

Ending Childhood Statelessness:

A Study on Macedonia

Working Paper 02/15



EUROPEAN NETWORK ON STATELESSNESS

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Introduction

Statelessness and the lack of registered civil status and personal identity documents presents a serious problem to their enjoyment of basic social and economic rights for a significant number of people living in the Republic of Macedonia. For the majority of these people, poverty, marginalization and discrimination is a “standard” part of everyday life. Most affected however, are the children without nationality who grow up believing that basic rights are a luxury given to many, but not to them.

The aim of this report is to explore the national legal and policy frameworks related to preventing childhood statelessness and to propose recommendations for strengthening these frameworks. The report assesses domestic law against Macedonia’s international obligations, while also discussing the role of different stakeholders and the current state practices in granting nationality to otherwise stateless children, preventing statelessness among children in other contexts and the importance of birth registration. Ultimately, by shedding some light on the issue of childhood statelessness in the national context and showing that addressing statelessness is a vital step in ensuring that children can build a better future, the report aims to contribute to breaking the often intergenerational cycle of marginalization in the country.

1. Statelessness in the national context

National legislative framework and international obligations

The rules on acquisition and loss of nationality are contained in the Law on citizenship of the Republic of Macedonia, adopted in 1992 with subsequent amendments in 2004, 2008 and 2011. Unfortunately, there are no implementing/subordinate regulations, circulars or instructions which provide further detail on how the nationality rules are to be interpreted and applied in practice. The Administrative Court of the Republic of Macedonia is the competent judicial authority to rule in cases of disputed application of the nationality regulations. The Higher Administrative Court is competent to decide on appeals against decisions made by the Administrative Court in the first instance¹.

The law on citizenship does not contain a definition of a ‘stateless person’. However, a definition can be found in the Law on foreigners², within the part *Definition of the concept of foreigner*, Article 2 (2) “A foreigner shall also mean a stateless person, that is, a person who is regarded by no country as its own citizen as in accordance with its national law”. This definition incorporates in full the definition of a stateless person set out in the 1954 Convention relating to the Status of Stateless Persons, to which the country acceded by succession on 18 January 1994³. However, **there are no formalized procedures for determining statelessness in the Republic of Macedonia, which remains a significant gap in adequately addressing the problem.** Nevertheless, in 2010 the first person has been recognized as stateless in the course of processing an application for naturalization conducted on the basis of the Law on General Administrative Procedure⁴.

According to the Constitution of the Republic of Macedonia, the courts judge on the basis of the Constitution, the laws and the international agreements ratified in accordance with the Constitution⁵.

¹ The organization of the work of the Higher Administrative Court is stipulated under the Law on Courts (Official Gazette No.58 / 06, 35/08 and 150/10) and the Law on Administrative Disputes (Official Gazette no.62 / 06 and 150/10)

² Official Gazette of the Republic of Macedonia No. 35 dated 23 Mart 2006, the law entered into force on 31 March 2006 and started to be implemented from 1 April 2007. Available at: file:///C:/Users/Marina/Downloads/fYROM_Law_on_Foreigners_2006_en.pdf (Accessed on 06.04.2015)

³ The former SFRY acceded to the 1954 Convention on 9 April 1959, with its dissolution all the successor States have in turn succeeded to the Convention, without reservation. The Republic of Macedonia gained its independence from the former Socialist Federal Republic of Yugoslavia (SFRY), where it was a federal state, and became a sovereign parliamentary democracy on September 8th 1991.

⁴ See also footnote n.27, page n.13 from Report on Statelessness in South Eastern Europe, UNHCR offices in Bosnia & Herzegovina, Croatia, former Yugoslav Republic of Macedonia, Montenegro, Serbia (and Kosovo: SCR 1244) – Bureau for Europe September 2011, available at: <http://www.refworld.org/pdfid/514d715f2.pdf>, (Accessed on 07.04.2015)

⁵ Article 98 from the Constitution of the Republic of Macedonia, Official Gazette of the Republic of Macedonia n.52/1991

International agreements ratified in accordance with the Constitution are part of the internal legal order and thus cannot be changed by law⁶.

The Republic of Macedonia became state party to the Convention on the Rights of the Child in 1993 and the following year to the International Covenant on Civil and Political Rights, the Convention on the Elimination of All Forms of Racial Discrimination and the Convention on the Elimination of All Forms of Discrimination against Women. In 2011, it ratified the Convention on the Rights of Persons with Disabilities. No reservations were put to the issue of children's right to a nationality in respect to any of these human rights conventions.

On 26 February 2002, the Law on Ratification of the European Convention on Nationality⁷ was promulgated, consequently the 1997 European Convention on Nationality (CoE) entered into force for the Republic of Macedonia on 1 October 2003⁸. The implementation of the Convention brought about the introduction of the first amendments of the domestic citizenship law⁹, which introduced several novelties, among which most importantly, acquisition of nationality by certain children born on the territory of the country who do not acquire another nationality at birth (although, as seen in section 2, the law is still not in full compliance with the ECN on this point), and a shortening of the period of residence for naturalisation of persons lawfully and habitually resident on the territory of the country from 15 to 8 years. These amendments also introduced additional transitional provisions¹⁰ dealing with the nationals of the other republics of the former Yugoslavia and the citizens of the former Yugoslavia that on September 8, 1991 had reported residence and submitted requests for permanent residence in the Republic of Macedonia and have had a real and effective bond with the country. They were given two years after the entry into force of the law to apply for Macedonian citizenship. In 2008, the second amendment of the Law on citizenship introduced facilitated acquisition of Macedonian nationality for stateless persons and recognised refugees who lawfully and habitually reside on its territory¹¹.

The Republic of Macedonia is not a state party of the 1961 Convention on Reduction of Statelessness. There is, at present, a lack of political will to accede to this international instrument in spite of the Government's continuous assurances that the country had a clear intention to do so. Finally, the Republic of Macedonia is also not yet a state party to the 2006 Council of Europe Convention on the Avoidance of Statelessness in the context of State Succession.

Specific citizenship context in the country

Following state succession, the 1992 Law on Citizenship provided that the citizens who possessed republican citizenship of the Socialist Republic of Macedonia and citizenship of SFRY became citizens of the Republic of Macedonia *ex lege*. All those originating from other republics of former SFRY who were domiciled in the newly established state, sometimes for decades, could only acquire Macedonian citizenship upon

⁶ Article 118 from the Constitution of the Republic of Macedonia, Official Gazette of the Republic of Macedonia n.52/1991

⁷ Official Gazette of the Republic of Macedonia n.13/2002

⁸ By way of this Law, Republic of Macedonia also put a reservation on Chapter III, Article 6, item 3 of the Convention stating that "the Republic of Macedonia retains the right to foresee among the requirements for acquisition of citizenship by naturalization a period of uninterrupted lawful residence in the territory of Macedonia of at least fifteen years until the submission of the application for admission into citizenship". The reservation was withdrawn following the adoption of the (first) 2004 Law Changing and Amending the Law on Citizenship.

⁹ Law Amending the Law on Citizenship of the Republic of Macedonia, Official Gazette of the Republic of Macedonia No.8 of 23.02.2004 year

¹⁰ This type of provision was introduced for second time with the 2004 amendment. The first time, the Law on Citizenship of the Republic of Macedonia enacted in November 1992 provided that the citizens who possessed republican citizenship of the Socialist Republic of Macedonia and the citizenship of SFRY became citizens of the new state *ex lege* while all those originating from other republics of former SFRY who were legally domiciled in SRM (and possessed an SRM ID card), could only acquire Macedonian citizenship upon application through naturalization under a transitional provision open for applications until 11 November 1993.

¹¹ According to Article 8, Law Changing and Amending the Law on Citizenship of RM, Official Gazette of RM No.98/2008, a stateless person and recognized refugee is required to have had a lawful and continuous residence in the country for six (6) years after the determination of statelessness or respectively from the recognition of refugee status (instead of eight years required for ordinary naturalization), and are exempted from the requirements: not to have been sentenced to imprisonment of at least one year in their country of origin; that no criminal procedure is pending against them in the country of origin; and to have renounced their previous nationality.

application, through naturalization, under a transitional provision open for applications until 11 November 1993¹². Hence, a one year transitional provision was provided for those who were legally domiciled in SRM, i.e. possessed a SRM ID card, to apply for facilitated acquisition of citizenship. Such applicants had to show *inter alia* that they had registered permanent residence in the country at the time of independence, as well as regular source of means of subsistence and at least 15 years of uninterrupted lawful residence in the country. Many long-term habitual residents were unable to meet the criteria. In addition, once this transitional provision ceased to apply, long-term habitual residents could only fall back on the procedure for ordinary naturalization, and many were unable to meet the rather strict requirements. As a result there were many who failed to regulate their Macedonian citizenship¹³, the majority of whom, also failed to effectively register the nationality of one of the other states created by the dissolution, from where they originated, whose republican citizenship they held.

In 2004, the Law Changing and Amending the Law on Citizenship included a new two-year transitional provision¹⁴ facilitating the naturalization of those who were habitually resident in the country prior to the dissolution. Article 14 of the 2004 Law (amendments) provided that the nationals of other republics of the former SFRY and the nationals of the former SFRY who had a registered domicile on 8 September 1991, and who have been permanently living in the territory of the Republic of Macedonia until the submission of the application and have a genuine and effective link with the country, may acquire Macedonian citizenship if within two years after the entry into force of this law they have submitted an application. They have to prove that no criminal proceedings are being carried out against them in Macedonia, for acts which threaten the security and defence of the country and that they meet the requirements¹⁵. The applicant must also have reached 18 years of age and be proficient in the Macedonian language to the extent that he/she can easily communicate in the environment¹⁶. There is no publicly available information on how many people benefited from this new transitional provision, nor how many people remained stateless as a result of inability to acquire nationality following state succession. Nevertheless, this background demonstrates that there is an existing problem of statelessness in the country which makes it all the more pertinent to consider what safeguards are in place to prevent statelessness from being passed on to successive generations.

Existing research, data and knowledge on (childhood) statelessness

Childhood statelessness has not been widely discussed as an issue in the Republic of Macedonia and not much has been known about it. The only publicly available research that was conducted on the topic of statelessness in the country was done by the UNHCR Office in Skopje in their publication *“The right to have rights - legal identity, citizenship and civil registration - key to social inclusion of marginalized communities”*¹⁷. Other research can be found in the *“Report on Statelessness in South Eastern Europe”*¹⁸ and the report *“Access to Civil Documentation and Registration in South Eastern Europe: Progress and Remaining Challenges since the 2011 Zagreb Declaration”*¹⁹. All existing studies explore the main causes and consequences of

¹² Article 26, Law on Citizenship of the Republic of Macedonia, Official Gazette of the Republic of Macedonia n.67/1992

¹³ Interviews with long-term habitual residents show that many of them were unaware of the fact that they were no longer nationals of the State in which they continued to reside, and that there was a need for them to regulate the citizenship of the newly created State.

¹⁴ Article 14, Law Amending and Changing the Law on Citizenship, [Official Gazette of RM No. 08/2004].

¹⁵ Article 7, paragraph 1, items 1 and 6, Law Amending and Changing the Law on Citizenship, [Official Gazette of RM No. 08/2004].

¹⁶ In the period between 2nd March 2004 until 30th November 2010, a total of 5,029 individuals (of which c.11%) Roma, were naturalised as Macedonian citizens under Article 14, of the 2004 Law Changing and Amending the Law on Citizenship (According to the Ministry of the Interior by February 2009, a total of 61,965 long-term habitual residents, citizens of one of the other republics of SFRY, have acquired Macedonian citizenship of whom 57,000 under the first transitional provision (1992 Law) and 4,965 under the second one (2004 Law).

¹⁷ The publication was an outcome of a regional project *“Social Inclusion of, and Access to Human Rights of Roma, Ashkali, and Egyptian Communities in the Western Balkans”* supported by the European Union and the United Nations High Commissioner for Refugees (UNHCR) launched in 2008 and a successive project titled *“Social Inclusion: Regional Support to Marginalized Communities”*, otherwise referred to as Phase II, launched on 1st August 2009. The project ended on the 31st October 2011

¹⁸ Report on Statelessness in South Eastern Europe, UNHCR offices in Bosnia & Herzegovina, Croatia, former Yugoslav Republic of Macedonia, Montenegro, Serbia (and Kosovo: SCR 1244) – Bureau for Europe September 2011, available at: <http://www.refworld.org/pdfid/514d715f2.pdf> (Accessed on 07.04.2015)

¹⁹ Stephanie Woldenberg, The report was prepared as a conference background document. In agreement with the OSCE High Commissioner on National Minorities, the United Nations High Commissioner for Refugees and the European Commission, the report was made available in the context

statelessness in the country and the region, dealing with the issue of childhood statelessness only as a sub-issue within the wider framework of the research.

In Macedonia, according to information provided in 2011 from the Ministry of Interior (Section for Foreigners and Readmission), 116 individuals²⁰ were considered to be stateless and thus eligible for facilitated access to regulated legal residence in the country, although a decision explicitly establishing statelessness has not been issued²¹. One UNHCR survey, which covered 70% of the territory of the country and reached 13,770 members of the Roma, Ashkali and Egyptian communities, found that many of those persons face one or more of the following problems: lack of personal documentation, lack of registration of birth or personal name, or unregulated legal residence or citizenship,²² demonstrating that these marginalized groups are the ones most significantly affected by these challenges. According to the UNHCR data for Macedonia, as of December 2014, there are 734 stateless persons in the country²³. This data is not disaggregated by age, so there is no indication of how many of these persons are minors. No other official statistics regarding the number of persons living on the territory of the country who are either stateless or at risk of statelessness are available²⁴, such that **the number of stateless children or children at risk of statelessness in Macedonia is not known.**

Stakeholders

The Ministry of the Interior (MOI), Ministry of Justice and Ministry of Labour and Social Policy (MLSP) are the key state bodies with significant responsibilities in dealing with prevention and reduction of statelessness and protection of the rights of stateless persons. The Citizenship Section of the Department for Administrative and Supervisory Matters within MOI is the responsible authority for receiving and deciding on requests for acquisition, loss or determination of the citizenship of the Republic of Macedonia. Where the person lives abroad, the request is submitted to the diplomatic and consular office of the Republic of Macedonia abroad²⁵. The Department for Administrative and Supervisory Matters also has a section responsible for the registration of domicile and issuance of identity cards and another one in charge of issuance of national passports.

The Section for Foreigners and Readmission (SFR) of MOI is in charge of implementation of the foreigners legislation, and thus for issuance of residence permits and travel documents to foreigners and stateless persons. The competence to identify whether a person is stateless logically falls under the SFR in view of the fact the Law on Foreigners and its by-laws provide for a definition of stateless person, issuance of alien residence permits, and issuance of travel documents. The Directorate for Keeping Records of Births, Deaths

of the Podgorica 25 October 2013 regional conference on civil registration and documentation. Available at <http://www.refworld.org/pdfid/5280c5ab4.pdf> (accessed 07.04.2015)

²⁰ Even though for the purposes of obtaining up to date data for this research, the Section for Foreigners and Readmission was contacted, they still haven't provided the accurate number of these persons.

²¹ Report on Statelessness in South Eastern Europe, UNHCR offices in Bosnia & Herzegovina, Croatia, former Yugoslav Republic of Macedonia, Montenegro, Serbia (and Kosovo: SCR 1244) – Bureau for Europe September 2011, p.11, available at: <http://www.refworld.org/pdfid/514d715f2.pdf>, (Accessed on 07.04.2015)

²² Cf. the UNHCR Report : *The "Right to Have Rights"*, Legal Identity, Civil registration and Citizenship: Key towards social inclusion of marginalised communities. The survey was based on a project conducted from February 2008 to March 2011 aimed at reducing the number of persons lacking registration or identity documents, as well as providing legal aid to this group and raising their awareness about the importance of civil registration and personal documentation.

²³ Refers to persons who are not considered as nationals by any State under the operation of its law. This category refers to persons who fall under the agency's statelessness mandate because they are stateless according to this international definition, but also include persons with undetermined nationality. Available at: <http://www.unhcr.org/pages/49e48d8f6.html#> (Accessed on 20.04.2015)

²⁴ The most up-to-date official statistics are provided in the results of the 2002 national census published in May 2005 which included *residents* rather than *citizens*, showing that just in the municipality of Shuto Orizari (in the capital Skopje), 2.2% of the almost exclusively Roma population was at risk of statelessness as a result of dissolution of former SFRY. In addition, the 2002 census did not include persons whose births/personal names were never registered in the Birth Registry Records. This is just one of the reasons for the discrepancies between official and non-official number of Roma residing in the territory of the country

²⁵ Article 21, Law on citizenship of the Republic of Macedonia, 1992 and its Amendments from 2004, 2008, 2011, Official Gazette of the Republic of Macedonia n.67/1992, n.8/2004, n.98/2008 and n.158/2011

and Marriages (the Directorate) is established within the Ministry of Justice for the purpose of keeping the registers for civil registration and for issuance of birth, marriage and death certificates²⁶. The Ministry of Labour and Social Policy is, on the other hand responsible for ensuring the exercise of basic social and economic rights of all nationals and non-nationals, including stateless individuals. They are also responsible for IDPs and readmitted individuals, many of whom may be Roma at risk of statelessness. MLSP further supports twelve Roma Information Centres (RICs) located in local Roma NGOs and municipalities all over the country whose job is to actively conduct the identification of and provision of free legal advice to Roma who are either long-term habitual residents or at risk of statelessness. The Centres for Social Work (CSW) under MLSP are responsible for child protection and are the key actors in identification of children with unregistered birth and foundlings.

The Law on Free Legal Aid²⁷ was adopted in 2010 and opened the opportunity for stateless persons with legal residence in the Republic of Macedonia to access state funded legal assistance. However, with the exception of the procedure on exercising the right to asylum, the law does not include legal issues that are of interest to or affect stateless persons. For instance, the procedure on obtaining citizenship and the procedure for regulating the status of foreign nationals are not covered by the law²⁸. According to MYLA's experience, the legal issues for which these persons need legal aid include: exercise of the right to health insurance and social protection, acquiring a work permit in the Republic of Macedonia, etc. In reality, the legal aid system is slow and inefficient and does not secure the exercise of these rights in a timely manner. Additionally, the evidentiary requirements needed in order to fulfil the eligibility criteria are impossible to meet due to the fact that initially the problem of the affected individuals is related with lack of identification and/ or other documentation²⁹.

2. Grant of nationality to otherwise stateless children

General rules on acquisition of nationality

The Law on Citizenship of the Republic of Macedonia was adopted in 1992 and amended three times, in 2004, 2008 and 2011. It establishes four modes of acquisition of Macedonian citizenship:

- by origin (*ius sanguinis*);
- by birth on the territory (*ius soli*);
- by naturalisation;
- by international treaties.³⁰

The general rule on acquisition of nationality by children, under the country's law is *jus sanguinis*. The child will acquire Macedonian citizenship by origin if:

(1) *At the time of the child's birth, both parents are citizens of the Republic of Macedonia;*

²⁶ Until 1st January 2010 the Citizenship Section of MOI was also responsible for civil registration and issuance of civil status documents (e.g. birth, marriage and death certificates), however, the Law Amending and Adding to the Law on Registry Records, provided for a transfer of competencies, from the Ministry of Interior, and the founding of the Department for Managing the Registry Records within the Ministry of Justice. The main reason for the transfer was to simplify the procedure of issuance of personal documentation, improve the efficiency and speed up the process.

²⁷ Official Gazette of the Republic of Macedonia n. 161 / 2009

²⁸ Article 8(2) stipulates the matter of interest of the person applying for legal aid which are covered by the LFLA: the rights covering social, health, pension and disability insurance, labor relations, children and juvenile protection, victims of domestic violence, protection to victims of criminal acts, protection of victims of human trafficking and property issues.

²⁹ Analysis of the Implementation of the Law on Free Legal Aid 2010 – 2012, Macedonian Young Lawyers Association – Skopje, National Roma Centrum – Kumanovo, Youth Cultural, Centre – Bitola ROMA S.O.S. – Prilep, Foundation Open Society – Macedonia, Skopje, January 2013, available at: <http://www.myla.org.mk/images/pdf/ailfa.pdf> (Accessed on 01.04.2015)

³⁰ No further details on this last mode of acquisition of Macedonian nationality have been elaborated.

- (2) *At the time of the child's birth one of the parents is a citizen of the Republic of Macedonia, if the parents have not determined by mutual consent that the child acquires citizenship of the other parent and if*
- (3) *At the time of the child's birth one of the parents is a citizen of the Republic of Macedonia, while the other parent is unknown or holds unknown citizenship, or respectively he/she is stateless, and the child is born abroad.*³¹

A child acquires Macedonian citizenship by birth on the territory, if the child is found or born on the territory of the country and whose parents are unknown, or hold unknown citizenship or no citizenship³². The child shall lose the citizenship of the Republic of Macedonia if before reaching the age of 15 years it is determined that his/her parents are foreign citizens, and provided that the he/she shall not be left without a citizenship.

A child will be granted Macedonian citizenship by naturalisation if both parents have acquired Macedonian citizenship by naturalisation. In situations where one parent has acquired Macedonian citizenship through naturalisation, his/her minor child will also acquire Macedonian citizenship if requested from the parent and the child lives in Macedonia, or upon a request from both of the parents and the child lives abroad³³.

Women and men have equal rights to pass on their citizenship to children born both inside and outside of the country, and children born out of wedlock have the same rights to acquire nationality as do children born in wedlock. However, what the citizenship law does not regulate, is access to nationality for children born on a ship or plane registered with the state.

Access to nationality for otherwise stateless children born on the territory

A child who is found or born on the territory of the country whose parents are unknown, of unknown nationality or stateless acquires citizenship of the Republic of Macedonia under article 6 of the citizenship law³⁴. This provision thus deals with several different situations in which the child would otherwise be stateless. Where this provision applies, there are no further conditions attached, i.e. for those children who benefit from the safeguard, they would acquire nationality automatically and not be subject to an application procedure and further requirements. Procedurally, this is in accordance with the European Convention on Nationality and 1961 Convention on the Reduction of Statelessness which allows for a choice of automatic grant at birth or later grant upon application. However, Macedonian citizenship law is focused on the situation of the parents (are the parents stateless or of unknown citizenship?) rather than on the situation of the child (is the child otherwise stateless?), meaning that the children can also be stateless if born in Macedonia where one or both parents possess a nationality but neither can confer it upon their children. **As a result, a child of parents who do have a (known) nationality but are not able to transmit that nationality to their child, for whatever reason, is not covered by the safeguard provided in the Macedonian law. It therefore fails to cover all otherwise stateless children and is thus in violation of the ECN.** This partial safeguard is also not in compliance with the 1961 Convention on the Reduction of Statelessness which, in Article 1, also establishes that “a contracting state shall grant its nationality to a person born in its territory who would otherwise be stateless”³⁵.

³¹Article 4, Law on citizenship of the Republic of Macedonia, 1992 and its Amendments from 2004, 2008, 2011, Official Gazette of the Republic of Macedonia n.67/1992, n.8/2004, n.98/2008 and n.158/2011

³²Article 6, Law on citizenship of the Republic of Macedonia, 1992 and its Amendments from 2004, 2008, 2011, Official Gazette of the Republic of Macedonia n.67/1992, n.8/2004, n.98/2008 and n.158/2011

³³ Article 12 (1) and (2), Law on citizenship of the Republic of Macedonia, 1992 and its Amendments from 2004, 2008, 2011, Official Gazette of the Republic of Macedonia n.67/1992, n.8/2004, n.98/2008 and n.158/2011

³⁴Article 6 (1) of the Law on Citizenship of the Republic of Macedonia Official Gazette of the Republic of Macedonia n.67/1992, n.8/2004, n.98/2008 and n.158/2011

³⁵ More on the issue in 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, page 5, available at: <http://www.refworld.org/docid/50d460c72.html> (Accessed 30.04.2015)

In practice, according to the data provided by the Section for Citizenship³⁶, from 1994 until 2014, 22 children acquired Macedonian citizenship on the basis of the fact that their parents held unknown citizenship. From 2012 until April 2015, 83 children were granted Macedonian citizenship on the basis of the fact that their parents were stateless. The status of the parents is determined by the Section for Foreigner and Readmission³⁷. According to information obtained from the Administrative Court, no cases were raised at the court in relation to access to nationality for otherwise stateless children born in the country³⁸.

Egzon's story

16-year old Egzon is a second generation long-term habitual resident in possession of a birth certificate, but with no Macedonian citizenship. He is stateless. His mother and father were born in Skopje, as well as his two elder sisters. Their grandparents are from Kosovo, but came to Macedonia in 1952. After the dissolution of SFRY, all their close family members managed to obtain Macedonian citizenship through the process of facilitated naturalization, except for them. When asked why, Hajdin (the father) said that lots of time has passed and that he doesn't know. He and his wife have been married since 1990, so all their children are born in wedlock. However, up till 2013 they did not hold an alien residence permit which regulates their stay in Macedonia.

"I am going from door to door since I married my wife! I was always asking them (the state institutions) why my brother has citizenship and me not? Nobody told me anything! Once I was so frustrated, that I asked from the police to tell me what I did wrong that I didn't deserve to have citizenship? They didn't care!"

In 2013 Hajdin addressed MYLA office in order to receive legal assistance in the procedure of obtaining legal residence for his family in Macedonia. At the time, he was diagnosed with skin cancer and was desperate to regularize his stay. His wife and daughters, Ganimet and Razije, also applied for alien residence permits. All of them will be able to apply for Macedonian citizenship through a process of facilitated naturalization after 6 years of continuous extension of the residence permit. Since he is still a minor, Egzon can now acquire Macedonian citizenship under the safeguards put in Article 6 which provide for a child who is born on the territory of the country whose parents are of unknown citizenship or stateless. Documents demonstrating his parents' status as stateless persons have now been submitted to the Section for Citizenship and Egzon is awaiting confirmation of his acquisition of Macedonian nationality

Access to nationality for otherwise stateless children born abroad

A child born abroad, one of whose parents at the time of his/her birth is a national of the Republic of Macedonia, while the other is a foreign national, acquires citizenship of the Republic of Macedonia by origin if he/she has been reported for registration as a national of the Republic of Macedonia before reaching 18 years of age or if before reaching 18 years of age she/he has settled permanently in the Republic of Macedonia together with her/his parent who is a national of the Republic of Macedonia³⁹. In the case of a lawsuit over the custody of a child, the citizenship is acquired after the court decision has gone into effect. Citizenship of the Republic of Macedonia may also be acquired under the requirements stated above by a person who has not been reported by both parents and who has reached 18 years of age, if he/she submits an application for registration in the citizenship of the Republic of Macedonia before reaching 23 years of

³⁶ Interview conducted with the Section for Citizenship, MOI, for the purposes of this research on 14.04.2015

³⁷ As previously explained, the competence of determining whether a person is stateless falls under the competence of this Section.

³⁸ Interview conducted with judge from the Administrative Court of the Republic of Macedonia, for the purposes of this research on 30.04.2015

³⁹ Article 5(1) Law on citizenship of the Republic of Macedonia, 1992 and its Amendments from 2004, 2008, 2011, Official Gazette of the Republic of Macedonia n.67/1992, n.8/2004, n.98/2008 and n.158/2011

age⁴⁰. This application can be filed to a diplomatic-consular mission of the Republic of Macedonia abroad. Once citizenship has been granted, the child's birth also has to be recorded with the institution competent for keeping the registries of birth in the country. No other additional conditions have to be fulfilled. **By prescribing safeguards which grant nationality by descent to all children born to their nationals abroad, the domestic rules comply the requirements set in the European Convention on Nationality and in Articles 1(4) and 4 of the 1961 Convention.**

In practice, the acquisition of Macedonian nationality for a child born abroad has to be done through the process of submitting a registration form to the Directorate for Managing Registry Records wherein additional inscription of the child will be performed, or to the diplomatic and consular office of the Republic of Macedonia abroad⁴¹. Information on acquisition of Macedonian nationality for a child born abroad can be acquired through several state websites⁴² where the nationality procedures are explained in detail. One is the official website of the Ministry of Interior⁴³, the second is the official website of the Ministry of Foreign Affairs of the Republic of Macedonia⁴⁴ and the last is a specially designed website from the Government of the Republic of Macedonia⁴⁵ (translated as "services"), which is the product of the efforts of the Macedonian Government for efficient and transparent functioning of the administration by enabling public presentation of the services that are oriented towards the citizens and businesses. Additionally, one of the competences of the Agency for emigration of the Republic of Macedonia⁴⁶ is to provide information on requests for citizenship to Macedonian emigrants.

3. Preventing statelessness among children in other contexts

Foundlings

A child whose parents are unknown shall be entered in the register of births in the place where it has been found. The entry shall be made on the basis of a decision of the competent body for guardianship – the Center for Social Work – containing the following: name and gender of the child; hour, day, month, year and place of birth of the child according to the place where it has been found⁴⁷. The decision of the Center for Social Work is brought on the basis of written minutes from operational checks conducted by the Ministry of Interior (police) in order to determine that the parents of the child are unknown. According to Article 6 of the Law on Citizenship of the Republic of Macedonia⁴⁸, "*Citizenship of the Republic of Macedonia acquires a child found or born in the Republic of Macedonia whose parents are unknown, or of unknown citizenship or stateless*". The foundling who is registered as a Macedonian citizen enters into the Registry of Macedonian Citizens⁴⁹. The citizenship of the Republic of Macedonia shall cease if it has been established that the child's parents are foreign nationals before he/she has reached 15 years of age and provided the child will not be rendered stateless⁵⁰. **This safeguard is compatible to the Article 2 of the 1961 Convention which provides that: "A foundling found in the territory of a Contracting State shall, in the absence of proof to the**

⁴⁰ Article 5(2) Law on citizenship of the Republic of Macedonia, 1992 and its Amendments from 2004, 2008, 2011, Official Gazette of the Republic of Macedonia n.67/1992, n.8/2004, n.98/2008 and n.158/2011

⁴¹ Article 5(3), Law on citizenship of the Republic of Macedonia, 1992 and its Amendments from 2004, 2008, 2011, Official Gazette of the Republic of Macedonia n.67/1992, n.8/2004, n.98/2008 and n.158/2011

⁴² One is the official website of the Ministry of Interior (<http://www.mvr.gov.mk/DesktopDefault.aspx?tabindex=0&tabid=432>), the second is the official website of the Ministry of Foreign Affairs of the Republic of Macedonia (<http://www.mfa.gov.mk/index.php/mk/za-makedonski-drzavijani/vidivi-uslugi/drzavijanstvo-na-rm>) and the last is specially designed website from the Government of the Republic of Macedonia (<http://uslugi.gov.mk/zauslugi.aspx>) translated as "services", which is result of the efforts of the Government of RM for efficient and transparent functioning of the administration by enabling public presentation of the services that are oriented towards the citizens and businesses.

⁴³ <http://www.mvr.gov.mk/DesktopDefault.aspx?tabindex=0&tabid=432>

⁴⁴ <http://www.mfa.gov.mk/index.php/mk/za-makedonski-drzavijani/vidivi-uslugi/drzavijanstvo-na-rm>

⁴⁵ <http://uslugi.gov.mk/zauslugi.aspx>

⁴⁶ <http://www.makemigration.com/>

⁴⁷ Article 8 Law on Registry Records of the Republic of Macedonia, Official Gazette n.8/1995

⁴⁸ Official Gazette of the Republic of Macedonia n.67/1992, n.8/2004, n.98/2008 and n.158/2011

⁴⁹ Article 5(2) of the Regulations on the Manner of Keeping Records of Citizens of RM and on the Forms Applied or Issued, Official Gazette n.2/1993

⁵⁰ Article 6(2), Law on Citizenship, Official Gazette of the Republic of Macedonia n.67/1992, n.8/2004, n.98/2008 and n.158/2011

contrary, be considered to have been born within that territory of parents possessing the nationality of that State". This safeguard is also compatible with the provisions of Article 6 of the ECN regarding the acquisition of nationality of the foundling.

According to the Law on Child Protection, a child is any person up to 18 years of age⁵¹, which surpasses the minimum requirements to states to grant nationality (in applying this safeguard) to all young children who are not yet able to communicate accurately information pertaining to the identity of their parents or their place of birth⁵². The nationality in this case is acquired automatically, simultaneously with the inscription of the birth of the child, through an appointed special⁵³ guardian responsible for initiating the procedure for inscription of the child's birth into the birth registry⁵⁴.

However, this safeguard is not applicable in cases when the parent is 'known' (i.e. the birth has been witnessed by a Doctor but a false identity provided), but where the identity has not been established, mostly due to the fact that once a child is treated as a foundling the Centre for Social Work has an obligation to put the child in an institution for abandoned children. In practice this means that if the child is treated as a foundling in these situations, he/she should be taken from the parents, thus this is the main reason why, in these situations, this safeguard is not used in practice.

Adoption

An adopted child acquires citizenship of the Republic of Macedonia by origin in the case of adoption when both of his/her adoptive parents are nationals of the Republic of Macedonia or when one of his/her adoptive parents is a national of the Republic of Macedonia⁵⁵. In the case of adoption, if at least one of the adoptive parents has acquired citizenship of the Republic of Macedonia by naturalisation, the adopted child who has not yet reached 18 years of age and who has been living with the adoptive parent in the Republic of Macedonia also acquires citizenship of the Republic of Macedonia⁵⁶. The child's consent is necessary for the acquisition of citizenship of the Republic of Macedonia, if the child has reached the age of 15 years. In the case of adoption, if at least one of the adoptive parents has acquired citizenship of the Republic of Macedonia by naturalization, citizenship of the Republic of Macedonia by naturalization shall also be acquired by the adoptee who is under 18 years of age and who lives in the Republic of Macedonia together with the adoptive parent. Again, the child's consent shall also be necessary for the acquisition of citizenship of the Republic of Macedonia if the child has reached the age of 15 years⁵⁷.

Where a child who is a national of the Republic of Macedonia is adopted by parents who are foreign nationals, the citizenship of the adopted child shall cease upon request of the adoptive parents (be lost by a renunciation with release). However, the child's consent is also necessary for the loss of the citizenship of the Republic of Macedonia, if the child has reached the age of 15 years⁵⁸. Citizenship of the Republic of Macedonia of an adopted child under 18 years of age shall cease upon a request of both parents whose citizenship of the Republic of Macedonia has been lost by renunciation or if citizenship of the Republic of

⁵¹ The definition is set in Article 11 (1) of this law, "As a child, in terms of this law, shall be considered any person up to the age of 18, and persons with physical and mental disability by the age of 26,."

⁵² 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, page 12, available at: <http://www.refworld.org/docid/50d460c72.html> (Accessed 30.04.2015)

⁵³ Guardian appointed specially and solely for the inscription of birth and personal name of the child.

⁵⁴ According to the information obtained from the Centres for Social Work on the territory of the country (using the Law on Free Access to Information), from 01.01.2012 up to 30.04.2015, no child has been registered as a foundling.

⁵⁵ Article 4(2) of the Law on citizenship of the Republic of Macedonia, Official Gazette of the Republic of Macedonia n.67/1992, n.8/2004, n.98/2008 and n.158/2011

⁵⁶ Article 12 of the Law on citizenship of the Republic of Macedonia, Official Gazette of the Republic of Macedonia n.67/1992, n.8/2004, n.98/2008 and n.158/2011

⁵⁷ Article 12 of the Law on citizenship of the Republic of Macedonia, Official Gazette of the Republic of Macedonia n.67/1992, n.8/2004, n.98/2008 and n.158/2011

⁵⁸ Article 20 of the Law on citizenship of the Republic of Macedonia, Official Gazette of the Republic of Macedonia n.67/1992, n.8/2004, n.98/2008 and n.158/2011

Macedonia has been terminated in this manner for one of the parents, and the other parent has given consent to that. In cases when the child's parents have been living separately, the citizenship of the Republic of Macedonia shall cease for the adoptive child by renunciation upon a request by the parent with whom the child lives, that is the one to whom the child has been given to educate and raise, and who has submitted the request for renunciation of the citizenship of the Republic of Macedonia, or in the case when the parent with whom the child lives is a foreigner. In both cases consent from the other parent shall be necessary⁵⁹.

Although not provided for under the law, in practice the administrative authorities, among the other required documents require from the parents to submit guarantee that the child shall be given a foreign citizenship, linking this requirement with Article 17(1) paragraph 6 from the citizenship law, which deals with meeting certain requirements for loss of citizenship by renunciation. The requirement of this type of evidence is crucial safeguard against loss of nationality which may lead to statelessness.

Surrogacy

The Law on Biomedical Assisted Insemination⁶⁰ was adopted in 2008 and contains an explicit prohibition of surrogacy. However, in 2014, the amendments of this law prescribed the possibility of insemination by implanting an embryo created by own or donated genetic material of a married couple in the womb of a woman-gestational carrier. However, **the current nationality law does not make any special provision for the acquisition of nationality of children born in the context of a surrogacy arrangement.** To date, no case relating to surrogacy and the child's right to a nationality has been brought before the Section for Citizenship of MOI⁶¹.

Loss of nationality

Citizenship of the Republic of Macedonia can only cease in two ways: by release (or request) and through an international agreement. The citizenship legislation does not provide for deprivation of Macedonian citizenship, which is prohibited by Article 4 of the Constitution⁶², but does provide for the reversal of naturalisation in the event of fraud⁶³. What is problematic here is the lack of safeguard in the case of reversal: the decision for admission to citizenship of the Republic of Macedonia of children who have acquired citizenship simultaneously with their parents shall also be revoked, which may lead to statelessness. The reversal based on fraudulent behaviour should *never extend to other persons but be based on a decision for each person individually, taking into account all individual circumstances. For that reason an extension of such deprivation to children is unacceptable*⁶⁴.

The citizenship of the Republic of Macedonia of a child under 18 years of age ceases upon request of both parents whose Macedonian citizenship has ceased by release or if the Macedonian citizenship of one of the parents has ceased in that manner, while the other parent has consented thereto. If the child's parents live separately, the citizenship of the Republic of Macedonia of the child ceases by release upon request of the parent with whom the child lives, or who has been given the custody of the child respectively and who has submitted an application for release from citizenship of the Republic of Macedonia or in the case when the

⁵⁹ Article 19(3) of the Law on citizenship of the Republic of Macedonia, Official Gazette of the Republic of Macedonia n.67/1992, n.8/2004, n.98/2008 and n.158/2011

⁶⁰ Official Gazette of the Republic of Macedonia n. 37/2008

⁶¹ Interview conducted with the Section for Citizenship, MOI, for the purposes of this research on 14.04.2015

⁶² A Macedonian citizen may neither be deprived of his/her citizenship, nor expelled or extradited to another state. Citizenship of the Republic of Macedonia is regulated by law. [Article 4, Constitution of RM].

⁶³ Article 14 of the Law on citizenship of the Republic of Macedonia, Official Gazette of the Republic of Macedonia n.67/1992, n.8/2004, n.98/2008 and n.158/2011

⁶⁴ Best Practices in Involuntary Loss of Nationality in the EU Gerard-René de Groot and Maarten Peter Vink No. 73/November 2014, Available at: http://aei.pitt.edu/58194/1/No_73_Involuntary_Loss_of_Citizenship_RdG_and_MV.pdf (Accessed on 28.04.2015)

parent with whom the child lives is a foreigner. In both cases the consent of the other parent is necessary⁶⁵. In practice for the decision for release to be brought, the parents must submit a request for release from the Macedonian citizenship, along with accompanying documents to the administrative authorities. Among the other required documents, the parents have to submit a guarantee that the child shall be given a foreign citizenship, linking this requirement with Article 17(1) paragraph 6 from the citizenship law, which deals with meeting certain requirements for loss of citizenship by renunciation. Thus, **citizenship is not lost by way of release unless it is first established that an alternative citizenship has been granted or is guaranteed upon loss of Macedonian citizenship**. The requirement of this type of evidence is a crucial safeguard against statelessness.

According to Article 15, a child whose Macedonian citizenship has been lost by renunciation, can re-acquire citizenship if he/she has legally and continuously resided in the country for at least three years by the age of 25 years, and has submitted a request for readmission to citizenship of the Republic of Macedonia.

Another safeguard against loss of nationality leading to childhood statelessness (and this safeguard is general, not only for children), is incorporated in the Article 18(1) from the citizenship law: *“The decision for release from citizenship of the Republic of Macedonia shall be revoked, if the person who has been granted release continues to live in the Republic of Macedonia, or respectively has emigrated abroad and has not acquired foreign citizenship within one year from the day of delivery of the decision for release”*. This means that citizenship will be automatically restored, i.e. the decision for release from citizenship will be revoked. However, in this case, the child is reliant on the parent to apply for nationality to be restored since paragraph (2) from the same article states that *“the person who has been granted release from citizenship of the Republic of Macedonia shall submit the application for revocation of the decision to the diplomatic-consular mission of the Republic of Macedonia abroad or to the competent state body in the Republic of Macedonia”*.

Facilitated naturalization

Macedonian nationality legislation provides for facilitated naturalisation of stateless persons or persons with recognised refugee status if, from the determination of statelessness or the recognition of refugee status respectively, until the submission of the application for admission into citizenship he/she has been:

- legally and permanently living in the territory of the Republic of Macedonia for at least six years, (in other cases, they have to be legally staying in Macedonia for eight years)
- has not been punished in the Republic of Macedonia with a sentence of imprisonment with a duration of a minimum of one year, for acts which are prosecuted ex officio and which are punishable according to the regulations of Republic of Macedonia,
- no criminal proceedings are being instigated against him/her in the Republic of Macedonia and if he/she fulfils the standard requirements for naturalisation⁶⁶.

The procedure is the same for a person born on the territory of the country and still residing there at the age of majority.

4. Birth registration and statelessness

⁶⁵ Article 19(1) and (2) of the Law on citizenship of the Republic of Macedonia, Official Gazette of the Republic of Macedonia n.67/1992, n.8/2004, n.98/2008 and n.158/2011

⁶⁶ Article 7-a, the Law on citizenship of the Republic of Macedonia, Official Gazette of the Republic of Macedonia n.67/1992, n.8/2004, n.98/2008 and n.158/2011. Worth noting is the fact that they are exempted from the requirements: not to have been sentenced to imprisonment of at least one year in their country of origin; that no criminal procedure is pending against them in the country of origin; and to have renounced their previous nationality.

Access to birth registration

The Republic of Macedonia has an obligation to ensure birth registration for all persons born on the territory of the country regardless of the status or nationality of the child, or the parents. This obligation, which safeguards birth registration as a fundamental human right, arises from the fact that Macedonia is a state party to the International Covenant on Civil and Political Rights (ICCPR) and the Convention on the Rights of the Child (CRC) which were signed and ratified by the former Yugoslavia in 1971 and 1991, respectively. The Law on Registry Records governs the procedures for birth registration and it distinguishes between registration of the fact of the birth of the child in the country's territory, and registration of the personal name of a child.

The birth of a child can be reported in writing or orally to the registry in the municipality where the child was born within a period of 15 days as of the day of birth. When a child is born in a means of transport he/she will be reported to the registry in the municipality where the mother's journey ended⁶⁷. If a child is born in a healthcare institution, the institution is obliged to report the birth of a child at the Registry. Furthermore, the parent or a legal guardian must visit the municipal registry office to complete the birth registration and must provide formal proof of the identity and civil status of both parents, to ensure the registration of the personal name. This procedure must be conducted within two months of the day of the child's birth⁶⁸. If a child is not born in a healthcare institution, the reporting of the birth shall be made by the father of the child, the person in whose home the child was born, the mother as soon as she becomes fit to do this, or the healthcare worker who assisted with the delivery. If none of the persons listed are present or if they are not able to report the birth of the child, it may be reported by a person who has found out about the birth⁶⁹.

Different requirements apply for registration of a birth and registration of a personal name of a child, however **there are no detailed legislative provisions which precisely define the administrative procedures and documentary evidence which the applicants should produce for purposes of registration of both the birth and the personal name of the child. As a consequence, the required proof vary according to the municipality registry officer.** This means that the type of evidence requested is left to the discretion of the registry officer, since the Law on General Administrative Procedure (as *lex generalis*) allows for the officials to require evidence for administrative procedures on the basis of their free assessment.

In practice, the following documents are required to be presented in front of the Registry, for the registration of birth (for children born at hospital) to take place: presence of at least one of the parents; valid documents for identification of both parents; marriage certificate; medical documentation issued from the hospital where the birth took place. The required documents for registration of birth for children born at home, within wedlock, are: presence of at least one of the parents; valid documents for identification of both parents; marriage certificate; presence of two witnesses who have witnessed the birth; valid identification documents of the two witnesses; statement issued by a Gynaecologist that the mother has given birth; immunization cards for the child. **In some cases, where there has been several years from the birth of a child, the parents need to obtain DNA analysis as evidence⁷⁰ which presents an additional and financially costly evidence.** The procedure/documentary evidence required for children born out of wedlock is somewhat more complex in that that requires the presence of both parents, who must produce their own birth certificates not older than six months, if the details of the father are to be recorded in the child birth certificate.

When the child is born abroad, the parents need to submit the child's birth certificate from the country where he/she is registered (not older than 6 month) and their personal documents: ID cards and marriage certificate – (or birth certificates if they are not married) to front the Directorate for Managing Birth Registry

⁶⁷ Article 6 (1) and (2), Law on Registry Records, Official Gazette n.8/1995

⁶⁸ Article 9, Law on Registry Records, Official Gazette n.8/1995

⁶⁹ Article 7, Law on Registry Records, Official Gazette n.8/1995

⁷⁰ The DNA analysis costs 300 EUR.

Records in order for the inscription of the birth to take place in the Republic of Macedonia. The child can be registered as well into the Birth registry records through the Macedonian diplomatic- consular mission in the foreign country.

After 30 days from the day of birth, the birth can be registered through a procedure for subsequent birth registration⁷¹, on the basis of a decision issued by the Directorate, Ministry of Justice. As mentioned above, the Law here as well does not foresee on the basis of which facts and proof the fact of birth shall be determined.

In practice, asylum seekers, recognised refugees, and persons under subsidiary protection have access to birth registration, however, this often presents difficulties. Depending on the registry officer, asylum seekers can register the birth of the child only with an identification document (ID card) issued by the Ministry of Interior, Section for Asylum. Refugees and persons under subsidiary protection can register child's birth with identification document (ID card for recognized refugee or ID card for person under subsidiary protection) issued by the Ministry of Interior, Section for Asylum and ex officio obtained Certificate for confirming the status of the mother and/or father from the same Ministry. Refugee children born out of wedlock are issued incomplete birth certificates, containing only details of the mother.

Access to birth registration is challenging due to the fact that parents often belonging to marginalized groups⁷² are encountering problems in meeting the evidentiary requirements, and the fact that full registration is not automatically conducted once the authorities first learn of the birth of the child. Additionally, the requirement for parents to provide valid identification documentation⁷³ to complete the registration of a child can be impossible for some to meet, and this requirement serves to perpetuate the cycle of undocumented parents transferring their problems with documentation to the next generation. Although not stated in the law, incomplete birth registration (the birth is registered but some details are left out) can occur if the father is not properly documented. However, the absence of the mother's proof of identity blocks completely the registration of both the parents' and the child's name in the birth registry, thus showing that even though not prescribed by law, **in practice it is essential that the mother of the child is properly documented for the birth registration to take place.**

Ebru's story

8-year old Ebru was born in hospital in Veles, Macedonia. Although Ebru's father is Macedonian, Ebru's birth has not been registered due to the fact that the Macedonian authorities require the mother of a child to possess a valid identification document in order to be able to register the child's birth. As a consequence, Ebru's father cannot legally recognize her and Ebru – who has now spent 8 years without a legal identity – is at risk of statelessness.

Ebru's mother Fikret does not have an ID card, nor an alien residence permit. In fact, she is stateless. Fikret was born in Tetovo in 1985 and is of Turkish ethnicity. Her parents came from Serbia to Macedonia before her birth (and before the dissolution of SFRY). In order for Fikret to be issued with an identification document (alien residence permit) she has to obtain a certificate from Serbia that she does not possess Serbian citizenship. She can't understand this: *"I have never traveled outside of Macedonia! I am born here, don't understand why they say (the authority) that I am Serbian?"*

Ebru does not have medical insurance and her parents can't receive social financial assistance because they can't provide identification documents to the Center for Social Welfare. Fortunately, even though Ebru

⁷¹ The parents need to pay 250 MKD (4 EUR) for the procedure of additional inscription of personal name.

⁷² Especially Roma, Ashkali and Egyptians who live in extreme poverty, but as well number of long-term habitual residents and irregular migrants and victims of human trafficking

⁷³ Most importantly, a legally registered residence is required in order personal identity documentation to be obtained.

doesn't have a birth certificate, she is going to elementary school in Demir Kapija (where they currently live) and she was issued a certificate that she finished first grade. When asked whether she likes to go to school, Ebru shyly hid behind her mother's skirt and waived her head affirmatively.

Fikret received information about the free of charge legal aid provided by MYLA from the Roma Information Center, part of the Ministry of Labor and Social Policy in Tetovo. She is currently in the process of collecting all documents necessary to apply for an alien residence permit. Through its partner organization PRAXIS, part of the Western Balkan Legal Aid Network, MYLA will try to obtain a certificate of non-possession of Serbian citizenship. Once Fikret, now pregnant with her second child, obtains an alien residence permit, she will be able to regularize her stay in Macedonia, conclude her marriage with Ebru's father and register Ebru's birth.

State-led initiatives to improve access to birth registration

On 10 September 2009, the Government of the Republic of Macedonia established a Working Group with the purpose of finding a solution for persons who lack basic personal documentation, focusing in particular on resolving the problems of persons whose births/personal names have not been registered in the Birth Registry Books⁷⁴. During the last quarter of 2011, MLSP, in cooperation with the Ministry of Interior, Ministry of Justice and local, mostly Roma NGOs⁷⁵ conducted a nationwide *Action for identification of persons with unregistered births and personal names*. The action was carried out in several stages: identification of cases in the field conducted through mobile teams composed of officials from the Centers for Social Work, Directorate for Managing Registry Records and the Ministry of Interior upon previously gained information and indications where these people reside, later providing opinions from the competent institutions in respect of the information/ cases collected during the field visits and ultimately completion of documentation and submission of applications by the identified individuals to the relevant authority. Within this Action, 441 persons not registered in the Birth Registry Records were identified⁷⁶. Following these activities, in 2012 the UNHCR Representation in Skopje created a cross-sectorial group consisting of representatives of UNHCR, MYLA, Section for Citizenship and Section for Foreigner and Readmission, the Directory for Managing Registry Records, Health Insurance Fund and MLSP with the main purpose of litigating in the complex cases of a risk of statelessness. The Macedonian Young Lawyers Association (MYLA), as a member of the cross- sectorial group, provides its legal expertise in the field and initiates procedures for subsequent registration of births and personal names amongst which are also those requiring extra judicial procedures. Even though the Action for identification has produced some results, i.e. 191 cases were resolved and MLSP financially supported 62 DNA analysis for cases where this type of evidence was necessary to prove the family kinship in order the procedure for birth registration to be conducted, still the everyday work of the civil society shows that the number of persons still not registered in the Birth Registry Records and further facing obstacles to do so is increasing. This has prompted the Ombudsperson of the Republic of Macedonia to recommend further intensification of the Action from March 2014⁷⁷.

Link between birth registration and nationality

⁷⁴ The Working Group is coordinated by the Deputy Minister for Labour and Social Policy, and members include representatives of MLSP, Minister without Portfolio, and a National Coordinator of the Implementation of the Roma Decade, MOI, MOJ, UNICEF, and civil society.

⁷⁵ NRC Kumanovo, LIL Skopje, Ambrela, Sumnal, Roma Information Centers part of Ministry of Labor and Social Policy

⁷⁶ More information on Macedonian available at: <http://www.mtsp.gov.mk/akcija-za-evidencija-na-lica-vo-maticna-kniga-na-rodenite-nbsp> (Accessed on 10.04.2015)

⁷⁷ More information on Macedonian available at:

<http://www.ombudsman.mk/MK/aktivnosti/1214/narodniot-pravobranitel-izgotvi-posebna-informacija-za-sostojbata-so-neregistriranite-lica-vo-nbsp> (Accessed on 11.04.2015)

Birth registration is essential not just in proving a person's legal identity and existence in Macedonia, but also due to the fact that birth registration provides proof of descent and of place of birth and therefore is a legal assumption for citizenship to be determined. When the registration of birth is conducted, according to the evidence presented by the parents and the ex officio communication with the Ministry of Interior (meaning that both a registry officer and citizenship officer consider the case), simultaneously with the issuance of the birth certificate, the child is registered as a citizen of the Republic of Macedonia. The acquisition of citizenship is considered to be automatic due to the fact that no special decision for granting nationality is issued from the Ministry of Interior. **Children born to undocumented parents of undetermined or unknown citizenship are unable to complete their birth registration. They are at risk of statelessness to the extent that this makes it difficult to prove where they were born and who their parents are, which may mean that they will be unable to prove their nationality.**

Badema's story

Badema is a 26-year old ethnic Roma woman who was born in Aversa, Italy. She never knew her father and believes that her mother was of Kosovan origin. Her mother took her to Macedonia as a baby but abandoned her with her grandparents when she was three or four months old. She lived with her grandparents until she was three years old when they placed her in a Centre for abandoned children. In 2006 Badema started to live in a common law marriage with a Macedonian citizen, with whom she now has three children. None of the children's births were registered due to her lack of documentation. Badema is stateless and her children are at risk of statelessness.

Badema contacted MYLA's office in 2012 and with the legal aid provided she was issued with a six month alien residence permit intended to enable her to register her children. However, this proved impossible because of her own lack of an original birth certificate. Meanwhile, her alien residence permit expired and she failed to extend it in time. Like others in her situation, because Badema does not possess any personal documents she has no legal identity – she cannot get married or register her children. She is also denied any state social assistance, does not have health insurance and has no access to formal employment. She lives in extreme poverty in an informal settlement with one room, begging on the streets for money. She and her children remain stuck in limbo.

Her story demonstrates how one legal obstacle leads to several more. Moreover, how the length of the procedures and the various forms of proof required from the state institutions lead to discouragement and frustration among many of the Roma population, further pushing them into poverty and marginalization. Currently, Badema is in a procedure for obtaining another temporary alien residence permit.

Conclusions and recommendations

Macedonia must implement children's right to a nationality in such a way that the best interests of the child are observed. In granting citizenship to otherwise stateless children, the situation of the child should be taken into consideration because it is currently possible that he or she acquires neither the nationality of his or her parents nor that of the state of his or her birth. The focus of the inquiry should not be whether a child's parents are stateless, but whether the child is. Therefore, restricting the application of the European Convention on Nationality (and the 1961 Convention) to children of stateless parents is insufficient in light of the different ways in which a child may be rendered stateless and contrary to the terms of those provisions. The Law on citizenship has to be amended in order to cover all possible situations for otherwise stateless children and meet its existing obligations under the ENC. Moreover, the country has to more actively work towards ratifying the 1961 Statelessness Convention.

Macedonian law does not recognise as a separate category nor have a separate provision regarding *abandoned* children. Macedonia has to ensure that abandoned children whose parents, mothers in particular are known, but have however failed to register the births/personal names of their children, and have subsequently deserted them, are able to acquire Macedonian citizenship. These cases are sometimes described even by the authorities themselves as “impossible to solve”. In situations such as these, the child is most often not even aware of his/her date and place of birth. There is a possibility for the child’s birth to be registered, but only if they are foundlings or children under legal guardianship. Thus the institute foundling within the national citizenship law should be interpreted with greater flexibility, meaning *children found abandoned on the territory of the country should be considered to be foundlings*⁷⁸, whenever the identity of the parents cannot be fully established, in order to fully cover and successfully resolve these cases.

Adequate safeguards need to be put in place for children whose parents lost their Macedonian citizenship in the case of reversal, due to the fact that this may lead to childhood statelessness. Special consideration should be given to the nationality status of these children bearing in mind the guiding principle of “*the best interest of the child*” set in Article 3 of the Convention on the Rights of the Child.

Birth registration is fundamental for acquiring nationality because it documents where a person was born and who the parents are – links which are key to proving whether a child has acquired nationality by place of birth or descent. Most children without birth registration are not stateless, but where children are born in circumstances that might cause statelessness, such as born to marginalised minorities who face difficulties accessing citizenship, lack of birth registration can result in statelessness. In this regard, Macedonia should:

- Implement a comprehensive state strategy which includes changes in the legislation, especially the Law on Registry Records, and consider introducing separate administrative procedure for determining the identity of the person;
- Find appropriate ways to more frequently and continuously inform citizens of their responsibility to register the birth of the child, and especially about the consequences or limited possibilities for realization of the fundamental rights of the child if he/she is not registered;
- Ensure coordination of the activities of relevant stakeholders, particularly between registry offices, police, medical institutions, schools where often undocumented children are enrolled and NGOs, and jointly find solutions to overcome this problem.
- Commit to further implementing the Zagreb Declaration on the Provision of Civil Status and Registration in South East Europe⁷⁹ and EXCOM conclusions on civil registration⁸⁰.

Guidelines regarding implementation of different safeguards, especially concerning foundlings, granting nationality to otherwise stateless children and adoption, need to be developed in order for adequate implementation of the citizenship law to be secured and full protection of the rights of the children ensured. The Macedonian legislator should also consider regulation around surrogacy, in order to prevent possible future situations of childhood statelessness in this context.

From the date of the last amendments of the Law on Citizenship, the Higher Administrative Court as a last judicial instance responsible to deal with the case of statelessness, has received and dealt with 11 cases. These cases were mainly related to acquisition of nationality on the grounds of marriage with a Macedonian citizen and naturalization on a basis of special scientific, economic, cultural, sports or other national interest⁸¹. This route is underutilised in protecting children’s right to a nationality. It is important for legal aid to include judicial procedures in the cases relating to childhood statelessness, due to the fact that courts

⁷⁸ 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, page 12, available at: <http://www.refworld.org/docid/50d460c72.html> (Accessed 30.04.2015)

⁷⁹ Available at: <http://www.unhcr.org/4ec12d0d9.html> (Accessed on 15.04.2015)

⁸⁰ Available at: <http://www.refworld.org/pdfid/525f8ba64.pdf> (Accessed on 15.04.2015)

⁸¹ Publicly available archive of judgements from the Higher Administrative Court of RM, available at: <http://www.vusskopje.mk/Odluki.aspx> (Accessed on 29.04.2015)

provide an important forum to test and enforce laws in a fair and rational manner, further upholding the rule of law in the country.

Annex 1: Key international provisions granting nationality to otherwise stateless children born in the territory

1961 Convention on the Reduction of Statelessness

Article 1

1. A Contracting State shall grant its nationality to a person born in its territory who would otherwise be stateless.

Such nationality shall be granted:

- a. at birth, by operation of law, or
- b. upon an application being lodged with the appropriate authority, by or on behalf of the person concerned, in the manner prescribed by the national law. Subject to the provisions of paragraph 2 of this Article, no such application may be rejected.

A Contracting State which provides for the grant of its nationality in accordance with sub-paragraph (b) of this paragraph may also provide for the grant of its nationality by operation of law at such age and subject to such conditions as may be prescribed by the national law.

2. A Contracting State may make the grant of its nationality in accordance with sub-paragraph (b) of paragraph 1 of this Article subject to one or more of the following conditions:
 - a. that the application is lodged during a period, fixed by the Contracting State, beginning not later than at the age of eighteen years and ending not earlier than at the age of twenty-one years, so, however, that the person concerned shall be allowed at least one year during which he may himself make the application without having to obtain legal authorization to do so;
 - b. that the person concerned has habitually resided in the territory of the Contracting State for such period as may be fixed by that State, not exceeding five years immediately preceding the lodging of the application nor ten years in all;
 - c. that the person concerned has neither been convicted of an offence against national security nor has been sentenced to imprisonment for a term of five years or more on a criminal charge;
 - d. that the person concerned has always been stateless.

[...]

1997 European Convention on Nationality

Article 6 – Acquisition of nationality

[...]

2. Each State Party shall provide in its internal law for its nationality to be acquired by children born on its territory who do not acquire at birth another nationality. Such nationality shall be granted:
 - a. at birth *ex lege*; or
 - b. subsequently, to children who remained stateless, upon an application being lodged with the appropriate authority, by or on behalf of the child concerned, in the manner prescribed by the internal law of the State Party. Such an application may be made subject to the lawful and habitual residence on its territory for a period not exceeding five years immediately preceding the lodging of the application.

Annex 2: List of stakeholders interviewed and/or input received as part of this research⁸²

- Section for Citizenship, Ministry of Interior of the Republic of Macedonia
- Directorate for Managing Birth Registry Records, Ministry of Justice
- Administrative Court of the Republic of Macedonia

⁸² Full details on file with the author.

No child chooses to be stateless. It is a fundamental truth that every child belongs – to this world, to a place and to a community – and this should be recognised through the enjoyment of a nationality. Yet statelessness continues to arise because European states are failing to ensure that all children born within Europe’s borders or to European citizen parents acquire a nationality. The European Network on Statelessness (ENS) advocates as one of its central tenets that none of Europe’s children should have to live without a nationality.

This working paper is one of a series that has been drafted in support of the ENS campaign, launched in November 2014, ‘**None of Europe’s children should be stateless**’. It examines the presence or absence, content and implementation of legislative safeguards for the prevention of childhood statelessness at the national level. Working papers have also been prepared by ENS members in Albania, Estonia, Italy, Latvia, Poland, Romania and Slovenia – each as part of a coordinated approach and employing a common research methodology.

The studies each provide: a detailed legal analysis, including of relevant lower-level circulars/policy guidelines; the identification and analysis of relevant jurisprudence; and data from interviews with implementing authorities, lawyers and other service providers about their knowledge and experience of relevant safeguards, as well as with relevant organisations with regard to advocacy around this issue. Each paper also includes a number of case studies to highlight particular issues identified.



MACEDONIAN
YOUNG LAWYERS ASSOCIATION

*“None of Europe’s children
should be stateless”*



European
Network on
Statelessness