



Discrimination and statelessness – the Roma in the Western Balkans

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The vast majority of persons who are at risk of becoming stateless in the region belong to the Roma ethnic minority, the most vulnerable, socially excluded and economically disadvantaged community in the region. They live in extreme poverty, deprived from rights, opportunities and resources normally available to other members of the society and therefore are less able to regulate their legal status. Many are illiterate or functionally illiterate, unemployed and have been living their entire life in deplorable housing conditions. They experience difficulties in providing evidence that they fulfil the legal requirements for establishing their nationality. This fosters a perception by the wider public that they do not belong to the State they live in and that they are not entitled to become nationals.

Upon the dissolution of Yugoslavia in the '90s many people were displaced and experienced significant problems with civil registration and documentation. The Successor States avoided large-scale statelessness through safeguards, which ensured the principle of continuity of former republican nationality in their new nationality legislation. Although statelessness was largely avoided due to this principle, thousands of people who were not registered as nationals in the Successor State in which they had permanent residence became foreigners overnight. Many other people were registered as nationals of Successor States with which they did not have any genuine links.

Some Successor States offered facilitated access to nationality during a transitional period to former Yugoslav citizens who had permanent (habitual) residence officially registered in the State for a prescribed period of time.¹ Also, most of the Successor States provided privileged access to the dominant ethnic group, giving them advantage over the ethnic minority groups, which had a discriminatory impact on many, especially the most marginalized minority groups.

The most vulnerable and socially marginalized members of the Roma population were not really able to benefit from the facilitated procedures, because they were not able to prove their former republican nationality and/or their permanent residence in the State. In many cases they just missed the deadline for acquiring nationality through a facilitated procedure, due to not being aware that they needed to regulate their status. Many of them had serious difficulties with reconstructing their personal records due to destroyed and missing registries, which in some cases, left them without effective citizenship, placing them at risk of statelessness.²

Without valid records regarding their birth and nationality, registered permanent residence and identity documents, they are not able to meet the requirements for registering the birth of their own children. Despite the States in the Region having established domestic birth registration procedures, there are Roma children who remain unregistered at birth. Although the requirements for birth registration are the same for all, they can be particularly challenging for the Roma who live on the margins of society. If births take place at home, midwives are not authorised to issue attestations of birth. The parents of a child born at home need to provide witnesses who were present at birth.

¹ Permanent (habitual) residence is not understood as stable and factual residence, but as officially registered residence.

² According to UNHCR's 2011 statistics, an estimated 20,186 persons are stateless or at risk of statelessness in the Region.



According to UNHCR's 2011 survey there are approximately 4,500 persons (the vast majority of whom belong to the Roma population) living in Serbia today whose birth is not registered, and 6,900 persons, members of the same community, who do not have their nationality determined and who are therefore at risk of becoming stateless. They lack personal identity documents and have no access to rights and services. The problem of legal invisibility can be passed on through generations. With each new generation it becomes more difficult to prove one's birth, origin and the ties to the state. Each new generation of the invisible will have less information and evidence relevant for acquiring nationality.

Birth and late birth registration are impossible if the mother or both parents do not possess valid identity documents. Roma who live in informal settlements and therefore are not able to officially register their permanent (habitual) residence³ and obtain an ID card, are not able to register the birth and nationality of their children. Also, persons with an undetermined nationality will also not be able to obtain an ID card and register their children, because an ID card is the necessary document when registering a child's birth.⁴ Children born out of wedlock, whose mothers have abandoned them and their whereabouts are unknown, who live with their biological fathers or other members of the family will not be registered at birth, because the mothers need to participate in the procedure. Also, persons who are not registered at birth, whose mothers or both parents are unknown or cannot be located, or do not wish to participate, or whose parents have deceased or abandoned them in childhood (and the children were not appointed legal guardianship while they were under age) will not be subsequently registered in the registries. The plight is even more serious among those who have connections with more than one Successor State established after the break-up of former Yugoslavia.

After years of advocacy efforts in drawing the attention of the state to the extremely difficult position of persons who failed to subsequently register in the birth registry on the grounds of the existing laws, as well as requests for the adoption of an adequate, accelerated and facilitated procedure as a systemic solution to the problem of the legally invisible, in August this year Serbia finally adopted Amendments to the Law on Non-Contentious Procedure prescribing a court procedure for the determination of the date and place of birth of persons who are not registered in the birth registry.

According to the Amendments, a person who has not been registered in the birth registry and cannot prove the date and the place of his/her birth in an administrative procedure for late birth registration, that person can initiate a non-contentious procedure for "proving the fact of birth". In this procedure, one shall provide the court with his/her name and gender, as well as the date and the place of his/her birth, if known, and evidence proving these facts or making them probable. Also other facts which can facilitate the determination of the fact of birth should be provided to the court if available, such as personal data of his/her parents, cousins, siblings, etc.⁵

³ By the end of 2011 Serbia finally adopted a new Law on Permanent and Temporary Residence of Citizens providing the possibility for inhabitants of informal settlements (the vast majority being members of the Roma community) to officially register their residence at the address of a local social welfare center. The Law stipulated a 3-month deadline after the entry into force for the Minister of Interior to adopt bylaws, which would enable implementation of this particular provision. However, the bylaws have not been adopted yet and therefore this provision has not been implemented in practice.

⁴ According to UNHCR's 2011 survey 9,000 persons were estimated not to have registered habitual residence and 16,200 not to possess an ID card (the vast majority of them being members of the Roma ethnic minority).

⁵ If the date and hour of birth of a person not registered into the birth registry cannot be established, the person shall be considered to have been born on 1 January at one second past midnight (00:01 hours) of the year that is the probable year of his/her birth. Also, if his/her place of birth cannot be established, he/she shall be considered born in the municipality or the town in the territory of which the person is likely to have been born.



The court shall examine at least two witnesses of age who have identity documents. The final court decision shall state the name and the surname of the person whose birth is being proved, his/her gender, and the day, month, year, hour and place of birth, including data about his/her parents, if known. The court shall deliver its final decision to the competent registrar to record the fact of birth in the birth registry.

However, according to these amendments, the Ministry of Interior, which is in charge of conducting the procedure for acquisition and determination of Serbian citizenship, shall not be bound by the final court decision on the date and place of birth.

Some persons will face significant problems in proving their right to nationality in the event that they have no proof related to their parents' nationality or they do not have their parents' personal records or relevant details in order to obtain the records from the civil registries. These persons may try to prove their origin on the basis of documents of their siblings, if available. If they do not have any siblings or if no such documents are available, they will probably never manage to determine their citizenship. They will be able to appeal, but only to the same body which reached a negative decision. They will have the possibility of review only by the Administrative Court which in practice very rarely decides on the merits.

While the adoption of the new non-contentious procedure is an extremely important initiative, it is only the first step towards solving the problem. It is yet to be seen if the affected population will benefit from the procedure and in what way the regulations relating to acquisition and determination of citizenship will be implemented in these cases.