Kyrgyzstan's 10-year battle to end statelessness* (2020): <https://eurasianet.org/perspectives-a-model-for-ukraine-kyrgyzstans-10-year-battle-to-end-statelessness>; Reuters, 'Ending statelessness is easy, says Kyrgyz winner of top U.N. prize' (2019): <https://www.reuters.com/article/us-kyrgyzstan-stateless-un-idUSKBN1WH203>; UNHCR, 'Kyrgyzstan ends statelessness in historic first' (2019): <https://www.unhcr.org/uk/news/news-releases/kyrgyzstan-ends-statelessness-historic-first>; UNHCR, 'Kyrgyzstan to Become the First Stateless-Free Country in the World' (2019): <https://www.unhcr.org/centralasia/en/10768-kyrgyzstan-to-become-the-first-stateless-free-country-in-the-world.html>.

⁷⁴ OSCE and UNHCR, *Handbook on Statelessness in the OSCE Area: International Standards and Good Practices* (2017), pp. 65-66: <https://www.osce.org/files/f/documents/5/1/302201.pdf>.

⁷⁵ UNHCR, *Good practice papers, Action 1, Resolving Existing Major Situations of Statelessness* (2022): <https://www.refworld.org/docid/54e75a244.html>, pp. 48-54.

several generations, as well as a certain level of income. In 2003, Sri Lanka passed a law to automatically grant nationality to some persons and for others to acquire nationality by declaration. In collaboration with UNHCR and local organisations, Sri Lanka launched a nationality campaign which allowed it to provide documentary proof of Sri Lankan nationality to 190,000 Hill Tamils, thanks to awareness-raising, accessible media outreach, and provision of legal advice through mobile clinics. Additional legislative reform ensued to ensure other groups also obtain nationality.⁷⁶

- **Bangladesh:** While the law entitled the Biharis, an Urdu-speaking minority in Bangladesh historically subject to discrimination and violence, to Bangladeshi nationality. In practice they were denied nationality, could not obtain identity documents, were excluded from many other rights, and were mainly forced to live in camps. Through strategic litigation amidst political tensions during an election period, Urdu-speaking activists managed to secure judgments recognising their community as Bangladeshi nationals and obliging the authorities to provide them with identity cards. Follow-up community-based advocacy and pressure from the international community allowed for these court decisions to be implemented and resulted in measures to recognise Bangladeshi nationality for this group.⁷⁷
- **Malaysia:** Various registration campaigns conducted by the government in collaboration with a local grassroots organisation and UNHCR allowed the mapping and gradual granting of Malaysian nationality to people of Indian-Tamil descent. These efforts involved mobile registration units and local community-based paralegals. Policy changes initially limited to stateless people of Indian descent were then extended to people of all ethnicities.⁷⁸
- **Kenya:** Due to historical migration and Kenya's colonial past, members of the Makonde ethnic group were excluded from Kenyan citizenship and were not registered in population databases at independence. Thanks to collective advocacy, the issue was raised to the Kenyan National Commission on Human Rights, which recommended the government make legal reforms to prevent and reduce statelessness. A legal reform enabled acquisition of nationality by registration, which was supported by joint advocacy efforts to improve the implementation of the registration procedure, including through petitions and protests. Eventually access to nationality was made easier by lifting stringent proof requirements and fees.⁷⁹

⁷⁶ Ibid, pp. 8-14.

⁷⁷ Ibid, pp. 15-20.

⁷⁸ Ibid, pp. 33-41.

⁷⁹ Ibid, pp. 64-75.

CONCLUSION

A solid international and regional legal framework exists on the right to a nationality, the obligation to prevent and reduce statelessness, and the protection of stateless persons. The prohibition of discrimination also extends to the context of nationality and statelessness, and it has been established that the principle of equality may require affirmative measures to reduce or abolish the conditions that perpetuate discrimination. This means that statelessness may require States to treat the person differently from other non-nationals, because their situation is factually different. This demonstrates the importance of identifying stateless people as an essential step to preventing stateless persons from being discriminated against, followed by targeted measures to eliminate legal, administrative, and practical barriers that prevent people from accessing their fundamental rights.

International and regional case law has further entrenched the prohibition on discrimination, and landmark judgments of the European Court of Human Rights have found that interference with the right to a nationality may engage the prohibition on discrimination and the right to respect for private and family life, due to the disproportionate impact of living without a nationality.

Despite this strong legal background, Roma and other minorities still suffer from human rights violations and systemic discrimination, both direct and indirect. Among other challenges, they face barriers to birth registration, civil registration and acquiring a nationality or confirming their nationality. This perpetuates the marginalisation of Roma communities as the lack of documentation or proof of nationality often prevents people from accessing education, healthcare, employment, housing, and other public services. Good practice examples show that solutions to reduce such barriers exist, including through targeted nationality and registration campaigns, issuance of identity documents, awareness-raising, and removing inflexible requirements or bureaucratic impediments. Impactful change has been seen in the nationality laws and practices of several countries that have addressed issues similar to those affecting stateless Roma communities, particularly where States are willing to take stock of the issue and collaborate with civil society and relevant stakeholders to find solutions that enable them to fully comply with their international obligations.



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