

# Ending Childhood Statelessness:

## A Study on Albania

Working Paper 06/15



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This working paper was commissioned by the European Network on Statelessness (ENS) a civil society alliance with 100 members in over 30 countries, committed to addressing statelessness in Europe. Among other objectives, ENS advocates for the enjoyment of a right to a nationality by all. This working paper is part of a series that has been produced in support of the ENS Campaign “None of Europe’s children should be stateless” which was launched in November 2014. ENS wishes to acknowledge the generous support for this campaign received from the Sigrid Rausing Trust and the Office of the United Nations High Commissioner for Refugees (UNHCR).

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## Introduction

This report was drafted in the context of the campaign “None of Europe’s children should be stateless”, initiated by the European Network on Statelessness (ENS), of which Tirana Legal Aid Society (TLAS) is a member. The objective is to promote measures that ensure the right to a nationality for children born in Europe and to prevent childhood statelessness. TLAS, as a specialized NGO in the area of birth and civil registration, carried out this research. The report identifies gaps in the legislation and practice in Albania that is putting children at risk of statelessness, with a view to raising awareness of and exploring solutions for these issues, including with the Albanian legislative and executive bodies.

The Albanian legal framework has significantly improved during recent years but the country is yet to meet its international obligations, especially in preventing situations of childhood statelessness. The existing legislation regarding statelessness does not reflect all the international obligations which stem from the Conventions ratified by Albania<sup>1</sup>. As a result, there are gaps within Albanian legislation that need to be addressed to achieve the necessary compliance with international and European standards, and in order to satisfy the standards required for the European Accession Agreement<sup>2</sup>.

### 1. Statelessness in the national context

#### *International Obligations*

The Republic of Albania is a party to the 1954 Convention Relating to the Status of Stateless Persons, which it acceded to in 2003. In the same year, Albania also acceded to the 1961 Convention on the Reduction of Statelessness, following its ratification in 2002 of the European Convention on Nationality. Albania is not a party to the 2006 Convention of the Council of Europe on the Avoidance of Statelessness in relation to State Succession. Albania has ratified the Convention on the Rights of the Child in 1991, the International Covenant on Civil and Political Rights in 1991, the International Convention on the Elimination of All Forms of Racial Discrimination in 1993, the Convention on the Elimination of All Forms of Discrimination against Women in 1993 and the UN Convention on the rights of persons with disabilities in 2012. Albania has not, in its ratification of the aforementioned international instruments, made any reservations concerning the right of children to a nationality.

According to the Albanian legislation, more specifically according to articles 116 and 117 of the constitution of the Republic of Albania:

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<sup>1</sup> UNHCR, “Addressing Statelessness in Albania as a protection tool, Gap Analysis Framework”, 2013; UNHCR, “Mapping Statelessness Report, Common outline for Albania”, 2011.

<sup>2</sup> In its 2013 Enlargement Strategy, the European Commission identified reinforcing the protection of human rights, including of Roma and anti-discrimination policies, as one of the five remaining key priorities for the opening of accession negotiations with Albania. See <http://eudelegationalbania.wordpress.com/2014/02/20/eu-albania-policy-dialogue-seminar-on-inclusion-of-roma-and-egyptian-communities/>

*“Normative acts that apply to all the territories of the Republic of Albania are:*

- a) The constitution;*
- b) Ratified international agreements;*
- c) Laws;*
- d) Normative acts of the Council of Ministers*

*Ratified international agreements are announced and published through the same procedures that are used for other laws. The announcement and the publication of other international agreements are described in the respective legislation.”*

Thus, in Albania, **ratified international acts and agreements take priority over domestic legislation the aforementioned international acts are considered part of Albania’s legislation and so a number of important international legal safeguards against statelessness are subject to direct application in the country.**

#### *National legislative framework*

The acquisition and relinquishment of Albanian nationality is regulated by Law no. 8389 dated 05.08.1998 “On Citizenship”, as amended by Law no. 8442, dated 21.01.1999. The legislative changes which occurred in 1999 are the most recent reforms passed.

In accordance with the legal provisions that define the criteria for acquiring, relinquishing and re-acquiring Albanian citizenship, the following by-laws have been adopted which define the rules, time-limits, documentation and competent authorities to consider such applications:

1. Joint Instruction no. 6252, dated 10.12.2001 and no. 3583, dated 11.27.2001 of the Ministry of Foreign Affairs and the Ministry of Public Order “On procedures and documentation for acquiring, reacquiring, and the renunciation of Albanian citizenship”, as amended by mutual Instruction no. 10452/2, dated 26.09.2007 and no. 5212/2, dated 17.09.2007 of the Ministry of Foreign Affairs and the Ministry of Internal Affairs;
2. Decision no. 554, dated 07.03.2013 “On defining of the procedures for recognition or acquisition of Albanian citizenship by persons of Albanian origin, with the exception of citizens of the Republic of Kosovo”;
3. Joint Instruction no. 4573/3, dated 12.07.2013 “On the procedures, time-limits and documentation requirements for the recognition of Albanian citizenship, their review, and the form and manner of filling of the application for acquiring citizenship by persons of Albanian origin”.

**Albanian Law embraces two concepts of acquisition of citizenship, *jus soli* and *jus sanguinis* – based respectively on birth in Albanian territory and on a blood relationship with an Albanian national. In each case, the law provides a procedure to be followed to acquire citizenship despite acquisition, on the face of the law,**

**being automatic and problems relating to the registration of children have, in practice, contributed to the denial of citizenship.** The details of these laws and practices are set out later in the report.

The acquisition, loss or renunciation of Albanian citizenship must be ratified through a decree of the President of the Republic. The person concerned must complete the necessary documentation required and the Ministry of Interior<sup>3</sup> then checks and verifies these documents, before delivering the request to the President for consideration and enactment. A decision to refuse the delivery of the documentation to the President can be challenged in court and the competent Court is the District Court of Tirana (Article 19(3) of the Law no. 8389, dated 08.05.1998 "On Citizenship" as amended)<sup>4</sup>. The law does not provide for the possibility to appeal against the Presidential decree on the grant or removal of citizenship. However, through decision no. 5139/ 23.12.2002, the District Court of Tirana considered itself competent to judge the Presidential decree on "the revocation of nationality of S.N.". This case demonstrates that the courts have accepted that the constitutional principles of "fair trial" and "right to appeal" make up for the absence of legal provisions on the right to appeal in cases of nationality and may consider such cases if put before them. Nevertheless, it is necessary to amend the law to introduce the right to appeal against Presidential decrees relating to nationality. The President and the Ministry of Interior have different prerogatives: the Ministry checks whether the format of the request is correct, but it has no right to evaluate the legal basis of any application and only the President can determine whether an application is supported by the law. As such, it is problematic that the existing law does not guarantee the right to appeal against a dismissive decision of the President of the Republic.

#### *(Childhood) statelessness in the national context*

Law no. 108/2013 "On Foreigners" provides a definition of a "stateless person" in Article 3(2) which states: "stateless person means a person who is not a citizen of any state". This law provides that stateless persons must be equipped with special travel documents<sup>5</sup>, in order to ensure their return to the Republic of Albania. **However, the law does not provide a special status for stateless people, nor does Albania have a statelessness status determination procedure in place.** Due to the lack of a law on statelessness, the legal status of stateless persons is not governed by any regulation and law. Moreover, in practice, stateless persons are not issued with travel documents to allow them to leave the country.

Official data relating to the population of Albania is compiled by the Institute of Statistics of the Republic of Albania. **The most recent population data is that which was gathered through the national census conducted in 2011. This included the category of stateless persons, who numbered 7.443<sup>6</sup>,** distributed by gender as follows: 3,874 stateless men and 3,569 stateless women. Persons identified as stateless in the census were

<sup>3</sup> Law no. 8389, dated 05.08.1998 "On Citizenship" as amended, refers to the Ministry of Interior as "Ministry of Public Order", referring to the previous name of the institution.

<sup>4</sup> Article 19/3 "The decision to make or not the request by the Ministry of Public Order is made known to the parties concerned, which, if they do not agree with its contents, can file a suit with the district court Tirana".

<sup>5</sup> Law no. 108/2013 "On Foreigners", Article 16(3): "The responsible central authority for migration and borders releases travel documents for stateless individuals, according to the conditions set by international conventions and acknowledged by the Republic of Albania. These stateless persons must be residents in the Republic of Albania, and have the right to return back as long as the document is valid. This document expires 2 years after the date of issuance".

<sup>6</sup> <http://www.instat.gov.al/al/census/census-2011/t%C3%AB-dh%C3%ABnat-e-census-2011.aspx>

those individuals who self-declared their statelessness<sup>7</sup>. As such, these numbers may not be fully accurate, as they could include citizens or stateless persons who have given incorrect answers in the census questionnaire regarding their citizenship, based on self-perception. Moreover, the census does not provide data on the further demographics of these individuals, the number of stateless children or the reasons for statelessness<sup>8</sup>. The national Census is the only official method of data gathering on the population and no survey has been initiated to date by other stakeholders to study the situation of stateless persons in the country. The law “On Civil Status”<sup>9</sup> does provide that the General Directorate of Civil Status must maintain a distinct register for stateless individuals, recording their whereabouts in the Republic of Albania. Yet, such individuals are included in the same register as those people who have renounced Albanian nationality. This method makes it impossible to distinguish between individuals who have renounced Albanian nationality to acquire another one, and those who have remained stateless. For this reason, it is not possible to extract accurate data on the number of stateless individuals from this source, nor – again – on the reasons for their statelessness. Furthermore, recent studies conducted by INSTAT, UNHCR and non-governmental bodies,<sup>10</sup> have not produced any data on the number of stateless children in the country.

Nevertheless, some profiles have emerged of individuals or groups who are affected by statelessness or a risk of statelessness in Albania. According to stakeholders interviewed for this research, there are several different causes and affected populations:

- **Vulnerable and marginalized individuals – mainly, but not exclusively, belonging to the Roma community – who encounter problems with civil registration in general and with birth registration in particular.** These persons mostly lack the required documentation to fulfil the legal requirements for the registration of births, as well as of deaths, marriages, legal residency transfers, divorces, child custody, etc. Other reasons children can be left without birth registration and at risk of statelessness are linked to (i) urban-rural distances (long distance from the health care centres, a serious lack of specialized doctors in regional hospitals and other circumstances that have obliged women to give birth at home), (ii) blood feud problems (forcing many people to seclude themselves and members of their families isolating them from the social, cultural, economic, and hence also administrative, life of the community), (iii) absence of information about the registration process or other similar reasons.
- **Certain Albanian emigrants – individuals who move abroad for a number of different reasons – who were left stateless due to voluntary renunciation of nationality and/or (failed) citizenship applications in the destination country.** For example, a number of returned immigrants from Germany have lost their Albanian citizenship as part of their applications for German citizenship and been left stateless.

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<sup>7</sup> Interviews with E.gjoleka, A.Mele, H.Gorenca respectively, the representatives of Directory of Civil Status, Directorate of Stateless and Refugee and UNHCR officer in Albania.

<sup>8</sup> Gap Analysis Framework - Statelessness Albania, UNHCR 2013 Report , Mapping Statelessness Report, Common outline for Albania, UNHCR,2011

<sup>9</sup> Law no.10129, dated 11.5.2009 “On Civil Status” amended by the articles 21 and 59.

<sup>10</sup> UNHCR, “Mapping Statelessness Report, Common outline for Albania”, 2011 and “Gap Analysis Framework, in Statelessness in Albania”, 2013; Tirana Legal Aid Society Assessment of feasibility for the electronic registration of child births in Albania, 2013; National Union of Roma – Amarodrom data provided in 2010; 2011: <http://census.al/Resources/Data/Census2011/CenusQuestionnaire.pdf> , Question 39; Centre for Economic and Social Studies (CESS), Mapping Roma Children in Albania, 2011.

Others voluntarily gave up Albanian citizenship hoping to benefit from property ownership, pension payments or other benefits abroad, for example in Greece where they based this decision on false information they had gathered in relation to the application of Greek legislation. According to the Directorate for Nationality and Refugees in the Ministry of Interior of Albania in 2011, there was a group of some 3,000 Albanian individuals who had voluntarily given up their citizenship in the early 1990s or thereafter, in order to obtain a different citizenship, but who are now attempting to regain their Albanian citizenship (although it is not reported how many of these persons are stateless). In some cases, the process for reacquisition of nationality is complicated by the fact that the person has not registered in the regional civil status offices and therefore has to go through judicial procedures.

- **A number of asylum seekers, from various countries, who are stateless due to nationality problems in their place of origin.** The law for asylum in Albania accommodates and provides protection to stateless people who qualify for refugee status, however where a stateless is not also a refugee their status becomes unclear.<sup>11</sup> Albania does not have a dedicated statelessness status determination procedure.

Albanian government bodies still have a limited understanding of the issue of statelessness, particularly child statelessness, as no state institution has been given a direct mandate to deal with this. The state authority dealing with foreigners and stateless persons is a special unit under the “Border and Migration”, while the central authority that deals with issues of refugees, asylum seekers together with citizenship issues, for acquisition, reacquisition and loss of Albanian citizenship is the Directory for Citizenship and Refugees under the Ministry of Interior. From the interviews conducted for the purposes of this study, it emerges that these entities have no data on the problem of childhood statelessness, that it is not treated as a separate issue in the scope of their activities and that no institution has a specific mandate to deal with the issue. In general, state bodies have shown more interest in registration problems. Moreover, although there exists a public commission which must provide free legal aid, in practice this institution has not been effective in covering the individuals and the communities in need. Consequently, the government does not offer facilities for the representation of statelessness cases. Furthermore, from practical observations, UNHCR in Albania is mostly focused on the situation of refugees and asylum seekers in the Republic of Albania. So far, legal aid on civil registration and nationality cases has been and continues to be provided by various non-profit organizations.

## 2. Granting of nationality to otherwise stateless children

### *General rules on acquisition of nationality*

According to Albanian legislation, nationality is based on both a blood relationship and on birth within the territory of Albania, so *jus sanguinis* and *jus soli*. **Everyone born of at least one parent with Albanian nationality**

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<sup>11</sup> Law on Asylum in the Republic of Albania, Article 1/1, 4 & 5, Explanation of terms “Asylum seeker and Refugee”, available at : <http://www.keshilliministrave.al/?fq=brenda&m=news&lid=9453>

**acquires Albanian citizenship<sup>12</sup> and a child born in the Republic of Albania to legally resident, foreign parents can acquire citizenship, subject to joint parental consent<sup>13</sup>.** Albanian nationality is granted pursuant to the registration of birth. In the application of the *jus sanguinis* rule, the child will be registered as an Albanian citizen, provided that the connection with the Albanian parent is proven through his/her ID or birth certificate. Foreign citizens, whose children are born in the Republic of Albania, must present themselves to the civil status office in order to claim nationality for their child via the *jus soli* provision in the law.

#### *Access to nationality for otherwise stateless children born on the territory*

As mentioned, every child born within the territories of the Republic of Albania, even to parents who are citizens of another country resident in Albania, can acquire Albanian citizenship. However, the law excludes children whose parents are not legal residents in Albania – and it also requires consent of *both* parents to be given. **For children born to foreign or stateless parents who do not hold legal residence in the country, there is no pathway for accessing Albanian citizenship, even if the child would otherwise be left stateless. This is a clear gap in the legislation and conflicts with the terms of the 1961 Convention and the ECN, to which Albania is a state party.<sup>14</sup>**

Foreign parents who wish to claim nationality for their Albanian-born child must make an application, submitting documents which prove that they are lawful residents in the Republic of Albania, following which the child is registered immediately as an Albanian citizen on the basis of this procedure initiated by the parents. The institution in charge of the process of acquisition is the civil status office in the area where the parents reside or in the area where the child has been found. These offices sit within the General Civil Status Division, which in turn is part of the Ministry of Interior. There is little information available about applications made under this provision and the extent to which otherwise stateless children have benefited.

#### *Access to nationality for otherwise stateless children born outside the country*

Article 7 of Law no. 8389, date 5.8.1998 "On Albanian Citizenship" amended by law no. 8442, date 21.1.1999 "On some amendment of the law no.8389, date 5.8.1998 "On Albanian Citizenship", provides that "*Any individual born to one (or two) parent(s) of Albanian nationality, acquires automatically the Albanian nationality*". This provision makes no distinction on whether the parents are married or not. The child acquires the Albanian nationality, as long as at least one of the parents has Albanian nationality, even if the parents in question are not married.

The aforementioned legal provision benefits every child, regardless whether he/she is born outside or inside the Republic of Albania. If the child is born outside the territory of Albania to parents that are citizens of Albania, the

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<sup>12</sup> Article 7 of the Law no. 8389, dated 05.08.1998 "On Citizenship" as amended by Law no. 8442, dated 21.01.1999 "On Amendments to the Law No. 8389, dated 05.08.1998 "On Citizenship".

<sup>13</sup> Article 8.2 of the Law no. 8389, dated 05.08.1998 "On Citizenship" as amended by Law no. 8442, dated 21.01.1999 "On Amendments to the Law No. 8389, dated 05.08.1998 "On Citizenship".

<sup>14</sup> In particular, article 1 of the 1961 Convention and article 6 of the European Convention on Nationality. See also annex 1.

registration is assigned as soon as the parents present themselves to the Albanian diplomatic institutions in the country where the birth has taken place<sup>15</sup>. Alternatively, if the child is born outside the country and has been registered in a civil status office in the foreign country, the parents, if they are Albanian citizens, can register their child directly in their local civil status office. In this case, the birth certificate must be in the form prescribed by the law, hence the certificate must be a legalized act, which can be recognized by the Albanian authorities<sup>16</sup>.

Albanian legislation is in full harmony with the international conventions, regarding the acquisition of nationality by children born to nationals abroad as it does not leave any room for statelessness<sup>17</sup>. However in practice, stringent requirements to complete the registration process such as possessing a legalized act of registration can put children at risk of statelessness because it can prevent a child born abroad to Albanian parents having their nationality recognised<sup>18</sup>.

### 3. Preventing statelessness among children in other contexts

#### Foundlings

Article 8(1) of Law no. 8389, dated 05.08.1998 "On Albanian Nationality", as amended provides that:

*"A child born or found within the territory of the Republic of Albania acquires the Albanian nationality if he is born to unknown parents, and as a result the child would otherwise remain stateless. If the child's parents become known before the child reaches the age of 14, and they are of foreign nationality, Albanian nationality can be relinquished at the request of the legal parents, provided that the child does not become stateless as a consequence of this action".*

With this provision, domestic legislation provides a guarantee that foundlings, whose parents are unknown to the authorities, will not be left stateless: the child is registered as an Albanian citizen. In terms of the law, there are no impediments as regards acquisition of nationality by children found in the Albanian territory – no age limits and no risk of statelessness should foreign parentage later be discovered. As such, **the legislation is in harmony with the provisions of the conventions to which Albania is a state party in respect of protecting the right to nationality for foundlings<sup>19</sup>**.

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<sup>15</sup> Law no. 10 129, date 11.5.2009 "On Civil Status" amended by article 41 "c. Children, who are born outside the Albanian territory to Albanian citizens with permanent residence in Albania are registered in the Albanian embassies or consulates in the country they are born. If this is not possible, the registration is done in one of the civil status offices of that country.

<sup>16</sup> Law no.9060, dated 8.5.2003 "On the adherence of the Republic of Albania to the "Convention on Abolishing the Requirement of Legalization for Foreign Public Documents".

<sup>17</sup> More specifically, the Albanian law conforms, in this respect, to Article 4 of the Convention on the Reduction of Statelessness and to Article 6 of the European Convention on Nationality.

<sup>18</sup> See further section 4 of this report on birth registration.

<sup>19</sup> Specifically, article 2 of the 1961 Convention on the Reduction of Statelessness and article 6(1b) of the European Convention on Nationality.

According to article 49 of Law no. 10129, dated 05.11.2009 "On Civil Status", as amended:

1. *"The child of unknown parents is presumed born in the place where he/she is found and at the time that is determined by a medical report.*
2. *The child of unknown parents is provided with a record by the relevant bodies of public order and a medical report issued by the medical doctor of the area where it was found.*
3. *At the request of the civil status service or, ex officio, by the approval of the mayor/head of municipality unit/head of commune, where the child is found, it is assigned the name and surname, as well as names of imaginary parents, that can be changed at the request of the child, upon adulthood, or by the parents' legal certification.*
4. *The above rules apply to children with unknown parents who suffer memory loss or are mentally disabled and cannot be identified. The situation can be changed for a found child, when the memory returns, he/she recovers from the mental disease or he/she is identified in any other way.*
5. *In all the cases provided in this Article, the found child is registered in the location where he/she will reside, except when he/she is found as an adult, speaks only foreign language and is registered as stateless person.*
6. *The criteria set out in this Article shall also apply to an adult person who has lost his/her memory, are mentally disabled, is found with a deceased parent or unidentified parent, except when the person speaks only foreign language. In this case he is registered as a stateless person".*

Foundlings thus acquire the Albanian nationality, with the location where they are found as the place of acquisition of nationality. However, registration is an important practical condition to the acquisition of nationality. Albanian law regarding the registration process of a child in the office of civil registry requires two key elements, first a valid document certifying the birth and the second the person authorized to make declaration of birth. Registration as a foundling (according to the procedure provided for in the above-mentioned Article 49) requires the coordination of three institutions: the Municipal Unit or the Commune where the child is found (or the child lives), the Health Centre of that location and the Civil Status Office. These three institutions are obliged to identify such cases and, in cooperation with each other, facilitate the registration of the child. Specifically, the employee of the public order in the municipality unit or commune is obliged to bring the child and persons who accompany him/her to the Health Centre, which should provide the child with a medical report determining the gender and approximate age of the child, and together with the employee of the civil status office make a record, followed by the child's registration.

**In practice, problems that have existed for years concerning civil registration in Albania. Failure to register children who did not have parental care created a big problem for persons who, for years, were unable to be registered directly at the office of civil registry.** This provision is used as a solution for the registration of children and consequently, the reduction of statelessness for this category. Thus, many children were registered as found children and automatically have acquired the Albanian nationality. Later on, court procedures are

followed to appoint a legal custodian of the child<sup>20</sup>. Unfortunately, there are no available data to properly quantify the last statement.

### *Adoption*

Under domestic law, if two Albanian citizens adopt a child, he/she automatically acquires Albanian nationality<sup>21</sup>. An adopted child also acquires Albanian nationality if only one of the adoptive parents is an Albanian citizen, provided that both are residents in the Republic of Albania. After the court decision granting the adoption of the child, he is registered with the family status of the adoptive parents and consequently, automatically gains their nationality; so it is not necessary for the parents to follow a special procedure for the adopted child to apply for nationality. Whether, if the child originally had a foreign nationality, he/she loses that nationality depends on the legal framework of the foreign country, in which the child previously enjoyed nationality.

According to the Albanian Family Code adoption is irrevocable<sup>22</sup>, so if a child acquires nationality through adoption he/she cannot lose it. A minor may, however, lose his/her original Albanian nationality when he/she is adopted by foreign citizens – but only if he/she acquires a new nationality through the adoption process<sup>23</sup>. As such, **there is no evidence of a risk of statelessness arising from inter-country adoption under Albanian law.**

### *Surrogacy*

Albanian legislation does not specifically deal with the question of acquisition of citizenship for children who born through a process of surrogacy. “Surrogacy” is mentioned indirectly in the article 261 of the Family Code<sup>24</sup>, which talks of surrogate adoption and refers to the Albanian Act on reproductive health. This act stipulates that surrogate adoption will follow the regular Albanian adoption procedures<sup>25</sup>. In theory, a child who was a product of surrogacy would be adopted by the parents and would be entitled to Albanian nationality according to the same rules as outlined above. The law on reproductive health further provides that the procedure will be regulated through sub-legal acts, but no such sub-legal acts appear to have been formulated on this matter. Nor is there any information available on whether or how such cases have been dealt with in practice.

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<sup>20</sup> Instruction No. 7, dated 10.01.2012 "On approval of procedures and records, to be completed by representatives of the state police and the municipalities/municipality units/communes for the cases of found children and unregistered children in civil status registry".

<sup>21</sup> Article 12 Law no. 8389, dated 05.08.1998 "On Citizenship" as amended by Law no. 8442, dated 21.01.1999 "On Amendments to the Law No. 8389, dated 05.08.1998 "On Citizenship".

<sup>22</sup> Law no.9062, dated 8.5.2003 "Family Code" Article 258, Effects of adoption. The adoption is effective from the date of the final decision. The adoption is irrevocable. The court shall forward the final decision for registration with the civil registration office where the adoptive parent has their record.

<sup>23</sup> Article 16 of Law no.8389, dated 5.8.1998 "On Albanian Nationality" as amended by law no. 8442, date 21.1.1999 "On some amendments of the law no.8389, dated 5.8.1998 "On Albanian Nationality": "A child loses the Albanian nationality when he/she is adopted by foreign parents *and acquires on this occasion a new nationality*".

<sup>24</sup> Law no.9062, dated 8.5.2003 Family Code, article 261 "On surrogate adoption", provided by the law no.8876, dated 4.4.2002 "On reproductive health", hold the same criterions and procedures that are provided for adoption by this Code and the respective legislation."

<sup>25</sup> Law no. 9695, dated 19.3.2007 "On Adoption Procedures and Albanian Committee of Adoption", amended.

## *Loss of nationality*

According to the law, a minor can lose his/her Albanian nationality only where both their parents agree for the child to renounce citizenship<sup>26</sup>. Sometimes, this procedure is carried out even when one of the parents is unwilling to do this, as long as the loss (substitution with another nationality) of the Albanian nationality is considered to be in the child's best interest. A request for the renunciation of the Albanian nationality cannot be approved unless the citizen presents the guarantee of the acquisition of a new nationality<sup>27</sup>. Thus, **today, no request for the renunciation of nationality is accepted as long as the authorities are not sure if the child has or will acquire a new nationality**. For this it is required that the individual bring an official document that shows the promise of receiving the new nationality or a document that shows that he or she has already gained a new nationality.

### **Vasil's story**

Vasil, 25, is an Albanian citizen, born in Albania to Albanian parents. Vasil's family (his grandfather, his father and other family members) migrated to Greece in 1990, while Vasil was a new-born, and after some time they renounced their Albanian citizenship in order to obtain the Greek one. However, they were unsuccessful in acquiring Greek nationality and hence, all the family members – including Vasil who was only a child at the time – were left without citizenship.

Later, they returned to Albania, where they currently reside. Vasil was never aware that he did not have any citizenship. He believed that he lacked identification documents because he could not afford any. Vasil had difficulties securing access to food, welfare assistance or other public social programs provided by the government.

TLAS prepared the necessary documentation, so all of Vasil's family members could apply to regain the Albanian citizenship. This is a complicated procedure, given the numerous required documents and the high costs, and as such, it could not be carried by Vasil's family without help. After almost a year, they regained their Albanian citizenship. Vasil got an identity card and his son – who had been left undocumented because they lived in a remote village in Albania and lacked the economic means to travel to register the child – was registered in the Civil Status Office. Furthermore, Vasil was able to marry legally the mother of his child. After re-acquiring Albanian citizenship, Vasil's family, including his child, became eligible to access public services on an equal basis as other citizens and the child was finally able to access hospitals to be vaccinated and kindergarten.

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<sup>26</sup> Law no. 8389, dated 5.8.1998 "On Albanian Nationality" as amended by law no. 8442, date 21.1.1999, article 16: "Minors can lose the Albanian nationality, when both parents, who also must have relinquished their Albanian citizenships, agree for their children to leave the Albanian nationality. A child can also leave his/her Albanian nationality, even when one of the parents does not give the consent, as long as this action is considered to be in the best interest of the child."

<sup>27</sup> Article 15 of Law no. 8389, dated 5.8.1998 "On Albanian Nationality" amended by law no. 8442, date 21.1.1999: "A person can renounce Albanian citizenship, as long as he/she fulfills the following conditions: [...] 2. He/she does not remain stateless, because of this action, as he/she acquires a foreign nationality or is guaranteed to be able to acquire one."

### Facilitated naturalization

Albanian law also provides for the acquisition of nationality through naturalization. This procedure is based on a period of residence of the individual, as the key condition to naturalization – a foreigner becomes eligible to apply after lawfully residing in the territory for more than 5 years. **The law sets out a facilitated procedure of naturalization for the stateless individuals, waiving several of the regular criteria.** The following conditions which are a part of the regular naturalisation are waived for stateless persons: that the person has attained the age of 18, has a dwelling and sufficient income, has never been sentenced for a criminal offence for which the law provides a three year (or higher) prison sentence and has basic knowledge of the Albanian language<sup>28</sup>. The law also provides special rules for the re-acquisition of nationality by those who had once renounced Albanian citizenship or who are “of Albanian origin”. There is no information available about the use of these facilitated procedures in practice, including as a tool for reducing the incidence of statelessness among children.

## 4. Birth registration and statelessness

Birth registration can play a critical role in ensuring the recognition of a person’s entitlement to nationality by the state. In Albania, birth registration is strongly linked with acquisition of citizenship at birth and, indeed, nationality is one of the key elements of identity established in an individual’s registration. **As a result of various obstacles in the birth registration process, there are certain occasions when children have the right to Albanian nationality (*jus sanguinis*), but they are not recognised as nationals because they are not registered.**

### Ilir’s story

Ilir is an Albanian citizen who has a 4 year old child. He was living in Greece when his child was born and he registered the child’s birth in the Greek Civil Status Office. At the moment of birth, the child was not named by his parents, but was nonetheless issued with a birth certificate, which contains accurate information on the parents’ identities. Later, Ilir and his family returned to Albania. Upon his return, Ilir became aware that his child was not registered as an Albanian citizen. The registration requires a birth certificate. Ilir requested help for the registration of his child, who, given the lack of entry in the civil register and recognition of Albanian citizenship, had numerous rights and services denied.

TLAS and the Albanian Ministry of Foreign Affairs ensured a legalized copy of the birth certificate of the child was retrieved. This was sent to the Civil Status Office for registration. This institution rejected the request for registration, arguing that the name of the child is missing. According to the directions of the Albanian institutions, Ilir must go personally to Greek Civil Status Office, and name his child, so the latter could be registered and acquire Albanian citizenship. However, Ilir is legally barred from going back to Greece, so this

<sup>28</sup> Law no. 8389, dated 5.8.1998 “On Albanian Nationality” as amended by law no. 8442, date 21.1.1999, article 9.

solution is not viable. According to the interpretation of the Albanian law on civil status, the name of an individual can be changed with the consent of both parents, as long as the child is still a minor. This case has now been put to the court, but meanwhile Ilir is worried as his child cannot attend kindergarten or have access to public hospitals.

The registration of children in the Republic of Albania is regulated through the law no. 10129, date 11.05.2009 "On Civil Status", as amended. This law asserts that the parents bear primary responsibility for the registration of their children, and in case this procedure fails, it falls to the state institutions to carry out this procedure. Under Article 38(1) of the<sup>29</sup>: *"Birth as fact, time, location, gender and motherhood are verified with the birth assistance certificate, the medical report or record, compiled at the time of birth, which is proved by the present medical personnel, and in case of lack of medical personnel by the responsible person of the train, the captain of the ship or the aircraft on the trip, the director of the prison or military unit, the body of public order, or official diplomatic representations abroad, the lack of medical staff"*. The legislation recognizes the records held on a ship or airplane to prove the fact of birth. If the record accurately confirms the birth, it is immediately registered in the civil register office of the Albanian, if the aircraft or the ship carries the flag of the Albanian State. Naturally, all the other conditions, as aforementioned in the cases of children born within Albanian territory, must also be fulfilled for this to result in the acquisition of nationality.

The basic document that proves that a birth has taken place is the birth certificate, which is provided to every mother in the hospital in which she gave birth. This document must be sent to the Civil Status Office (the office where the mother of the child is registered or the closest office to mother's residence), which registers new-borns. A birth can also be proven through a medical report or a written report (at the time of birth), where the mother gives birth outside the hospital, e.g. at home, on a train, ship or plane, or in prison. The written report has to be made by the supervisor of the vehicle or of the institution. In other cases, when the mother cannot prove birth through a written document, or when the latter is not in the required format, she must go to court to verify the fact of birth<sup>30</sup>.

The birth of a child is declared at the Civil Status Office by the parents, other adults from the family, the custodians, the legal representatives, and in their absence by other persons that can prove the right. A child born in Albania to foreign parents, who are not lawful residents in the Republic of Albania, does not acquire Albanian nationality, but can be registered. In these cases, the child is registered with his/her parents' nationality. **The law does not provide any time limits for registration, but it encourages early registrations. Mothers who register their new-borns within 60 days from the birth (births inside the territory of the**

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<sup>29</sup> Law no. 10 129, dated 11.5.2009 "On Civil Status", as amended.

<sup>30</sup> Article 38 of Law no. 10129, date 11.5.2009 "On Civil Status" amended.

**Republic of Albania) or within 90 days (births from Albanian citizens outside Albania) receive a monetary reward<sup>31</sup>.**

Children who are abandoned or given up for adoption are registered in the Civil Status Office located in same area as the hospital where the child has been born. Where available, the child is registered according to the data provided by the mother (in her identification document). The child is registered as a foundling if the mother is not known or cannot verify her identity (lacks the identification documents). After that, the child undergoes the procedures for adoption or for custody appointment. The declaration of birth for foundlings is carried out by the institutions of local government, or the institution responsible for the public order (police) having jurisdiction in the place the child is found<sup>32</sup>.

### **Blerina's story**

Blerina is an Albanian citizen who lived in Greece and had three children with a Greek man. Her three children were born in one of the maternity units of a hospital in Greece. She later returned to Albania with the children to live with her parents. Following her return, Blerina was not able to register her children in the Civil Status Office in Fier, because she did not bring from Greece any documents for any of the children that might have been issued by the hospital where she gave birth for registration purposes. Blerina, like many other Albanian women (especially from the Roma community) lacked the economic means to pay the applicable hospital tariffs required by Greek hospital where she gave birth to her three children. When they left the hospital without payment, they were not provided with the documentation that would normally be issued to mothers, providing data regarding the birth of their child.

As a result, Blerina's three children could not be registered in the Civil Status Office in Fier. Furthermore, Blerina was not legally recognised as the mother of her three children. This situation made Blerina ineligible to access state welfare and social services programs. Blerina's family members have continuously sought help from the relevant local authorities because the unregistered children could not be vaccinated, registered in kindergarten or schools, were not recognized in the welfare office for welfare assistance, etc. This category of children who are unregistered from birth in the relevant civil offices are invisible before the law and there are no records of them – they are treated as if they do not exist. In Blerina's case, none of the representatives of the local authorities offered any assistance in relation to these three unregistered births.

The situation could later only be remedied through a judicial procedure. Through a civil trial, it was possible to register two of Blerina's three children. During the course of the trial, the children's father returned to Albania,

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<sup>31</sup> Article 41 of Law no. 10129, date 11.5.2009 "On Civil Status" amended.

The number of newborns in Albania is varying between 35000 – 32000 newborns/births per Year. The benefit of 5000 leke for each newborn according the law amendment above have never been 100 % covered by the State budget, only for about 20 % of the total birth's number are allocated to civil offices in whole the territory, which mean that the legislation is not applied in practice, the progress is not measured or evaluated compare with the whole number of births reported from maternities or health centers.

<sup>32</sup> Article 40 of Law no. 10129, date 11.5.2009

and against Blerina's will, took away the oldest child. That child remains legally unregistered, unidentified and invisible<sup>33</sup>.

In Albania, there is a gap between the number of births proven through birth assistance certificates in maternity units and the number of births registered in the civil status offices: number of registered births reported by the General Directorate of Civil Status (which is the same number stated by INSTAT) is smaller than the number of births recorded by the Department of Statistics at the Ministry of Health which receives data from maternity units and/or health centres. A Feasibility Study for the need of establishing an electronic birth registration system, completed by TLAS with close collaboration of the General Directory of Civil Office & Ministry of Health, in 2013, found that difference between the birth number reported from Ministry of Health and the number of births registered by civil offices during the same Year is nearly 10%. However, considering the fact that civil status offices also registered children born outside the institutions<sup>34</sup> we can reach the conclusion that the difference is even bigger, which means that a more in-depth analysis must be conducted.

The law on Civil Status tries to pre-empt this problem by providing that: "All health centres, public or private, which are authorized to verify births, are obliged to send every Monday to the civil status offices, where parents have their residence, information on births that occurred in the institution. Failure to comply with this provision is sanction able by a fine equal to 50.000 Albanian Lek". However, the Ministry of Health has not met this reporting requirement (the health centres are failing to make the aforementioned reports) and the Ministry of Interior has not applied, so far, the penalty provided by the law.

For various reasons, access to the civil register has shown flaws for years, despite the legislation being revised continuously. There are still categories of children who face difficulties in accessing the civil registration. Children born to asylum seekers or refugees in the Republic of Albania may be registered. They can register in the national register of the Civil Status Office, and acquire immediately the Albanian nationality if their parents are lawful residents in the Republic of Albania.<sup>35</sup> The same applies to the human trafficking victims. **Nevertheless, if the parent, for lack of documentation, cannot prove his/her parental relation with the child they consequently cannot register the child.**

Two other groups of people who face problems with the civil registration are: children who are born outside the Albanian territory to Albanian parents, who have made false declarations regarding their identities, and children, who are born to Albanian migrants in the Republic of Greece and are registered without a name. With regard to the former, upon return to the Republic of Albania, these children cannot be registered, since the data declared by the parents are not compatible to the real data. The child may also not be able acquire the Albanian

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<sup>33</sup> Unregistered children tend to be more vulnerable and exposed to domestic and other types of violence, human trafficking, forced child labor, and other forms of abuse. In Albania, there are several identified cases of parents and relatives, or others, who have trafficked, sold and abused children but there are no records that can be found of the child in any registers in order to initiate an investigation or open a case before courts.

<sup>34</sup> The same feasibility study found a total number of 35,012 children born in Albania during 2012; 34,795 of them were born in maternity units and 217 children were born outside maternity units.

<sup>35</sup> The category of lawful residents includes also asylum seekers and refugees.

nationality. With regard to children born to Albanian migrants in Greece and are registered in the foreign civil status registry without a name, but whose birth certificates contain accurate data, including parents' identities, the Albanian Civil Status Office does not acknowledge any act of birth which does not have any information on the name of the child. As a result, these children cannot be registered and cannot obtain the Albanian nationality because the birth act is considered null by the Albanian authorities. These types of cases have been sent to court by TLAS' lawyers, and hopefully a judiciary solution can ameliorate the situation.

The issue of unregistered children who are deprived of the right to have citizenship has been the subject of constant attention and TLAS has significant experience on the subject-matter, having initiated amendments, additions and improvements to the legal framework in this area. The Ministry of Interior, the Ministry of Health and the Ministry of Social Welfare and Youth are key partners in resolving these issues, but birth registration is not addressed as a priority concern by the state bodies. Nevertheless, over years extensive advocacy work was carried out to sensitize the public authorities of the importance of this major problem. Also, it is worth noting that legal assistance provided over the years by TLAS in civil registration matters, through various projects funded by foreign donors, has made a difference in practice in numerous cases. During 2012, TLAS operated in four major cities in Albania where it initiated, and succeeded to fulfil registration for 282 children, of which 60% belong to the Roma community, who consequently acquired the Albanian citizenship after registration. 180 of these cases were children born outside the territory of Albania and for 26 of the cases, court proceedings were followed to prove the fact of birth in order to register them and for them to automatically acquire Albanian citizenship.

## Conclusions

Statelessness is not recognised as a significant issue by authorities and stakeholders in Albania. Although the Directorate for Nationality and Refugees and Directorate of Civil Status are the relevant authorities dealing with granting of nationality, there is little attention for the prevention and reduction of statelessness nor the protection of the rights of stateless persons. There is no status for stateless persons in place nor a statelessness determination mechanism that would allow for the identification of cases. As a result, stateless persons are not systematically and individually identified, and there are obstacles to the attainment of lawful residence in the country by stateless persons. Moreover, what limited data there is on the scale of the problem is impacted by the methodological constraints of how it was gathered (e.g. census data based on self-identification).

It is important that a clear distinction be drawn between civil registration and statelessness in order to provide a better understanding for all relevant authorities. The gaps that exist within the nationality law framework and are contributing to the creation of childhood statelessness must be recognised and addressed. In particular, a safeguard is needed, in line with Albania's international obligations, which guarantees access to a nationality for *all* otherwise stateless children born in the territory. Nevertheless, gaps in access to civil registration and the provision of ID documents are also putting children born in Albania or to Albanian parents abroad at risk of

statelessness at birth. The government of Albania should take further steps to reform laws and practices that impede the enjoyment of Albanian nationality by those entitled to it

## **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 research<sup>36</sup>**

- Ministry of Internal Affairs, Directory of Refugee and Citizenship
- Ministry of Internal Affairs, expert of Civil Status Directory
- UNHCR Albania
- UNICEF Albania

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<sup>36</sup> 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 Estonia, Italy, Latvia, Macedonia, 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.



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

