

EUROPEAN COURT OF HUMAN RIGHTS

Application No. 32903/22

BETWEEN:

*Ramadani*

Applicant

v.

*Serbia*

Respondent

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WRITTEN SUBMISSIONS ON BEHALF OF THE INTERVENORS

The AIRE Centre (Advice on Individual Rights in Europe)  
and the European Network on Statelessness (ENS)

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pursuant to the Registrar's notification dated 25<sup>th</sup> April 2024 on the Court's permission to  
intervene under Rule 44 § 3 of the Rules of the European Court of Human Rights

16<sup>th</sup> May 2024

## **Birth registration and discrimination against Romani communities**

1. Registering births is crucial in determining and confirming a child's nationality as it allows essential facts to be recorded, such as the date and place of birth and the child's descent, which are essential to establish the child's links to a State. While not having a birth registered or a birth certificate evidencing registration does not equate statelessness, it may lead to challenges proving a person's links to the State, and thereby expose them to a risk of statelessness if their nationality cannot be confirmed. Therefore, birth registration is crucial in preventing statelessness.<sup>1</sup>
2. Children whose birth has not been registered face serious disadvantages in accessing rights and services, including the right to acquire a nationality and a name, to preserve their identity, and the rights to education, healthcare, social security, property, inheritance, work, and political participation.<sup>2</sup> The child's family may also be unable to access parental and child allowances, further contributing to social exclusion.<sup>3</sup> Individuals whose birth has not been registered are also more vulnerable to poverty, marginalisation, discrimination, and violence, and face an increased risk of exploitation, child, early and forced marriage, trafficking, child labour, and other harmful practices.<sup>4</sup>
3. In Western Balkan countries, Roma were often excluded, through direct discrimination or low civil registration rates, from nationality policies designed to ensure continuity following the dissolution of the former Yugoslavia.<sup>5</sup> Across Europe, Romani communities remain disproportionately impacted by difficulties in accessing birth registration due to a range of factors, including inability to meet bureaucratic and documentary evidence requirements, discriminatory attitudes of registry officials, and poverty and marginalisation,<sup>6</sup> which in turn perpetuates a vicious cycle of discrimination.<sup>7</sup>
4. There are credible reports that children are prevented from registering in practice because of parents' lack of documentation, which leaves children at risk of statelessness. This issue disproportionately impacts on the Romani population.<sup>8</sup> The resulting lack of identity documents is perpetuated intergenerationally, as the parents who are undocumented and who may therefore not have the birth of their child registered, were often themselves not registered at birth.<sup>9</sup> Moreover, it is important to consider the nexus between lack of

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<sup>1</sup> European Network on Statelessness (ENS), 'Thematic Briefing, Birth registration and the prevention of statelessness in Europe: identifying good practices and remaining barriers' (July 2020), p. 3, at [statelessness.eu](https://statelessness.eu); ENS, 'Submission to the UN Special Rapporteur on violence against women and girls' (May 2023), p. 1, at [statelessness.eu](https://statelessness.eu); UNHCR, 'Global Action Plan to End Statelessness: 2014-2024', Action 7 (2014), p. 23, at [unhcr.org](https://unhcr.org); UNHCR, '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' (2012), p. 12, at [refworld.org](https://refworld.org).

<sup>2</sup> ENS, 'Thematic Briefing, Birth registration and the prevention of statelessness in Europe' (n 1), p. 3; UN Human Rights Council, 'Birth registration and the right of everyone to recognition everywhere as a person before the law', Resolution A/HRC/RES/52/25 (2023), at [undocs.org](https://undocs.org).

<sup>3</sup> Praxis and ENS, 'Joint submission to the Human Rights Committee on Serbia' (February 2024), § 4, at [statelessness.eu](https://statelessness.eu).

<sup>4</sup> ENS, 'Thematic Briefing, Birth registration and the prevention of statelessness in Europe' (n 1), p. 3; UN Human Rights Council, Resolution A/HRC/RES/52/25 (n 2).

<sup>5</sup> ENS and The AIRE Centre, 'Legal briefing: Statelessness and the prohibition on discrimination against Romani communities' (April 2023), p. 11, at [statelessness.eu](https://statelessness.eu).

<sup>6</sup> ENS, 'Submission to the UN Special Rapporteur on violence against women and girls' (May 2023), p. 1, at [statelessness.eu](https://statelessness.eu).

<sup>7</sup> ENS and The AIRE Centre, 'Legal briefing' (n 5), p. 13.

<sup>8</sup> ENS, Statelessness Index on Serbia, at [index.statelessness.eu](https://index.statelessness.eu); Praxis, Reports, at [praxis.org.rs](https://praxis.org.rs); Protector of Citizens of the Republic of Serbia, 'Report on the position of „Legally Invisible“ Persons in the Republic of Serbia, Belgrade' (2012), p. 11, at [ombudsman.rs](https://ombudsman.rs) (in Serbian); Praxis and ENS, 'Joint submission to the Human Rights Council at the 43<sup>rd</sup> Session of the Universal Periodic Review (4<sup>th</sup> cycle) on Serbia' (October 2022), § 27, at [statelessness.eu](https://statelessness.eu).

<sup>9</sup> Praxis and ENS, 'Joint submission to the Human Rights Committee on Serbia' (n 3), § 4.

documentation and poor statistical representation as an example of the structural discrimination against Roma.<sup>10</sup>

### **Obligations under Article 8 ECHR**

5. Article 8 of the European Convention of Human Rights (ECHR) is engaged when (I) one (or more) of the protected rights is identified and at issue, (ii) there has been an interference or a failure to meet a positive obligation in relation to one or more of those rights. Any such interference or failure must (i) be in accordance with a law which has the requisite “quality of law”, (ii) pursue an identified legitimate aim, and (iii) be proportionate to the legitimate aim pursued. This obligation may include the adoption of specific measures and due diligence to secure this right.<sup>11</sup>
6. Article 8 encompasses a broad range of rights including a person’s right to personal autonomy,<sup>12</sup> the right to establish and develop relationships with others,<sup>13</sup> and the right to establish details of one’s identity.<sup>14</sup> Where refusals of birth registration are concerned, the protected rights are likely to be the right to respect for private life (personal autonomy and identity). The Court recently found that the right to respect for private life under Article 8 includes an individual’s right to have one’s birth registered, given its impact on a person’s daily life and as a prerequisite for establishing personal identity.<sup>15</sup> The failure to have one’s birth registered has been found to interfere with an individual’s “*right to a recognised identity under Article 8*” and sense of personal autonomy.<sup>16</sup> The right to a recognised identity also includes, where relevant, access to other identity documents.<sup>17</sup>
7. The Court has previously acknowledged the significant and negative consequences of lacking birth registration or identity documents on, *inter alia*, an individual’s “*ability to pursue academic studies and training*”,<sup>18</sup> opportunities to “*secure stable job contracts*”,<sup>19</sup> feelings of legal security,<sup>20</sup> as well as access to certain social and economic benefits.<sup>21</sup>
8. The Court has held in e.g. *Mennesson v. France and v. Italy*<sup>22</sup> that, in accordance with the best interests of the child, States have positive obligations under Article 8 of the Convention to establish a legal relationship between children and their intended biological parent(s).<sup>23</sup> The best interests of the child require that any procedure to establish such relationship must be exempt from excessive formalism.<sup>24</sup> The intervenors invite the Court to consider that birth registration is a prerequisite for any procedure to establish a legal parent-child relationship, given the role of birth certificates in conferring legal identity. Refusals of birth registration may also interfere with the right to respect for family life rubric of Article 8 in that it may affect the recognition of family relationships. The Court

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<sup>10</sup> European Roma Rights Centre (ERRC), Institute on Statelessness and Inclusion (ISI), ENS, ‘Roma Belong. Statelessness, Discrimination and Marginalisation of Roma in the Western Balkans and Ukraine’ (October 2017), pp. 17-18, at [statelessness.eu](http://statelessness.eu).

<sup>11</sup> *Hoti v. Croatia*, no. 63311/14, 26 July 2018, § 118; *Kurić v. Slovenia*, no. 26828/06, 26 May 2012, § 358.

<sup>12</sup> *Pretty v. the United Kingdom*, 2346/02, 29 April 2002, §§ 66, 82; *Nada v. Switzerland*, no. 10593/08, 12 September 2012, § 151.

<sup>13</sup> *Pretty v. the United Kingdom* (n 12), § 61.

<sup>14</sup> *Hoti v. Croatia* (n 11), § 119.

<sup>15</sup> *G.T.B. v. Spain*, no. 3041/19, 16 November 2023, § 118.

<sup>16</sup> *ibid*, § 122.

<sup>17</sup> *ibid*, § 118.

<sup>18</sup> *ibid*, § 123.

<sup>19</sup> *ibid*; *Hoti v. Croatia* (n 11), § 126; *Sudita Keita v. Hungary*, no. 42321/15, 12 May 2020, § 34.

<sup>20</sup> *Kurić and Others v. Slovenia* [GC], no. 26828/06, 26 June 2012, § 302; *Hoti v. Croatia* (n 11), § 126.

<sup>21</sup> *Hashemi and Others*, no. 1480/16, 13 January 2022, § 49.

<sup>22</sup> *Mennesson v. France*, no. 65192/11, 26 June 2014, § 100.

<sup>23</sup> *C v. Italy*, no. 47196/21, 31 August 2023, § 68.

<sup>24</sup> *ibid*.

has asserted that a child is part of the family unit from the moment of birth and by the very fact of it, which creates a bond amounting to “family life” between the child and the parent(s) leading to “a positive obligation on the part of the competent authorities to allow complete legal family ties to be formed [...] as expeditiously as possible”.<sup>25</sup> The recognition of a parent-child relationship is also essential for a child’s sense of legal certainty about their identity in society and for the possibility of living and developing in a stable environment.<sup>26</sup> As a result, the Court has noted that the legal-parent child relationship is an essential aspect of the identity of individuals and is included within the right to private life of both the parent and the child.<sup>27</sup>

9. **Given the significant impact of the lack of birth registration on the exercise of other fundamental rights, the intervenors submit that any legal provisions or measures which unduly prevent a child from being registered as soon as possible after birth may have disproportionate impact on the enjoyment of their right to respect for private and family life, thus amounting to a violation of Article 8.**

*The denial of birth registration and its effect on nationality*

10. The lack of a birth certificate can leave individuals particularly vulnerable to statelessness. The intervenors invite the Court to recall its recognition in *Hoti v Croatia* of the adverse impacts of statelessness on an individual’s daily life and the exercise of rights recognised by the ECHR.<sup>28</sup> In *Hashemi and Others v. Azerbaijan*, this Court recognised that official documents attesting to a nationality are indispensable for the effective exercise of many of the rights that nationals alone can claim.<sup>29</sup> The Court found that the refusal to provide access to an identity card to the applicants, and therefore recognise their nationality, was an unjustifiable interference with their right to respect for private life.<sup>30</sup>
11. Without birth registration, individuals may not be able to prove their legal identity, parental links, or place of birth, which affects both *jus sanguinis* and *jus soli* systems of conferring nationality. The Court has found **that the refusal to issue identity cards is comparable to a refusal to recognise an individual’s nationality.**<sup>31</sup>
12. While the right to a particular nationality is not explicitly guaranteed by the Convention or its Protocols, the Court has indicated on several occasions that “**nationality is an element of a person’s identity**” and falls within the scope of Article 8.<sup>32</sup> Access to a nationality is often necessary to grant legal status to an individual, enabling them to exercise their rights, participate fully in society, and enjoy the benefits of belonging to a community. The Court has also considered access to a nationality particularly important for the personal and social identity of children, noting in *Mennesson v. France* that children’s uncertainty concerning the recognition of a certain nationality is “worrying” and “is liable to have negative repercussions on the definition of their personal identity”.<sup>33</sup>
13. **The intervenors submit that the failure to facilitate birth registration impacts individuals’ ability to confirm their nationality with significant consequences for their private and family life. If an individual is unable to confirm their nationality, this can**

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<sup>25</sup> *Kroon and others v. The Netherlands*, no. 18535/91, 27 October 1994, §§ 30, 36.

<sup>26</sup> *D.B. and Others v. Switzerland*, nos. 58817/15 and 58252/15, 22 November 2022, § 87.

<sup>27</sup> *S.-H v Poland*, nos. 56846/15 and 56849/15, 16 November 2022, § 64.

<sup>28</sup> *Hoti v Croatia* (n 11), § 126; *Sudita Keita v Hungary* (n 19), § 34.

<sup>29</sup> *Hashemi and Others* (n 21), § 49; *Ahmadov v. Azerbaijan*, no. 32538/10, 30 January 2020.

<sup>30</sup> *Hashemi and Others* (n 21), § 48.

<sup>31</sup> *ibid*, § 46; *Ahmadov v. Azerbaijan* (n 29), § 45.

<sup>32</sup> *Mennesson v. France* (n 22), § 97; *Zeggai v France*, no. 12456/19, 13 October 2022, § 28; *Ghoumid and Others v. France*, no. 52273/16, 16 November 2020, § 43; *Genovese v. Malta*, no. 53124/09, 11 October 2011, § 33.

<sup>33</sup> *Mennesson v. France* (n 22), § 97; *Labassee v. France*, no. 65941/11, 26 June 2014, § 76.

**be comparable to a denial of nationality by the State.**

14. The Court has indicated that such denial of nationality “*may raise an issue under Article 8*” due to the consequences for the individual’s personal and family life.<sup>34</sup> This is also true for any interference with Article 8 stemming from decisions concerning the acquisition,<sup>35</sup> withdrawal,<sup>36</sup> or revocation of nationality.<sup>37</sup>

Proportionality

15. This Court has previously held that the arbitrary denial of nationality, through inaction of the State, cannot be justifiable given the consequences on the enjoyment of private and family life of the individual.<sup>38</sup> To determine whether a *denial* of nationality is arbitrary, the Court has applied principles established in cases relating to the *deprivation* of nationality, namely that any measure must be “*in accordance with domestic law*”, be “*accompanied by necessary procedural safeguards*”, and be “*implemented diligently and swiftly by authorities*”.<sup>39</sup> A failure to comply with any of these requirements when refusing to issue identity documents or register an individual’s birth would amount to arbitrariness and a violation of Article 8 of the Convention.<sup>40</sup>
16. In addition to determining arbitrariness, it is also the role of the Court under Article 8 to consider whether decisions that interfere with the right to respect for private and family life strike a fair balance between individuals’ right to protection of their rights and the interests of the Contracting State.<sup>41</sup>
17. In all decisions concerning children, States are obliged to consider their best interests as a paramount importance.<sup>42</sup> Given the importance of birth registration for a child’s ability to establish legal identity, exercise fundamental rights, and avoid the adverse consequences of statelessness, it can be concluded that it is never in the best interests of the child to not have access to a nationality (see paras 48 and 54 below).
18. **The intervenors further submit that States have positive obligations to ensure respect for private and family, which includes obligations to facilitate birth registration and issue birth certificates. This procedure must be universally accessible and sufficiently flexible to ensure that children are not left unregistered.**
19. Given the importance of birth registration on an individual’s private life, this Court found in *G.T.B. v. Spain* that **States have a positive obligation to issue birth certificates and other identity documents.**<sup>43</sup> States are afforded a margin of appreciation to decide how to comply with positive obligations, a number of factors relating to the applicant will affect the width of that margin and must be assessed on an individualised basis.<sup>44</sup>
20. In particular, **the margin of appreciation will be restricted “where a particularly important facet of an individual’s existence or identity is at stake”**,<sup>45</sup> as well as in cases concerning vulnerable persons, such as individuals without identity documents and

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<sup>34</sup> *Genovese v. Malta* (n 32), § 33.

<sup>35</sup> *S.-H v Poland* (n 27), § 74.

<sup>36</sup> *Ramadan v. Malta*, no. 76136/12, 21 June 2016, § 85.

<sup>37</sup> *Ghoumid and Others v. France* (n 32), § 43.

<sup>38</sup> *Hashemi and Others* (n 21), § 47.

<sup>39</sup> *ibid*, § 46.

<sup>40</sup> *ibid*, §§ 57-58; *Ahmadov v. Azerbaijan* (n 29), § 45.

<sup>41</sup> *Vavříčka and Others v. the Czech Republic* [GC], no. 47621/13, 8 April 2021, §§ 273-275.

<sup>42</sup> *ibid*, §§ 287-288; *Menesson v. France* (n 22), § 99; *Labassee v. France* (n 33), § 78; *G.T.B. v. Spain* (n 15), § 124.

<sup>43</sup> *G.T.B. v. Spain* (n 15), § 119.

<sup>44</sup> *Strand Lobben and Others v. Norway* [GC], no. 37283/13, 10 September 2019, § 211.

<sup>45</sup> *X and Y v. the Netherlands*, no. 8978/80, 26 March 1985, §§ 24, 27; *Christine Goodwin v. the United Kingdom* [GC], no. 28957/95, 11 July 2002, § 90; *G.T.B. v. Spain* (n 15), § 115.

- stateless persons.<sup>46</sup> The Court has also established that the best interests of the child will weigh in any balancing assessment, narrowing a State’s margin where necessary.<sup>47</sup> The intervenors note that if a chosen solution is not in the best interests of the child, there must be clear evidence demonstrating that their best interests were given primary consideration in practice. To assess whether a fair balance has been struck between competing interests, the Court may recall its finding in *G.T.B. v Spain* that the aim of maintaining reliable information in civil registries “*was not incompatible with assisting a person such as the applicant [...] so as to protect a particularly important facet of the applicant’s identity*”.<sup>48</sup>
21. Finally, the Court also acknowledged that certain circumstances **may require “some adaptability in the standard procedures” to prevent children from being left unregistered.**<sup>49</sup> Such circumstances include instances where the child’s parent is unable to produce the necessary documents to register the birth. Accordingly, in *G.T.B.*, this Court found that Spanish authorities were **required “to act with due diligence in order to assist the applicant to obtain his birth certificate and his identity documents”** when it was proven otherwise impossible.<sup>50</sup> The Court will recall that the failure to act in an adequate and timely manner constituted a violation of Article 8 of the Convention.
  22. The intervenors further note that fulfilling positive obligations may also include implementing mechanisms to ensure universal and flexible access to birth registration immediately after birth to provide all children with a legal identity and enable them to effectively exercise their rights established by the ECHR.

#### **Article 14 with Article 8 ECHR**

23. The ECHR prohibits, under Article 14, discrimination in the enjoyment of Convention rights.<sup>51</sup> In addition, Article 1 of Protocol No. 12, which Serbia has ratified,<sup>52</sup> extends the scope of the protection against discrimination to “*any right set forth by law*” and thereby introduces a more general prohibition of discrimination.
24. **The intervenors submit that the right to immediate birth registration should not be dependent on the documentation status of the child’s parents, as that constitutes both direct and indirect discriminatory treatment prohibited by Article 14.**
25. A legal provision requiring parents to present documentation (such as ID cards or passports) to register the birth of their children immediately after birth, failing which they must undergo an additional court procedure before registering the birth of the child, constitutes a difference in treatment of persons in relevantly similar situations, and therefore amounts to direct discrimination.
26. The requirement to present documentation to register a child’s birth also disproportionately affects Romani populations, which constitutes indirect discrimination.
27. The Court has held that a difference in treatment is discriminatory if it has “*no objective and reasonable justification*”, namely if “*it does not pursue a legitimate aim or if there is not a reasonable relationship of proportionality between the means employed and the aim sought to be achieved*”.<sup>53</sup> Discrimination on the grounds of the parents’ documentation

<sup>46</sup> *Kurić and Others v. Slovenia* [GC] (n 20), § 302; *Hoti v. Croatia* (n 11), § 102.

<sup>47</sup> *El Ghatet v Switzerland*, no. 56971/10, 8 November 2016, § 46; *Neulinger and Shuruk v. Switzerland* [GC], no. 41615/07, 6 July 2010, § 135; *Tarakhel v. Switzerland* [GC], no. 29217/12, 4 November 2014, § 99; *Tuquabo-Tekle and Others v. the Netherlands*, no. 60665/00, 1 December 2005, § 44.

<sup>48</sup> *G.T.B. v. Spain* (n 15), § 124.

<sup>49</sup> *ibid.*, § 122.

<sup>50</sup> *ibid.*, § 124.

<sup>51</sup> *Biao v. Denmark* [GC], no. 38590/10, 24 May 2016, § 130.

<sup>52</sup> Council of Europe, Chart of signatures and ratifications of Treaty 177, Protocol No. 12 to the Convention for the Protection of Human Rights and Fundamental Freedoms (ETS No. 177), at [coe.int](http://coe.int).

<sup>53</sup> *Biao v. Denmark* [GC] (n 51), § 90.

status is not justified, and may effectively hinder the right to a birth registration.

Direct discrimination on the ground of documentation status

28. Discrimination can be direct when a difference in treatment of persons in analogous or relevantly similar situations is based on an identifiable characteristic or status protected by Article 14.<sup>54</sup> The Court has held that the words ‘other status’ in Article 14 “*have generally been given a wide meaning in its case law and their interpretation has not been limited to characteristics which are personal in the sense that they are innate or inherent*”.<sup>55</sup>
29. States enjoy a certain margin of appreciation in assessing whether differences in treatment are justified. However, the scope of that margin varies according to the circumstances, the subject-matter, and the background of the case.<sup>56</sup> The Court has identified certain grounds of discrimination where States’ margin of appreciation is reduced.<sup>57</sup> Contracting States’ international and regional human rights obligations mandate the right to immediate birth registration for all regardless of the documentation status of the child or their parents (see paras 44-54),<sup>58</sup> indicating a consensus among Contracting States to meet this standard, which affects the margin of appreciation in discrimination cases.<sup>59</sup>
30. This Court has also previously ruled that “*very weighty reasons would have to be put forward before it could regard a difference in treatment based exclusively on the grounds of nationality as compatible with the Convention*”.<sup>60</sup>
31. This Court applies a narrow margin of appreciation to a difference in treatment on the grounds of nationality. **By analogy, the intervenors submit that a narrow margin of appreciation should be applied to a difference in treatment on the ground of documentation status, given the impact of the lack of documentation on an individual’s private and family life – particularly where it prevents immediate birth registration, confirmation of nationality, and increases the risk of statelessness.**
32. Furthermore, the applicant’s personal situation must be taken into account “*exactly as it stands*” and dismissing the victim’s claims on the ground that they “*could have avoided the discrimination by altering one of the factors in question – for example, by acquiring a nationality – would render Article 14 devoid of substance*”.<sup>61</sup> It is very difficult for vulnerable populations, including Roma, to obtain documentation, often due to the lack of public measures to address systemic forms of discrimination in law or in practice. This makes documentation requirements challenging, if not impossible, to meet.
33. **The right to birth registration is universal and unconditional. As such, children born to undocumented parents in a State’s territory are in a relevantly similar position to children born in the same territory to documented parents, particularly as the status of the parents should not influence the child’s right to birth registration.**
34. **The imposition of a requirement, in law or in practice, which allows documented parents to immediately register their child’s birth while requiring undocumented parents to undergo an additional court procedure to register the birth of their child, amounts to a differential treatment on the ground of documentation status. The**

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<sup>54</sup> *ibid*, § 89; *D.H. and Others v. the Czech Republic* [GC], no. 57325/00, 13 November 2007, § 175; *Varnas v. Lithuania*, no. 42615/06, 9 July 2013, § 106; *Hoogendijk v. the Netherlands* (dec.), no. 58641/00, 6 January 2005.

<sup>55</sup> *Molla Sali v. Greece* [GC], no. 20452/14, 19 December 2018, § 134.

<sup>56</sup> *ibid*, § 136.

<sup>57</sup> ECtHR, ‘Guide on Article 14 of the European Convention on Human Rights and on Article 1 of Protocol No. 12 to the Convention’ (August 2022), § 74, at [echr.coe.int](https://www.echr.coe.int).

<sup>58</sup> ENS, ‘Thematic Briefing, Birth registration and the prevention of statelessness in Europe’ (n 1), p. 4.

<sup>59</sup> ECtHR, ‘Guide on Article 14’ (n 57), § 75.

<sup>60</sup> *Andrejeva v. Latvia* [GC], no. 55707/00, 18 February 2009, § 87.

<sup>61</sup> *ibid*, § 91.

**impact of such differential treatment is particularly weighty when the additional procedure is complex, lengthy, or ineffective in practice.**

35. **A difference in treatment in accessing immediate birth registration on the ground of the absence of parental documentation does not pursue a legitimate aim within the spirit of the Convention and is therefore unjustified, thus constituting direct discrimination that is prohibited by Article 14 in conjunction with Article 8.**
36. Article 14 of the Convention, read in conjunction with Article 8 and in line with international norms and best practices, imposes positive obligations on States to remove any barriers that discriminate or impede access to birth registration, and “*documentation requirements that are difficult or impossible to fulfil, in particular for persons in vulnerable situations*”.<sup>62</sup> There is positive State practice, including in North Macedonia where all children born on the territory must be registered immediately irrespective of the nationality or documentation status of their parents.<sup>63</sup>
37. The intervenors invite the Court to consider whether the aim of imposing documentation requirements to establish the identity of the parents and the facts of birth could be achieved by less disadvantageous measures,<sup>64</sup> such as the acceptance of non-documentary evidence, oral testimony, *ex officio* investigations,<sup>65</sup> or solemn declarations.<sup>66</sup>
38. In the alternative, the intervenors note that **Article 14 may impose positive obligations to correct factual inequalities.**<sup>67</sup> Failing to do so may be “*tantamount to turning a blind eye to the specific nature of acts*” which were previously destructive of fundamental rights.<sup>68</sup> In *Horváth v. Hungary*, the Court recognised the need for positive measures to overcome the obstacles faced by Romani children to access education due to past discrimination.<sup>69</sup> **Parents who are unable to present the documentation required to register a child’s birth should not be prevented from doing so because of past, intergenerational discrimination which prevented them from obtaining the required documents in the first place. Serbian procedures should allow for these positive measures because it is in the best interests of the child to be registered as soon as possible after birth. The best interests of the child must be a primary consideration, not the administrative convenience of the authorities.**

#### Indirect discrimination on the ground of ethnic origin

39. Discrimination can also be indirect when certain policies or measures have “*disproportionately prejudicial effects on a particular group*”,<sup>70</sup> even though it is neutrally formulated,<sup>71</sup> not specifically aimed at that group, and has ‘no discriminatory intent’.<sup>72</sup>

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<sup>62</sup> UN Human Rights Council, Resolution A/HRC/RES/52/25 (n 2).

<sup>63</sup> North Macedonia: Law on Civil Registry, 21 June 2023, Article 4-a, at [refworld.org](https://refworld.org); ENS, ‘Statelessness Index on North Macedonia’, at [index.statelessness.eu](https://index.statelessness.eu); Macedonian Young Lawyers Association, ERRC, ISI, ENS, ‘Joint submission to the Human Rights Council at the 46<sup>th</sup> session of the Universal Periodic Review on North Macedonia’ (October 2023), § 23, at [statelessness.eu](https://statelessness.eu).

<sup>64</sup> See e.g. CJEU, *Kalliri*, C-409/16, judgment of 18 October 2017, § 42; ECtHR, *Fernandez Martinez v. Spain*, no. 56030/07, 12 June 2014, § 132; *Moraru v Romania*, no. 64480/19, 8 November 2022.

<sup>65</sup> ENS, ‘Thematic Briefing, Birth registration and the prevention of statelessness in Europe’ (n 1), p. 10. See, e.g., an example in Austria in ENS, ‘Statelessness Index on Austria’, at [index.statelessness.eu](https://index.statelessness.eu).

<sup>66</sup> See, e.g., an example in Czechia in ENS, ‘Statelessness Index on Czechia’, at [index.statelessness.eu](https://index.statelessness.eu); Czechia, Act on Birth registry (zákon o matrikách) no. 301/2000 Sb, at [aplikace.mvcr.cz](https://aplikace.mvcr.cz) (in Czech).

<sup>67</sup> *Thlimmenos v. Greece* [GC], no. 34369/97, 6 April 2000, § 44.

<sup>68</sup> *Abdu v. Bulgaria*, no. 26827/08, 11 March 2014, § 44.

<sup>69</sup> *Horváth and Kiss v. Hungary*, no. 11146/11, 29 January 2013.

<sup>70</sup> *D.H. and Others v. the Czech Republic* [GC] (n 54), § 175; *Biao v. Denmark* [GC] (n 51), § 103.

<sup>71</sup> *D.H. and Others v. the Czech Republic* [GC] (n 54), § 184.

<sup>72</sup> *Biao v. Denmark* [GC] (n 51), § 91; *D.H. and Others v. the Czech Republic* [GC] (n 54), § 184.



Laws preventing immediate birth registration for children born to undocumented parents, even if they do not explicitly differentiate on the basis of ethnic origin, may have disproportionately prejudicial effects on minority communities (see paras 1-4).

40. The Court has held that “[d]iscrimination on account of a person’s ethnic origin is a form of racial discrimination” and “authorities must use all available means to combat racism”.<sup>73</sup> The Court has further held that “where a difference in treatment is based on race or ethnicity, the notion of objective and reasonable justification must be interpreted as strictly as possible”<sup>74</sup> and “no difference in treatment which is based exclusively or to a decisive extent on a person’s ethnic origin is capable of being objectively justified”.<sup>75</sup>
41. Bureaucracy and institutional barriers, systemic marginalisation, and the lack of measures to address discriminatory attitudes and promote registration, have perpetuated low civil and birth registration rates among the Roma.<sup>76</sup> As held by the Court, Roma have become a specific type of disadvantaged and vulnerable minority who thus require special protection,<sup>77</sup> and “special consideration should be given to their needs [...] both in the relevant regulatory framework and in reaching decisions in particular cases”.<sup>78</sup>
42. **Requirements imposing the presentation of documentation in order to access immediate birth registration disproportionately affect Romani populations due to the low rates of civil and birth registration among this community. As such, the intervenors consider that the cumulative impact of such interference constitutes indirect discrimination and contravenes Article 14 taken together with Article 8.**
43. Moreover, there is international consensus among Contracting States to recognise the “special needs of minorities” and “protect their [...] identity”.<sup>79</sup> **To break the cycle of marginalisation and risk of statelessness, the intervenors submit that Contracting States have a positive obligation to prevent and address systemic discrimination which limits Romani individuals’ access to documentation, and in turn hinders their children’s ability to access to birth registration.**

### **Article 53 ECHR**

44. **Article 53 prohibits *inter alia* a construction of Convention rights which would limit the human rights and fundamental freedoms ensured under any other agreement to which the respondent State is a party.** When construing the rights and freedoms which are defined in the Convention, this Court must guarantee at least the level of protection of those human rights and fundamental freedoms already guaranteed by other international agreements to which the relevant Contracting State is a party.
45. Serbia succeeded to the UN Convention on the Rights of the Child (CRC);<sup>80</sup> the International Covenant on Civil and Political Rights (ICCPR);<sup>81</sup> the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD);<sup>82</sup> the

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<sup>73</sup> *Sejdić and Finci v. Bosnia and Herzegovina* [GC], nos. 27996/06 and 34836/06, 22 December 2009, § 43.

<sup>74</sup> *ibid.*, § 44. See also *D.H. and Others v. the Czech Republic* [GC] (n 54), § 196.

<sup>75</sup> *Sejdić and Finci v. Bosnia and Herzegovina* [GC] (n 73), 22 December 2009, § 44. See also *D.H. and Others v. the Czech Republic* [GC] (n 54), § 176.

<sup>76</sup> ERRC, ISI, ENS, ‘Roma Belong’ (n 10), p. 14.

<sup>77</sup> *D.H. and Others v. the Czech Republic* [GC] (n 54), § 182.

<sup>78</sup> *ibid.*, § 181.

<sup>79</sup> *ibid.*, § 181.

<sup>80</sup> UN General Assembly, *Convention on the Rights of the Child*, United Nations, Treaty Series, vol. 1577, p. 3, 20 November 1989.

<sup>81</sup> UN General Assembly, *International Covenant on Civil and Political Rights*, United Nations, Treaty Series, vol. 999, p. 171, 16 December 1966.

<sup>82</sup> UN General Assembly, *International Convention on the Elimination of All Forms of Racial Discrimination*, United Nations, Treaty Series, vol. 660, p. 195, 21 December 1965.

- Convention on the Elimination of Discrimination Against Women (CEDAW);<sup>83</sup> and the International Covenant on Economic, Social and Cultural Rights (ICESCR).<sup>84</sup>
46. Serbia also acceded to the **1961 Convention on the Reduction of Statelessness** (1961 Convention).<sup>85</sup> The aim and focus of this instrument is the prevention and reduction of statelessness at birth.<sup>86</sup> It mandates States to implement safeguards to prevent statelessness at birth or later in life, including by granting their nationality to children born on their territory who would otherwise be stateless. Birth registration is crucial to ensure the implementation of such safeguards.<sup>87</sup> The 1961 Convention also protects people from being discriminatorily deprived of their nationality “*on racial, ethnic, religious or political grounds*”, which applies regardless of whether statelessness results from the deprivation.<sup>88</sup>
  47. **Article 7 CRC** explicitly requires that children must be registered immediately after birth and enjoy the right to acquire nationality. The rights set forth in the CRC, including the right to acquire nationality, must be exercised regardless of the child’s or their parents’ race, colour, ethnic or social origin, birth, or other status – such as documentation status.<sup>89</sup>
  48. The right to acquire nationality from birth falls within the scope of **Article 3 CRC**, which states that the best interests of the child shall be a primary consideration in all actions concerning children. CRC General Comment (GC) No. 14 elaborates on the best interests principle and makes it clear that “*inaction or failure to take action and omissions are also ‘actions’*” for the purposes of Article 3.<sup>90</sup> It clarifies that the decision making process must include an evaluation of the impact of the decision (or the lack thereof) on the children concerned that assessing and determining their best interests requires explicit procedural guarantees.<sup>91</sup> GC No. 14 further recognises that the scope of decisions made by administrative authorities is “*very broad*” and may encompass decisions relating to, among other things, access to nationality. In all such decisions, the process must be guided by the best interests of the child.<sup>92</sup> **The failure of national authorities to register a child’s birth and grant nationality automatically at birth amounts to a failure to take action and cannot be concluded to have been in the best interests of the child.**
  49. In General Comment No. 7, on rights in early childhood, the CRC Committee states that the existence of comprehensive services for registration at birth is a first step in ensuring rights to survival, development, and access to quality services. This may be achieved

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<sup>83</sup> UN General Assembly, *Convention on the Elimination of All Forms of Discrimination Against Women*, United Nations, Treaty Series, vol. 1249, p. 13, 18 December 1979.

<sup>84</sup> UN General Assembly, *International Covenant on Economic, Social and Cultural Rights*, United Nations, Treaty Series, vol. 993, p. 3, 16 December 1966.

<sup>85</sup> UN General Assembly, *Convention on the Reduction of Statelessness*, United Nations, Treaty Series, vol. 989, p. 175, 30 August 1961. Serbia acceded to the 1961 Convention on 7 December 2011. See [refworld.org](http://refworld.org).

<sup>86</sup> 1961 Convention, second recital; UNHCR, ‘Convention on the Reduction of Statelessness, Introductory note by the Office of the United Nations High Commissioner for Refugees’ (May 2014), pp 3-5, at [unhcr.org](http://unhcr.org). For information about statelessness and birth registration, see ENS, ‘Written submissions to inform the European Commission 2024 Enlargement Package’, at [statelessness.eu](http://statelessness.eu). See also Praxis and ENS, ‘Joint Submission to the Universal Periodic Review on Serbia’ (n 8); UNHCR, ‘Guidelines on Statelessness No. 4’ (n 1), §§ 8-10; and ENS, ‘Thematic Briefing, Birth registration and the prevention of statelessness in Europe’ (n 1).

<sup>87</sup> UNHCR, ‘Global Action Plan to End Statelessness: 2014-2024’, Action 7 (2014), p. 4, at [unhcr.org](http://unhcr.org).

<sup>88</sup> 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.

<sup>89</sup> CRC, Articles 2, 3, 7 and 8. See also Committee on the Rights of the Child, General comment No. 7 (2005) on implementing child rights in early childhood (GC No. 7), § 25; and General Comment No. 11 (2009) on indigenous children and their rights under the Convention, § 41.

<sup>90</sup> Committee on the Rights of the Child, General comment No. 14 (2013) on the right of the child to have his or her best interests taken as a primary consideration (GC No. 14), § 18.

<sup>91</sup> *ibid*, § 99.

<sup>92</sup> *ibid*, § 30.

through “a universal, well-managed registration system that is accessible to all”.<sup>93</sup> It is the responsibility of the State which has ratified the CRC to ensure its full implementation, as stated in Article 4 and elaborated in GC No. 5.<sup>94</sup> The CRC Committee has also held that “[u]niversal free birth registration is a prerequisite” for “barriers to children’s access to health services, including financial, institutional, and cultural barriers, [...to] be identified and eliminated.”<sup>95</sup>

50. **Article 2 ICCPR** prohibits discrimination and **Article 24(3) ICCPR** provides that every child has the right to acquire nationality. In 2017, the Human Rights Committee noted the “continued difficulties faced by internally displaced Roma” on ground such as registering births<sup>96</sup> and recommended that Serbia increase its efforts to facilitate and enable the registration of children whose parents lack identification documents.<sup>97</sup>
51. **Article 5(d)(iii) ICERD** contains a further undertaking by State parties to guarantee the right, among others, to nationality. In its General Recommendation No. 27, the ICERD Committee recommended that States review, enact or amend legislation to eliminate all forms of racial discrimination against Roma,<sup>98</sup> and ensure that legislation on citizenship and naturalisation do not discriminate against them.<sup>99</sup>
52. The CEDAW Committee has been willing to recognise that discrimination persists against Romani women and girls. For instance, in the Committee’s view in *LA v North Macedonia*, it recommended that the State party adopt measures to combat intersecting forms of discrimination against Romani women and girls.<sup>100</sup>
53. The UN Human Rights Council’s resolution ‘Birth Registration and the Right of Everyone to Recognition Everywhere as a Person Before the Law’ emphasised the importance of birth registration as an official record of a person’s existence and recognition before the law, and expressed concern that unregistered persons would have limited or no access to the services and rights they are entitled to.<sup>101</sup> It further called on States to ensure universal, accessible, simple, expeditious and effective registration without discrimination.
54. The intervenors finally note that Serbia was granted candidate status in the EU in 2012.<sup>102</sup> Candidate States should aim to comply with standards under EU law, in particular, EU law provisions against discrimination, such as Article 21(1) of the Charter of Fundamental Rights of the European Union. This Court may also want to consider the findings of the CJEU which held that the respect for private and family life in conjunction with the best interests of the child obliges the immediate registration of children upon birth and the provision of identity documents.<sup>103</sup>

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<sup>93</sup> Committee on the Rights of the Child, General comment No. 7 (2005) on implementing child rights in early childhood, § 25.

<sup>94</sup> Committee on the Rights of the Child, General Comment No. 5 (2003) on general measures of implementation of the Convention on the Rights of the Child, p. 4.

<sup>95</sup> Committee on the Rights of the Child, General comment No. 15 (2013) on the right of the child to the enjoyment of the highest attainable standard of health, § 29.

<sup>96</sup> Human Rights Committee, Concluding Observations on the Third Periodic Report of Serbia (10 April 2017), CCPR/C/SRB/3, § 14.

<sup>97</sup> *ibid*, § 15. See also Human Rights Committee, List of Issues in relation to the Fourth Periodic Report of Serbia (3 May 2024), CCPR/C/SRB/Q/4, § 8; Praxis and ENS, ‘Joint Submission to the Universal Periodic Review on Serbia’ (n 8).

<sup>98</sup> CEDAW Committee, General Recommendation No. 27 on Discrimination Against Roma, § 1.

<sup>99</sup> *ibid*, § 4.

<sup>100</sup> CEDAW Committee, *LA v North Macedonia*, § 9.8(b)(i) and (vi). See also CEDAW Committee, *SB and NB v North Macedonia*, § 9(vi).

<sup>101</sup> UN Human Rights Council, Resolution A/HRC/RES/52/25 (n 2).

<sup>102</sup> See European Commission, ‘Serbia, membership status: candidate country’, at [ec.europa.eu](https://ec.europa.eu).

<sup>103</sup> CJEU, Case C-490/20, *V.M.A. v. Stolichna obshtina, rayon ‘Pancharevo’*, 14 December 2021; CJEU, Case C-2/21, *Rzecznik Praw Obywatelskich*, 24 June 2022.