

# Ending Childhood Statelessness:

## A Study on Romania

Working Paper 01/15



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## Introduction

***“Statelessness is a man-made problem and occurs because of a bewildering array of causes. (...) Families endure generations of statelessness despite having deep-rooted and longstanding ties to their communities and countries. Some have become stateless due to administrative obstacles; they simply fall through the cracks of a system that ignores or has forgotten them.”<sup>1</sup>***

The purpose of this paper is to provide an overview of the situation of childhood statelessness in Romania and the extent to which existing national legislation, policy and practice comply with international and regional standards in the field.

While the official data talks about a very small number of stateless individuals several potential gaps in the system may lead to other such cases, including of stateless children, living in near invisibility. Some of these gaps are related to the birth registration system, others are caused by the lack of safeguards against statelessness for children born in Romania to stateless parents or parents unable to prove or pass on their nationality due to administrative or legal barriers and conflicting legal systems. These problems may also be related to or exacerbated by the limitations faced by authorities in their capacity to properly identify, register and ensure documentation to stateless individuals. This means that, in the absence of immediate and concrete action to prevent and reduce statelessness, such situations may be perpetuated as new generations will emerge, still deprived of rights that the majority of the population often take for granted.

### 1. Statelessness in the national context

#### *International obligations*

Romania is a member of the United Nations<sup>2</sup>, the Council of Europe (since 1993) and the European Union (since January 1<sup>st</sup> 2007), being bound as such to comply with the EU acquis, but also the UN as well as regional human rights instruments. In December 2005, Romania acceded to the 1954 Convention relating to the Status of Stateless Persons<sup>3</sup> and the 1961 Convention on the Reduction of Statelessness<sup>4</sup>, but listed three reservations to the former, in relation to Articles 23, 27 and 31. Since then, civil society organizations and the UNHCR have occasionally taken a stand in encouraging Romanian authorities to lift these reservations and establish a statelessness status determination procedure, but these actions and efforts remained largely unsuccessful to date. While there are no particular political or legislative obstacles to these objectives being met, lack of action by key decision makers may be attributed to both the absence of political interest in this area – which is not viewed as significant in terms of the number of persons affected or impact – as well as to potential implications for state authorities that such amendments are seen as entailing, in terms of financial and human resources.

As a state party of the 1961 Convention, Romania is bound by its provisions and has a principle obligation in relation to the prevention and reduction of childhood statelessness, in line with Art. 1-4. Romania must grant nationality to children who would otherwise be stateless born in its territory and to foundlings found in its territory, as well as to otherwise stateless children of Romanian nationals born abroad.

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<sup>1</sup> UNHCR - A Special Report - Ending Statelessness within 10 years, [http://unhcr.org/statelesscampaign2014/Stateless-Report\\_eng\\_final3.pdf](http://unhcr.org/statelesscampaign2014/Stateless-Report_eng_final3.pdf), page 2

<sup>2</sup> Romania's membership in the United Nations dates back to 14 December 1955, when by Resolution 995, after a difficult and time-consuming admission process, Romania became the 74th member of the United Nations - [http://www.un.ro/the\\_un\\_and\\_romania.html](http://www.un.ro/the_un_and_romania.html)

<sup>3</sup> Romania acceded to the 1954 Convention through Law no. 362/2005 (*Legea nr.362 din 13 decembrie 2005 pentru aderarea României la Convenția privind statutul apatrizilor, adoptată la New York la 28 septembrie 1954*) published in the Official Journal no. 1146 of 19 December 2005.

<sup>4</sup> Romania acceded to the 1961 Convention through Law no. 361/2005 (*Legea nr. 361 din 13 decembrie 2005 pentru aderarea României la Convenția privind reducerea cazurilor de apatrizie, adoptată la New York la 30 august 1961*) published in the Official Journal no. 1156 of 20 December 2005.

Romania is also bound by an obligation to ensure special protection to children, in compliance with article 7 paragraphs 1 and 2 of the UN Convention on the Rights of the Child<sup>5</sup> which creates an important obligation for the state:

*„The child shall be registered immediately after birth and shall have the right from birth to a name, the right to acquire a nationality and, as far as possible, the right to know and be cared for by his or her parents.*

*States Parties shall ensure the implementation of these rights in accordance with their national law and their obligations under the relevant international instruments in this field, in particular where the child would otherwise be stateless.”*

In addition to being a state party to various human rights instruments and the two UN Statelessness Conventions, in 2002 the country also ratified the 1997 European Convention on Nationality.<sup>6</sup> As such, the prevention of statelessness should also be ensured in line with article 6(2) of the ECN, which sets the standard as regards the granting of nationality to otherwise stateless children born on Romanian territory.

Unfortunately, **Romania’s international obligations with respect to the prevention of childhood statelessness are not properly met by existing national legislation**, as demonstrated in this report. Moreover, when ratifying the ECN, Romania made reservations to Art. 6 para (4) and Art. 8.<sup>7</sup> While both reservations raise specific issues in practice, the reservation to Art 6 para. (4) is particularly problematic. It reads:

*“With reference to Article 6, paragraph 4, sub-paragraphs e, f and g, of the Convention, Romania reserves its right to grant its nationality to persons who were born on its territory from parents with foreign nationality and to persons who are lawfully and habitually resident on its territory, including stateless persons and recognized refugees, at request, in accordance with the conditions stipulated by the domestic law”<sup>8</sup>*

This restricts the scope of the ECN by limiting access to a facilitated citizenship acquisition procedure for stateless persons, which is not provided for in domestic legislation.

### *National legislative framework*

The Romanian Constitution of 1991, as revised through Law No. 429/2003, includes several relevant provisions regarding citizenship and stateless persons, namely those referring to: the acquisition of citizenship and loss thereof (art. 5), the protection accorded to aliens in general (art. 18) and expulsion and extradition (art. 19). The Constitution also established in its Article 20 the principle according to which provisions concerning citizens' rights and liberties shall be interpreted and enforced in conformity with the

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<sup>5</sup> Law no. 18/1990 for the ratification of the UN Convention on the Rights of the Child (Rom: [Legea republicata nr. 18 din 09/27/1990 privind ratificarea Conventiei cu privire la drepturile copilului, Monitorul Oficial nr. 314 din 06/13/2001](#))

<sup>6</sup> Adopted in Strasbourg on 6 November 1997. Entered into force on 1 March 2000. Romania ratified the Convention through Law no. 396/2002 (*Legea nr. 396 din 14 iunie 2002, publicată în „Monitorul Oficial al României”, Partea I, nr. 490 din 9 iulie 2002*).

<sup>7</sup> Reservation: *“With reference to Article 8, paragraph 1, of the Convention, Romania reserves its right to permit the renunciation of its nationality, if the petitioner person fulfils the conditions stipulated by the domestic law.”*

The present wording of Article 26 of the Law nr. 21/1991, consolidated, on Romanian citizenship, is the following : “The loss of the Romanian citizenship can be approved, for founded reasons, if the person requesting it is over 18 years of age and he/she:

- a) is not accused in a criminal trial or has no criminal sentence to execute;
- b) has no debts to the State, to Romanian or foreign physical or legal entities or, having such debts, pays them or provides sufficient guarantees as to their payment;
- c) acquired another citizenship or has applied for another citizenship and has the assurance that he/she will acquire it.

<sup>8</sup>The present wording of Article 8 of the Law nr. 21/1991, consolidated, on Romanian citizenship, is presented in the following sections.

Universal Declaration of Human Rights, with the covenants and other treaties Romania is a party to. It also provides that any inconsistencies between the human rights covenants and treaties Romania is a party to, and the national laws, will be interpreted in favour of the international regulations, unless the Constitution or national laws comprise more favourable provisions. This means that, in principle, human rights and other conventions that Romania is a party to become an integral part of internal law, having priority over it. **At the national level, international conventions – such as the 1961 Convention – may be directly invoked and applied by a Romanian Court.** In addition, according to the Romanian Constitution, fundamental rights and freedoms are recognized to all persons regardless of their citizenship status – the right to life, physical and mental integrity (art. 22), right to individual liberty (23), right to a defence (art. 24), right to private and family life (art. 26) etc., are referred to as rights of the “person” and are therefore equally guaranteed and protected for all.

In Romania, the rules on acquisition and loss of nationality are contained in the Citizenship Law no. 21, an organic<sup>9</sup> law which was adopted on March 1st, 1991 and has since then undergone a series of modifications that led to its republishing in 2000 and most recently in 2010. It was last modified in 2013, through Laws no. 2/2013 and 44/2003.<sup>10</sup>

The public authority in charge of the application of the legal procedures for the acquisition, reacquisition, renunciation and withdrawal of Romanian citizenship, is the National Authority for Citizenship (*Autoritatea Nationala pentru Cetatenie*), hereinafter also referred to as the NAC, functioning according to the provisions of Government Emergency Ordinance no. 5/2010.<sup>11</sup> A Commission for Citizenship functions at the level of the NAC, and the approval of all requests for acquisition or reacquisition of Romanian citizenship is done based on its proposals, by order of the President of NAC.

**There is a possibility to challenge the decisions of the NAC in Court, in cases of disputed application of the nationality regulations.** According to Art. 19 of Law no. 21/1991 on Romanian citizenship, republished, as modified through Law no. 2/2013, an order of the NAC to reject one’s application for citizenship acquisition, or an order to reject the application for its reacquisition, may be challenged within 15 days from the date of communication, at the administrative and fiscal section of the Bucharest Tribunal. The Court’s decision may be appealed to the administrative and fiscal section of the Bucharest Court of Appeal [*Curtea de Apel Bucuresti*]. While, according to the Court’s portal (which publishes some information on jurisprudence<sup>12</sup>, though quite limited) there are situations where the NAC’s decisions are challenged, the proportion of rejected applicants who use appeals routes in such cases is not significant. This may, at least in some cases, be attributed to the fact that in general the decisions of the NAC are upheld by the Court, and in this context it is likely that rejected applicants prefer to restart the process rather than invest several months or even years in a court case that is unlikely to succeed. There is a possibility to also challenge rejections of the application to renounce Romanian citizenship, under the same conditions as specified above (art. 31 para. 6 of the Citizenship Law).

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<sup>9</sup> Under the current Constitution of Romania, organic laws are passed to regulate specific areas, such as the laws relating to the status of civil servants, the status of national minorities in Romania; the general statutory rules of religious cults; as well as other fields for which the Constitution stipulates the enactment of organic laws.

The existence of organic laws is provisioned by the text of the Constitution itself (Art. 73), and organic laws have an intermediate status between that of an ordinary law and of the Constitution itself.

<sup>10</sup>In Romanian: *Legea nr. 2/2013 privind unele măsuri pentru degrevarea instanțelor judecătorești, precum și pentru pregătirea punerii în aplicare a Legii nr. 134/2010 privind Codul de procedură civilă; Legea nr. 44/2013 pentru modificarea Legii cetățeniei române nr. 21/1991.*

The legislative process regarding Law no. 21/1991 is available in detail on the website of the Chamber of Deputies:

[http://www.cdep.ro/pls/legis/legis\\_pck.htm?act?id=1293](http://www.cdep.ro/pls/legis/legis_pck.htm?act?id=1293)

Law no. 21/1991 on Romanian citizenship, republished in 2010 without the most recent 2013 amendments) is also available in English and French on the website of the National Authority for Citizenship: <http://cetatenie.just.ro/index.php/ro/legislatie>

<sup>11</sup> G.E.O. no.5/2010 for the establishment, organizing and functioning of the NAC (*In Romanian: OUG Nr. 5 din 5 februarie 2010 pentru înființarea, organizarea și funcționarea Autorității Naționale pentru Cetățenie*)

<sup>12</sup> The portal of the Court of Appeal, list of cases involving the National Authority for Citizenship:

[http://portal.just.ro/2/SitePages/Rezultate\\_dosare.aspx?k=cetatenie&a=%20scope%3AvDosar%20MjmpldInstitutie%3D2&v1=-write&start1=21](http://portal.just.ro/2/SitePages/Rezultate_dosare.aspx?k=cetatenie&a=%20scope%3AvDosar%20MjmpldInstitutie%3D2&v1=-write&start1=21)

The order to withdraw Romanian citizenship may be appealed within 15 days from the date of communication, at the administrative and fiscal department of the competent County Court [*the Tribunal* where the domicile / residence of the applicant is located]. If the applicant has no domicile or residence in Romania, the order may be challenged at the administrative and fiscal section of the Bucharest Tribunal. The Court's decision is final and irrevocable. (Art. 32 para. 7). Any other cases of disputed application of the nationality regulations comprised in Law no. 21/1991, aside from those mentioned above, fall within the competence of the administrative and fiscal sections of the tribunals. The decision of the court can be appealed to the administrative and fiscal section of the Court of Appeal.

As far as the definitions of 'citizenship' and 'statelessness' are concerned, several points should be noted. While citizenship is defined in Art.1 para. 1 of Law no. 21/1991 as the '*link and membership of a person to the Romanian state*', statelessness is only defined in Government Emergency Ordinance no. 194/2002 on the regime of aliens in Romania [*hereinafter referred to as the 'Aliens Law'*]. According to Article 2(1) (b) of the Aliens Law, a stateless person is an "*alien who does not have the citizenship of any state*" – a definition that does not fully comply with that provided in Art. 1.1. of the 1954 Convention. Stateless persons are assimilated with "foreigners" in terms of their legal regime, and have the same rights and obligations as any other legally residing third country nationals. Starting from the definition of the "alien"<sup>13</sup>, the law sets out similar regimes for third country national and stateless persons with a legal residence on Romanian territory. However some special provisions are included in favour of stateless persons of Romanian origin<sup>14</sup>, in relation to the issuance of travel documents<sup>15</sup> and the regime of passports for stateless persons<sup>16</sup>.

#### *Existing research, data and knowledge on (childhood) statelessness*

**Childhood statelessness has not been raised as a particular issue in Romania, and no encompassing research has been published on this theme**<sup>17</sup>. The authorities have also not shown a particular interest in tackling the issue of statelessness in general, or childhood statelessness specifically. Following a set of requests for information sent to relevant authorities such as the Ministry of Justice [*Ministerul Justiției*], the National Authority for Citizenship<sup>18</sup> [*Autoritatea Națională pentru Cetățenie*], the General Inspectorate for Immigration<sup>19</sup> [*Inspectoratul General pentru Imigrări*], The Directorate for Persons Record and Databases Management<sup>20</sup> [*Direcția Evidența Persoanelor și Administrarea Bazelor de Date*], and the National Authority for the Protection of Children's Rights and Adoption<sup>21</sup> [*Autoritatea Națională pentru Protecția Drepturilor Copilului și Adopție*], it was confirmed that none of these stakeholders have been involved in research developed specifically to address this topic in the past 5-10 years.

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<sup>13</sup> Article 2(1) a) of G.E.O. no 194/2002, republished, with subsequent modifications: *alien – a person who does not hold Romanian citizenship or the citizenship of another EU or SEE member state or of the Swiss Confederation*.

<sup>14</sup> Art. 69(1)h) of GEO no. 194/2002

<sup>15</sup> Art. 118 of GEO no. 194/2002

<sup>16</sup> Art. 120-124 of GEO no. 194/2002

<sup>17</sup> There was also no research or study addressing specifically the area of childhood statelessness, made public and that could be identified. In the early 2000s, UNHCR contracted NGOs such as Romani Criss to look more generally at the situation of persons renouncing Romanian citizenship. UNICEF also conducted some studies on various groups of population / local communities, where they looked –among others – at the number of children who were not registered / did not have identity documents. However, there was no consistent or more comprehensive study in the field. One Report of UNICEF – 'Helping the invisible children – Evaluation Report I, 2011', available in English at the following link: [http://www.unicef.org/romania/Raport\\_HIC\\_engleza.pdf](http://www.unicef.org/romania/Raport_HIC_engleza.pdf) also mentions, among others, the situation of children without identity documents, looking at a specific geographical area in the NE of the country.

<sup>18</sup> Letter no. 2902/ANC/27.02.2015, in response to a request for information sent by the national researcher. The Letter is on file with the national researcher.

<sup>19</sup> Letter no. 2799831 of 03.03.2015, in response to a request for information sent by the national researcher. The Letter is on file with the national researcher.

<sup>20</sup> Letter no.3546577 of 23.02.2015, in response to a request for information sent by the national researcher. The Letter is on file with the national researcher.

<sup>21</sup> Letter 1901DGPDC/CC/10.02.2015, in response to a request for information sent by the national researcher. The Letter is on file with the national researcher.

It is possible that statelessness is not perceived as a pressing issue in Romania, also due to the very low number of stateless persons registered as such in the country. Statistical data on statelessness is collected by the General Inspectorate for Immigration [hereinafter referred to as GII], which is the main institution implementing Romanian policies in the fields of migration, asylum, and aliens' integration and the relevant legislation in these fields. **According to information made available by GII<sup>22</sup>, on 31 December 2014, there were only 299 stateless persons in possession of a valid residence permit**, out of which 116 had permanent residence and 95 were holders of a residence permit for family members (of Romanian citizens). Only 37 were refugees, 18 had subsidiary protection, one person was registered with a residence permit for employment purposes and the remaining 32 individuals had residence permits for other purposes. In addition to the above, one stateless person was registered with *tolerated stay*.

As far as specific data on children is concerned, the statistical information available to GII at 31 December 2014 indicated that, by birthplace, there were only 18 stateless children in Romania, officially registered as such.

The trend during the past 5 years was of a notable increase in their number however, as in 2010 there were only 6 stateless children registered with GII – this number increased to 14 in 2011, 16 in 2012, 18 in 2013 and 2014. This increase, while not justified as such officially, may have occurred in the context of the conflict in Syria, which meant the arrival on the territory of stateless children, most likely of Palestinian origin. Such an assumption may be supported by available data as regards the birthplace of formally registered stateless children, provided in the table below:

*Table 1: Number of stateless minors in Romania, at 31.12.2014, by birthplace:*

Country of birth	No. of stateless children
Germany	3
Jordan	1
Lebanon	4
Romania	4
Saudi Arabia	1
Syria	5
<b>Grand total</b>	<b>18</b>

The information presented above also includes children of Romanian origin and German origin, who are most likely the descendants of former nationals that became stateless after having renounced their citizenship in the early 1990s. **GII does not have data regarding any births registered in Romania during the past 5 years, from stateless parents. Also, between 2010 and 2014, GII did not receive applications for international protection from stateless children, or applications for 'toleration' (tolerated stay).**

While the validity of this data is not questioned, there are some concerns as regards the population that it reflects. **Romania does not have a statelessness status determination procedure at national level and, as such, it is difficult to tell whether identification, registration and documentation of statelessness are adequately conducted.** According to GII, in practice, stateless persons entering the country legally and who hold travel documents that are recognized by the Romanian State, may be issued residence and travel documents in line with the legal provisions in place (established by the Aliens Law). However, it remains unclear what happens with persons of unknown, unclear or undetermined nationality – these notions are not used in law, policy or practice, and as such there is no group of the migrant population that is considered as having 'unknown nationality'. As a result, everyone whose data is entered in the GII database will either be registered as having a certain nationality or as being stateless. According to the authorities

<sup>22</sup> Letter no. 2799831/03.03.2015, on file with the national Researcher in Romania.

“with a purpose to establish the identity and citizenship/ statelessness situation of aliens who are in Romanian, GII requests information from other states and conducts verifications through institutional means”.<sup>23</sup> In these circumstances, practical gaps exist and were reported on some occasions in relation to the registration and documentation of (potentially) stateless individuals; in this context, the introduction of a statelessness status determination procedure, conducted by trained staff, would facilitate registration and identification of statelessness situations or cases of unknown / undetermined nationality potentially affecting children and adults alike.

It should also be stated that in general, **the level of awareness of the problem of childhood statelessness in Romania is quite limited, even among lawyers, NGOs and researchers dealing with migration issues.** Separately, organizations focusing on the Roma community and other groups facing extreme poverty (and thus at a heightened risk of social exclusion) may be able to provide some insight on the situation of children born in Romania whose births are not registered and who may be deprived, on that account, of the rights linked to the possession of Romanian citizenship. In Romania, the birth certificate is extremely important in relation to recognition of citizenship, as it represents the proof of citizenship for children younger than 14 (normally, accompanied by the ID/passport of the parents, as per the provisions of Art. 22 para (2) of the citizenship law). The birth certificate will also contain a CNP (personal numeric code, a sort of personal identification number) which is only granted to Romanian citizens (upon request it may also be granted to children of persons with international protection and asylum seekers) and is extremely important in view of accessing services such as healthcare or the educational system.

Coming back to the issue of statelessness as such, a series of initiatives on the matter were undertaken in recent years, especially under the leadership of the UNHCR Representation in Romania. UNHCR co-hosted a Conference on Statelessness in 2010, whose focus and follow-up action was to promote the adoption of a statelessness status determination procedure, to encourage some amendments to the Citizenship legislation and to promote the lifting of Romania’s reservations to the 1954 Convention. Aside from that, in the context of the initiation, in 2014, of the Global *ibelong*<sup>24</sup> campaign aimed at ending within 10 years the problem of statelessness, UNHCR undertook a 2014 *Study on the Situation of Statelessness in Romania*<sup>25</sup>. Also, in 2015 it is expected that the Handbook on Statelessness for Parliamentarians<sup>26</sup> will be re-printed and distributed (it was also disseminated in 2010).

Only two civil society organizations dealing with migration issues have taken a more specific interest in statelessness. ARCA – the Romanian Forum for Refugees and Migrants<sup>27</sup>, implemented until early 2011 a set of actions dedicated to the reduction of statelessness in Romania, such as legal counselling as well as financial and legal assistance for the acquisition of Romanian citizenship by stateless persons on the territory. ARCA was also involved in some key advocacy actions relating to statelessness in 2010, when it organized, jointly with UNHCR, a Statelessness Conference as part of an initiative for the development of Romania’s policy and practice in the field of statelessness. Nevertheless, ARCA’s involvement in relation to statelessness has since then considerably diminished. The Jesuit Refugee Service - JRS Romania<sup>28</sup> has been more active recently in dealing effectively with individual cases of statelessness, as well as in some advocacy – as it is currently also the only Romanian organization that is a member of the European Network on Statelessness.

Unfortunately, so far, none of the main advocacy objectives at national level – namely the adoption of a statelessness status determination procedure, the amending of the Citizenship legislation and the lifting of Romania’s reservations to the 1954 Convention – have been met, as no particular interest in this regard

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<sup>23</sup> Letter no. 2799831, 03.03.2015.

<sup>24</sup> The Campaign to End Statelessness in ten years was launched on 4 November 2014, see <http://ibelong.unhcr.org/en/>

<sup>25</sup> This Study has not been made public. It is going to be used for advocacy purposes at national level, but not aimed for being publicly disseminated.

<sup>26</sup> [UNHCR – Nationality and Statelessness; Handbook for Parliamentarians](http://www.unhcr.org/53d8ddab6.html), available at the following link: <http://www.unhcr.org/53d8ddab6.html>

<sup>27</sup> The Romanian website of ARCA is available here: <https://arca4refugee.wordpress.com/>

<sup>28</sup> The Romanian website of JRS is available here: <http://jrsromania.org/en/despre-noi/>

was demonstrated by either public authorities or the political class. This situation persists in spite of commitments taken in the context of the above-mentioned 2010 Statelessness Conference, where representatives of the Ministry of Interior, Ministry of Foreign Affairs and Ministry of Justice all recognized the importance of preventing statelessness and the possibility of improvement of national responses to statelessness situations.

## 2. Grant of nationality to otherwise stateless children

### *General rules on acquisition of nationality*

The legal regime on citizenship of Romania is in fact a hybrid of the two principles – *jus sanguinis* and *jus soli*, with a clear predominance of the former. Law no. 21/1991 on citizenship – an ‘organic law’ [*Rom: lege organică*] adopted in March 1991 – was modelled after the former nationality legislation of 1939 and preserved some provisions of the 1971 law, resulting in a synthesis that has a few elements of *jus soli* – for instance, with regard to children who are born in Romania from unknown parents and who are considered to be Romanian citizens.<sup>29</sup>

The 1991 Law enumerates four ways of acquiring Romanian citizenship:

- a) by birth, through transmission from at least one parents who is a national of the country (following the *jus sanguinis* principle) (Article 5)
- b) by adoption of an alien child by a Romanian citizens (Article 6)
- c) by reacquisition by former citizens (Art. 10)
- d) upon request, through a naturalization process, by aliens who were either born in Romania and who had lived in the country for a period of time (Article 8).

With regard to acquisition of nationality by birth, the citizenship law lays down the principle of automatic acquisition of citizenship in all cases of children born from Romanian parents, either on the national territory, abroad or in any other circumstances. In addition, according to Art. 9 of Law no. 272/2004 regarding the protection and promotion of the rights of the child, republished in 2014, which transposes Art. 8 of the UN Convention on the Rights of the Child, a child has a right to the establishment and preservation of his or her identity. Also, in Romania, a child is “registered immediately after birth and from that date he or she has the right to a name, to acquire a nationality, and, if possible, to know his or her parents and be cared for, raised and educated by them”. Every child has a right to keep his or her citizenship, name and family relations as recognized by law without unlawful interference (Art. 9, para. 4). The law also states that if it is found that a child is deprived illegally of any of the elements of his or her identity, public institutions and authorities have an obligation to act immediately to restore the child’s identity.

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

Children born on Romanian territory from parents who are both either as foreign citizens or stateless, do not gain access to citizenship automatically, but are instead subject to a naturalization procedure, which is described in detail in the 1991 Citizenship Law. It is also worth noting that the Romanian Citizenship law underwent several substantial amendments, in 1999<sup>30</sup>, 2002, 2003, 2008<sup>31</sup>, 2009<sup>32</sup> etc., as part of the

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<sup>29</sup> Art. 5 para. 3 of the Citizenship Law.

<sup>30</sup> Mandatory residence period increased from 5 to 7 years, and to 8 years in 2003. Also, in 1999, the condition of a “legal, stable and continuous residence” was introduced.

<sup>31</sup> The naturalization period for refugees was reduced to half (4 years). However, persons granted subsidiary protection do not benefit from this measure by law or in practice, which creates unjustified discrimination in terms of naturalization processes for the 2 categories – especially since the regime of persons with refugee status and those granted subsidiary protection, are identical according to the asylum and integration legislation.

process of EU integration; these actually led to the tightening of the regime for the acquisition of nationality by aliens in practice. The currently applicable provisions set a framework for the acquisition of citizenship by naturalization, with several conditions to be met by applicants, including that of residence for a prolonged period of time<sup>33</sup>. Aside from this, what is perceived as problematic in most instances, in terms of naturalization procedures, is the costs and length of the procedure, but also the interpretation of the legal conditions by the NAC – which is seen as allowing for biased assessments and discretionary decisions by its employees and with very limited transparency (as no further Guidelines, instructions or assessment criteria are made public, aside from those provided for by the Law and limited information available on the institution’s website<sup>34</sup>).

Nevertheless, it must be emphasized that **the Romanian Citizenship Law does not include any safeguard against statelessness for children born in the country to stateless parents** - they become, by effect of the national legislation, stateless as well, and will need to go through the complex naturalization procedure as set out in Article 9 of the Law. There is **also no safeguard for children who cannot effectively or automatically acquire or be recognized as having the same citizenship as their parents**: while the administrative authorities will register these children, born in Romania, as having the same nationality as their parents (based on the parents’ statements and documents), following a more in depth analysis we may find situations where the respective states of ‘presumed’ nationality will not consider these children as nationals, by their law or practice. If none of the countries with which the child has links considers the child as a national, the child is in fact stateless, although he/she had been registered as a national of a third country. We must therefore conclude that **Romania’s Citizenship Law is not in line with the standards set out in Article 1(A) of the 1961 Convention, and also does not ensure effective implementation of the obligations deriving from Article 6(2b) of the ECN.**<sup>35</sup>

While it remains a state-party to the 1961 Convention on the Reduction of Statelessness (“1961 Convention”), Romania fails to comply with the safeguard contained in Article 1 of the 1961 Convention, which gives a child *who would otherwise be stateless* the right to acquire the nationality of his or her State of birth through one of two means: either automatically (*ex lege*) by virtue of birth in its territory, or later - upon application. According to national law, citizenship is granted only upon application, if strict conditions are met and with no facilitated procedures or conditions for stateless individuals or children (unless they were previously granted refugee status). Most importantly, the applicant needs to be at least 18 years old in order to apply for citizenship (otherwise, the application made by the child’s parents has to also include an application in the name of the child); and there is no possibility for children, even over 16, to apply in their own name or to have their applications submitted in their name by a legal representative. As a country that opted to grant nationality upon application, pursuant to Article 1(1)(b,) to children born in their territory who would otherwise be stateless at an age determined by domestic law, Romania fails to comply with the international standards set out in this regard, by not allowing for acquisition of citizenship shortly after birth, thus leaving the child stateless for a considerable period of time. In terms of applicable conditions, Romanian law also sets the rule<sup>36</sup> of ‘lawful’ residence’ of ‘at least 8 years’, which is a breach of both the terms of the ECN (Article 6(2)(b)) as well as of the 1961 Convention that talks about ‘habitual residence’ (Article 1(2)(b)), understood as stable, factual residence and not necessarily a legal or formal residence.<sup>37</sup>

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<sup>32</sup> An order of the Minister of Justice issued in April 2009 caused serious criticism towards Romania, by the EU. Basically, the amendment consisted of facilitating and accelerating the citizenship “re-acquisition” process for Moldovans.

<sup>33</sup> These are described in Article 8 of Law no. 21/1991 on Romanian citizenship.

<sup>34</sup> For instance, the steps and conditions of the procedure are described here in detail: <http://cetatenie.just.ro/index.php/ro/etape-cetatenie> <http://cetatenie.just.ro/index.php/ro/vrei-sa-devii-cetatean-roman> The bibliography however includes a set of themes and laws, but it is unclear how many questions are put to the applicant, what types of questions and what is the ways in which the answers are assessed. In practice, this causes most of the issues.

<sup>35</sup> See for the text of the 1961 and ECN standards on this issue Annex 1.

<sup>36</sup> Art. 8 para. 1 letter a). of Law no. 21/1991 on Romanian citizenship.

<sup>37</sup> UN High Commissioner for Refugees (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*, 21 December 2012, HCR/GS/12/04, para. 40. The Guidelines are available at: <http://www.refworld.org/docid/50d460c72.html> [accessed 10 April 2015]

Additional information about naturalization procedures are also included in Section 3, with further details as regards applicable conditions for stateless persons – including children.

Currently, in relation to children that have a relevant link to the country, Romania also falls short of meeting its obligations as party to the CRC<sup>38</sup>, as some of the provisions thereof are important when interpreting Articles 1-4 of the 1961 Convention – namely, those in Articles 7 and Article 8, which apply without discrimination (Article 2 of the CRC) and in ‘*the best interest of the child*’ (Article 3 of the CRC).

One positive development may however be expected in the near future, as the National Authority for Citizenship reportedly forwarded to the Ministry of Justice a proposal for the modification of Law on citizenship no. 21/1991 by introducing letter c) to art. 5, para.(2), as follows:

*„Also it will be considered that the following are Romanian citizens:  
...c) those who were born on Romanian territory from stateless parents“.*

Nevertheless, it should be noted that **the newly proposed text – which aims to ensure correlation of the national legal framework with the provisions of international instruments that Romania is a party to – does not cover those children who are born in the country to foreign parents who cannot transfer their nationality to the child.**

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

Children born on Romanian territory to parents who are stateless or of foreign nationality, may only acquire a nationality through a ‘generally applicable’ naturalization procedure, which minors can access together with their parents – if they are under 18 years of age – or individually, after they turn 18. According to the General Inspectorate for Immigration, the authority in charge of keeping a record of aliens on Romanian territory, there is no data about stateless children born in the country in the past 5 years<sup>39</sup>.

Children born on the territory to parents who are stateless or of foreign nationality have their birth registered through the same procedure as Romanian children<sup>40</sup>, the only difference being that of the identity documents required in view of conducting this registration (namely the travel documents for stateless persons and the residence permits of the parents). In practice, the Civil Status Officers conduct the birth registration in line with these provisions and there are no reports of specific issues affecting stateless persons who are able to present the required documents.

According to art. 4 of the Law no. 119/1996 on civil status acts, while foreign citizens with temporary or permanent residence in Romania can register civil acts under the same conditions as Romanian citizens, **stateless persons have an obligation to request the registration of their civil status acts** – including birth certificates – at the competent Public Community service for Persons Record or with the civil status officer at the City hall. According to the Directorate for Persons Record and Database Management, functioning under the Ministry of Interior, stateless persons prove their identity with a “passport issued on the basis of the 1954 Convention”, accompanied by the residence permit issued by the General Inspectorate for Immigration. It is not clear how registration is effectively conducted in the absence of these documents,

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<sup>38</sup> UN High Commissioner for Refugees (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*, 21 December 2012, HCR/GS/12/04, available at: <http://www.refworld.org/docid/50d460c72.html> [accessed 10 April 2015]

<sup>39</sup> According to Letter no. 2799831/03.03.2015, in response to a Request for Information sent by the Researcher specifically for this Study. The letter is on file with the Romanian researcher.

<sup>40</sup> The procedure for birth registration of nationals is described in detail under Section 4 and is conducted in compliance with the provisions of Law no. 119/1996 on civil status acts, its methodological norms adopted through Govt. Decision no. 64/2011 and Law no. 272/204 on the promotion of the rights of the child.

and the law does not stipulate anything for exceptional cases where these standard conditions are not met.<sup>41</sup>

Generally, children born in Romania to parents who are aliens do not encounter significant issues when it comes to birth registration, as long as they are able to submit the documents required by the Civil Status Officers. However, there have in the past been isolated incidents with regard to the refusal of issuing birth certificates for children born to parents who were asylum seekers, refugees or persons with subsidiary protection status, as the parents were for instance asked to present their passports from their home countries, instead of the travel documents issued by the General Inspectorate for Immigration. Such cases, which were caused by a lack of understanding or inappropriate application of the legal provisions in place<sup>42</sup>, were resolved through the intervention of NGOs such as ARCA – The Romanian Forum for Refugees and Migrants, that could mediate in these situations.

It should also be emphasized that, while a birth certificate issued in Romania for any child born on the territory from foreign or stateless parents does not have a specific line for '*Nationality*', there is a separate section for '*Mentiuni*' ('Mentions', or annotations) where authorities will add information about the country of nationality or statelessness situation<sup>43</sup>. In practice, this section is filled-in based on the parents' statements and identity documents, but a potential issue could be raised on account of the fact that no verification is conducted as regards the actual possibility of a child enjoying or being recognized automatically as having the same citizenship as the parents. This means that potential conflicts of laws, or any other types of problems that could appear, for instance, in the context of a country's authorities' refusal to register the child born in Romania as their national, are not given sufficient attention nor analysed from the perspective of a possible statelessness situation. There were, for instance, reports by Syrian nationals who, despite receiving birth certificates from the Romanian authorities, indicating their children's nationality as being Syrian, were refused the issuance of Syrian travel documents, pointing to a possible nationality problem.

### Taher's story

Taher is a 34-year old doctor from Syria and a known opponent of the Syrian regime. In early 2014, while his family was legally residing in Romania, his wife gave birth to a baby girl. They registered the birth and acquired a Romanian birth certificate from the City hall, which indicated the child's Syrian nationality – as both parents were Syrians. Soon afterwards, as Taher wanted to register his daughter at the Syrian embassy as well, and have a passport issued for her, he was faced with a refusal. The clerk indicated that this was because of his affiliation with the Syrian community organization in Bucharest, which was opposing the Syrian regime. His wife tried to register their daughter at the Embassy as well, but her request was also rejected. According to Taher, this was a very difficult moment for the family:

*'My baby has a birth certificate from the Romanian authorities, but we could not get a passport and we could not travel with her. After we lost everything in Syria, we could not even travel together as a family. All because they refused to acknowledge her as a citizen. So what was the point of having a Romanian document [birth certificate] which said she was Syrian, if we could not prove it and if her country did not recognize her?'*

A few months later, both Taher's and his wife's passports also expired, and they were unable to prolong them because the Embassy refused to receive their applications. They were not even allowed in through

<sup>41</sup> There is no information available on any such cases in practice and how these have been dealt with.

<sup>42</sup> According to Art. 30, para. 2 of G.D. no. 64/2011, the registration of birth for a child whose parents are aliens is done based on the identity documents of the parents, as well as their passports.

<sup>43</sup> In line with Art. 151 corroborated with art. 24 letter d) of the G.D. no. 64/2001 on the Methodology for the unitary application of dispositions concerning civil status.

the gate. They could not prolong their residence permits; their status was about to become that of 'illegal' residents. He claimed that, in those moments, he '*felt very much ashamed*' because he had to go apply for asylum '*(...) I don't know why. I though asylum meant we were helpless. We were standing there, in line, with the children... we never imagined we would be refugees, but we were.*' While this problem was solved because the family were granted subsidiary protection in Romania, it demonstrates the precarious nature of documentation for families who have come from war-torn areas and the potential knock-on effects for the enjoyment of nationality by children born in exile. It remains to be seen whether Taher or his daughter will be considered as nationals by the regime which is in power when the Syrian crisis is over.

#### *Access to nationality for otherwise stateless children born abroad, according to the law*

All children born abroad to a parent who is a national of Romania are automatically, *ex lege*, considered to be Romanian citizens. Also, the relevant legislation does not make any distinction between the regime applicable to children born outside of marriage, as compared to children born in families where parents are married (art. 5, para. 2.a and b). There are no additional legal criteria applicable, but the regime of civil status acts – referred to below – mentions a procedure to be undertaken in view of issuing the birth certificate and correctly registering the child's birth, if he or she is born abroad. In this regard, the current provisions are in line with the relevant international legal standards set out by Art. 4 of the 1961 Convention on the Reduction of Statelessness and Art. 6 of the European Convention on Nationality.

#### *Access to nationality for otherwise stateless children born abroad, in practice*

In terms of statistical information, it appears that a relatively high number of children are born abroad: for instance, according to the National Institute for Statistics which released this data on 30 May 2014, from the total number of children born to Romanian parents in 2013, 176.013 children were born in Romania, and 22.203 were born abroad. **Since the Citizenship Law is very clear in terms of automatic acquisition of nationality for children born to nationals abroad, there are no issues to be raised in this regard.** For children, the proof of citizenship is made with the birth certificate, accompanied by the passport or the ID of either of the parents. In practice, the administrative authority competent for registering civil status acts for children born to a national abroad can, depending on the case, be either the chief of the diplomatic mission / consular office of Romania, or – in special circumstances – the commander of a ship or plane on board of which the child is born.

The legal procedure for the registration and transcription of birth certificates for children born abroad, is found both on the website of the Directorate for Persons Record and Databases Management as well as on the websites of the Ministry of Foreign Affairs.<sup>44</sup> The staff of these institutions, who have a special regime as civil servants, have to be aware and comply with their responsibilities as set out in the Terms of Reference for their positions or in the Internal Regulations of the respective institutions; in this regard, they are subject to annual professional training programmes.

In practice, children whose birth was registered abroad will need to transcribe the civil status documents in Romanian registries. This can be done through either of two procedures, depending on the case: through a request, in compliance with Art. 40 para. 2 of Law no. 119/1996, republished, for the registration of the foreign civil status certificates in Romanian registries (in this case, if the person is abroad, the documentation will be submitted at the diplomatic mission from the country where the child was born); or through a request for the transcription of foreign civil status certificates in Romanian registries (if the person submits the request while in Romania).

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<sup>44</sup> For instance, <http://torino.mae.ro/node/280> ; <http://washington.mae.ro/node/280>

Children born abroad who were not registered with the diplomatic mission or any foreign local authority, will have their birth certificate issued in the country, at the Public Community Service for Persons Record or the Civil Status Officer from the territorially-competent City-Hall (from the place where the parents reside), following verifications conducted by the Ministry of Interior, through the Ministry of Foreign Affairs.

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

#### *Foundlings*

In Romania, the treatment of foundlings in terms of citizenship acquisition is established through the provisions of Law no. 21/1991, according to which “*a child found on Romanian territory is considered to be a Romanian citizen, until proven otherwise, if none of the parents is known*” (Art. 5, para. 3)<sup>45</sup>. Conferral of nationality is therefore automatic, *ex lege*, but certain administrative conditions have to be met in order for this provision to be effective in practice.

Furthermore, the Citizenship law provides that a child found on the territory loses Romanian citizenship if before the age of 18 filiation is established to both parents, and they are foreign citizens, as well as in cases where parentage has been established only towards one parent – who is a foreign citizen – while the other parent remains unknown. According to the same provisions, Romanian citizenship is lost on the date on which filiation (parentage) is established (Art. 30). The law provides no clarification regarding situations where it is found that parents are stateless, and no jurisprudence exists on the matter. While in practice the authorities state that they take into account potential situations of statelessness when deciding on the withdrawal of Romanian citizenship, in the absence of clear provisions it may happen that a child found on the territory is rendered stateless following the identification of his stateless parents.

With regard to the implementation of these provisions in practice, the applicable administrative procedures are referred to in Law no. 272/2004 on the rights of the child<sup>46</sup>, Law no. 119/1996 on civil status documents<sup>47</sup> and the methodological norms for the application thereof adopted by Gvt. Decision no. 64/2011<sup>48</sup>. Some of these provisions also apply to children who are abandoned by the mothers in hospitals or other healthcare institutions, if the identity of the mother is unknown. Basically, any authority, institution or person who cares for pregnant women or finds a new-born or an older child whose identification data is unknown or cannot be established, has an obligation to inform a police unit or the local public authority and Social assistance services immediately (within 24 hours). A birth certificate for the child is issued by the territorially competent Public Community Service for Persons Record within 30 days from the moment the child was found, based on a report that is signed by a representative of the Social Assistance Service, of the Police and by a doctor. The above-mentioned report needs to be filled-in within 3 days from the moment the child was found, and has to include information regarding the date, place and context in which the child was found, the child’s sex and presumed date of birth – as established by the doctor. The authority responsible for all actions regarding birth registration is, in such cases, the public Social Assistance Service in whose territorial range the child was found<sup>49</sup>.

In addition to the above-mentioned provisions, the Law on the rights of the child no. 272/2004 provides that, in view of establishing the identity of a child who was found or abandoned in a hospital, the Police and Public Community Services for Persons Record are required to designate one or more persons responsible

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<sup>45</sup> Art. 5 para.(3), in Romanian, reads: “*Copilul găsit pe teritoriul statului român este considerat cetățean român, până la proba contrarie, dacă niciunul dintre părinți nu este cunoscut*”.

<sup>46</sup> Art. 12 and 14-16

<sup>47</sup> Art. 19-21

<sup>48</sup> Art. 29 and 33-37.

<sup>49</sup> According to Art. 19 of Law no. 119/1996 on civil status acts.

to carry out, with celerity, the necessary steps for birth registration and to send any information identified to the Social Assistance and Child Protection Services.

**While the medico-legal expertise needed for the birth registration is free for children whose birth was not registered** (as per art. 14 of the Law on the rights of the child), **this is not the case for persons who are over 18 years of age and whose birth remained unregistered**. This issue will be explored in more detail under Section 4 of this Paper.

There is no particular age limit for the registration of birth in the case of foundlings; nevertheless, art. 29 and 33 of the Methodological norms for the application of legislation on civil status acts stipulate a timeframe of 30 days within which the birth of a child needs to be declared and registered, if the child is under one year of age, and also 30 days from the moment the child was found, if he/she is over one year of age. This provision is basically a safeguard against situations of legal limbo, where foundlings found on the territory would remain unregistered pending prolonged verifications.

The issuance of a birth certificate for foundlings is done based on the following documents: a) a written statement from the person who found the child or a note from the representative of the Social Assistance Services within the administrative and territorial unit in the area where the child was found; b) the report prepared and signed by the competent police unit, the doctor and the representative of the Social Assistance Services; c) the decision determining the name and surname, issued by the mayor, for situations where the family name and surname of the child are not known; d) the forensic certificate establishing the gender and approximate age of the child. If, following the registration of the child's birth, the parent(s) is/are identified, the birth certificate is annulled through court decision and a new one is issued.

Basically, while these safeguards are compliant with Article 2 of the 1961 Convention, they are not however fully in line with the legal standards comprised in Art. 6(1) of the European Convention on Nationality. **While foundlings found in Romania are granted citizenship *ex lege*, it has to be noted that there is no specific provision prohibiting the deprivation of Romanian citizenship in the case a child found on the territory is identified as having stateless parents.**

### *Adoption*

As mentioned before, one of the ways in which a child can acquire Romanian citizenship is through adoption. According to art. 6 of Law no. 21/1991, "*Romanian citizenship is acquired by a foreign or stateless child through adoption, if the adoptive parents are Romanian citizens*". If only one of the adoptive parents is a Romanian citizen, the citizenship of the child has to be decided by agreement between the adoptive parents. Nevertheless, if such agreement cannot be reached, the competent court deciding on the adoption will also have to decide with regard to the future citizenship of the child, taking into account the interest of the child and asking for the child's opinion if he/she is over 14 years of age. While the legal provisions do not specify what is the course of action in a hypothetical situation where one of the adoptive parents is Romanian and the other one is stateless and the parents cannot reach an agreement, in practice, given the fact that the Court would be called to decide on the matter with due regard for the best interests of the child, it is likely it will decide in favour of the child acquiring Romanian citizenship.

Interestingly enough, when it comes to adoption and citizenship, the law differentiates between cases of annulment and cancelation of adoption, compared to those of dissolution of adoption. Consequently, in the case of annulment or cancellation of adoption, a child under the age of 18 is considered to have never been a Romanian citizen if he or she is residing abroad or leaves the country for permanent residence abroad. In the case of dissolution of adoption, the child who has not attained the age of 18 will lose Romanian citizenship on the date of the adoption's dissolution date, if he or she lives abroad or leaves the country for permanent residence abroad. **While no jurisprudence could be identified on the matter, these provisions**

**reveal a clear gap in the protection against statelessness resulting from annulment, cancelation or dissolution of adoption for a child who resides abroad.**

In the case of children adopted by foreign parents, the general principle according to which “Romanian citizenship cannot be withdrawn from a person who has acquired it by birth” (Art. 25 para. 2 of the Citizenship Law) remains applicable. Nevertheless, there is an exception<sup>50</sup>, which is in line with international and regional standards as it also contains relevant guarantees preventing potential situations of statelessness from occurring: if a child, under the age of 18, is adopted by foreign parents, he/she will lose Romanian citizenship if he/she is granted the same nationality as the adoptive parents. If the child is over 14, his/her consent is also verified, and it shall be considered that the child lost Romanian citizenship from the date he/she acquired the citizenship of the adoptive parent(s). If the adoption is annulled, the child (if under 18) will be regarded as never having lost Romanian citizenship. **This is in line with applicable international and regional standards, such as those set out by Art. 5 of the 1961 Convention and Art. 7 of the ECN.**

### *Surrogacy*

Surrogacy is not dealt with in Romanian legislation. Currently, the Civil Code<sup>51</sup> only addresses medically-assisted human reproduction with a donor (*‘reproducerea umana asistată medical cu un terț donator’*) and establishes, under art. 441, that the use of such technologies does not determine filiation between the child and the donor – which also implies that the donor (a third party to the couple benefiting from medically-assisted human reproduction) would not have parental rights or claims over the child.

There is no further guidance, data or jurisprudence on surrogacy and nationality issues. A Draft bill with regard to medically-assisted human reproduction – registered at the Chamber of Deputies under the Code *PL-x nr. 462/2013 – ‘Proiect de Lege privind reproducerea umană asistată medical’*<sup>52</sup> after it was approved by the Senate on 11 November 2013, is still under discussion with the special commissions of the Chamber of Deputies. This Draft bill tries to regulate the legal regime and confidentiality issues regarding medically assisted reproduction techniques, but does not refer to surrogacy as such nor does it address related nationality issues.

### *Loss of nationality*

Romanian nationality is lost either by renunciation or by withdrawal. According to the law, a child should not lose nationality due to the loss or deprivation of nationality from a parent. This interpretation is confirmed by the National Authority for Citizenship, which states that the Citizenship Law also includes provisions preventing children from becoming stateless, because the withdrawal of Romanian citizenship from one of the parents does not have any implications for the citizenship of his/her spouse or his/her children (in application of Art. 26).

With regard to renunciation of Romanian citizenship, this is done only upon request and is approved by the Citizenship Commission, provided – among others – that the person concerned has already acquired or has requested and has assurances that he/she will receive another citizenship. (Art. 27, para. (1), letter c). **This condition, which constitutes a safeguard against statelessness in cases of voluntary renunciation to citizenship, was included in the legislation in 1999**, following a series of events in the 1990s where a large

<sup>50</sup> Art. 29 of Law no. 21/1991 on Romanian citizenship

<sup>51</sup> <http://www.just.ro/LinkClick.aspx?fileticket=OKRoig31Q!%3D&tabid=2592>

<sup>52</sup> This Draft bill and the legislative process for its adoption is available on the websites of the Chamber of Deputies and respectively of the Senate, at <http://www.cdep.ro/proiecte/2013/400/60/2/se790.pdf> and <http://www.senat.ro/Legis/Lista.aspx?cod=17384>

number of Romanian citizens from communities affected by poverty and social exclusion renounced Romanian citizenship and became stateless, then travelled to countries like Germany and Austria in search of better social assistance measures and support. It should be emphasised however that such cases benefit from a facilitated procedure for reacquiring Romanian citizenship, and additional similar situations should be prevented as a result of the introduction of the above-mentioned provisions.

While the Citizenship law contains an additional safeguard concerning children, stipulating that the “*loss of Romanian citizenship by renunciation does not have any effects over the citizenship of the spouse and minor children*” (Art. 28 para. 1), this still does not provide full protection against statelessness for children. That is because legal provisions also establish that, in cases where both parents renounce Romanian citizenship, and the child accompanies them abroad, he/she will also lose citizenship with the parents, or at the time when the last of his parents has lost citizenship (if renunciation was approved at different dates), or at the date when the child leaves the country (in case he/she leaves the country after both his/her parents renounced Romanian citizenship). Furthermore, a child who is entrusted by a Court decision to the parent residing abroad and who renounces citizenship, will in his/her turn also lose Romanian citizenship on the same date with the parent to whom he/she was entrusted for care, subject to the agreement of the other parent. **Consequently, there is a gap in the protection against statelessness for children in the context of renunciation, as the provisions apply regardless of the fact that a child may or may not be able to acquire the citizenship of the state where his/her parents left to.** At the same time, statelessness in such cases may also occur if the child / parents are later on deprived of the newly acquired citizenship, for any reason, in the new country of residence.

#### *Facilitated naturalization*

As described under Section 2, naturalization is possible in Romania in line with art. 4 para.1, letter c) and art. 8 of the Citizenship Law, while additional provisions with regard to children are found in Art. 9 of the same act. The 1991 Citizenship Law describes a set of conditions that all aliens have to meet to be granted Romanian citizenship, including that of residence for a prolonged period of time<sup>53</sup>.

In terms of the procedure, the applications have to be filed personally or through an attorney, by people who are over 18 years of age (or by parents on behalf of themselves and their children), to the Citizenship Commission within the National Authority for Citizenship<sup>54</sup>. Following an assessment of the person’s individual file, the NAC informs eligible candidates of the date for their interviews, which are in fact examinations of the persons’ knowledge of Romanian language, history, geography and Constitution. The acquisition of citizenship becomes effective upon the person taking the oath of loyalty in front of the Minister of Justice or a State Secretary.

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<sup>53</sup> Article 8 - The Romanian citizenship can be acquired, at request, by a stateless person or by a foreigner, provided the following conditions are met:

- a) was born and resides at the date of application on the Romanian territory or, although was not born on this territory, has been legally residing on the Romanian territory for at least 8 years or for at least 5 years from marriage, if married and living with a Romanian citizen;
- b) proves, by way of behaviour, actions and attitude, loyalty to Romania, does not commit nor sustain acts against the rule of law or the national security and declares that did not commit such acts in the past;
- c) has 18 years of age;
- d) has, in Romania, the legal means for a decent life, pursuant to the legislation on the regime of aliens;
- e) is known for having a good behaviour and has not been sentenced in Romania or abroad for a crime which would make him/her undignified for acquiring the Romanian citizenship;
- f) knows the Romanian language and has basic notions of Romanian culture and civilization, sufficiently for his/her integration in the social life;
- g) knows the Romanian Constitution and the national anthem.

The period of residence provided for in paragraph 1, letter a), may be reduced up to half in case the applicant is an internationally renowned personality or has invested in Romania at least 500.000 euros.

If the foreigner or the stateless person applying for the Romanian citizenship leave the Romanian territory for more than 6 months within a year, that year does not count in the calculation of the period of residence set forth in paragraph 1, letter a).

<sup>54</sup> This institution was formerly called the Directorate for Citizenship, and is subordinate to the Ministry of Justice.

**There is no facilitated naturalization procedure for stateless persons, unless they were granted refugee status or they are married to Romanian nationals** – in the former case, the residence period ‘may’ be reduced but at the discretion of the NAC. In fact, as already mentioned, the Citizenship Law does not include a safeguard against statelessness for children born in the country to stateless parents, or for children who cannot effectively or automatically acquire or be recognized as having the same citizenship as their parents. As the notions of unknown/unclear/undetermined nationality are not used in law or practice, such categories of persons are not registered in Romania, nor do they benefit from facilitated naturalization procedures.

**The only facilitated naturalization procedure is the one that applies in the case of stateless persons or foreign citizens who were former Romanian nationals or who are of Romanian origin, and who apply to reacquire Romanian Citizenship** in line with Art. 10 and 11 of the 1991 Law:

*“Art. 10. — (1) Romanian citizenship may be granted also to persons who have lost such citizenship, as well as to their descendants to the second degree inclusively who apply to acquire it again, and they may keep their foreign citizenship and establish their domicile in Romania or keep their domicile abroad, provided that they meet the conditions in Art. 8 para. (1) b) - e) accordingly.*

*(2) Paragraph (1) shall apply also to stateless persons who are former Romanian citizens and to their descendants to the second degree inclusively.*

*(3) The reacquisition of citizenship by one spouse has no consequences upon the citizenship of the other spouse. A person who is a foreign national or is stateless and is married to a person who reacquires Romanian citizenship may apply for Romanian citizenship under this Act.*

*Art. 11. — (1) Persons who have acquired Romanian citizenship by birth or adoption and have lost it for reasons that are not imputable to them or whose Romanian citizenship has been withdrawn against their will, as well as their descendants to the third degree, may apply for reacquisition of Romanian citizenship or it may be granted to them, and they may keep their foreign citizenship also, and either establish their domicile in Romania or keep their domicile abroad, provided that they meet the conditions in Art. 8 para. (1) b), c) and e).*

*(2) Art. 10 para. (2) and (3) shall apply mutatis mutandis.”*

Such cases of statelessness among persons of Romanian origin occur among those who in the 1990s, left the country and renounced Romanian citizenship, in an effort to receive international protection or at least social benefits in countries such as Germany, Austria and Poland. These stateless persons of Romanian origin and their descendants, have access to a simplified reacquisition procedure, whereby they are requested to prove that they are loyal to the Romanian state and they did not commit acts against public order, national security and safety, that they are over 18 years of age, that they have legal means to support themselves and that they have not been sentenced in Romania or abroad for a crime which would render them undeserving of re-acquiring the Romanian citizenship.<sup>55</sup> In addition, those who were deprived of nationality for reasons not imputable to them are, according to art. 11 of the Citizenship Law, not required to make proof of their financial means of support. It should nevertheless be noted that even the conditions stipulated under this ‘facilitated’ process of reacquisition of citizenship may be, in some cases, hard to meet.

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<sup>55</sup> Art. 10 of Law no. 21/1991 on citizenship.

## George's story

George is a stateless person of Romanian origin, born in 1983. In the early 1990s, when he was about 7, George's family decided to emigrate. They did that because life was difficult in Romania, and his parents could barely afford to care for him and his sisters. They left for Germany, where they stayed for several years and received social assistance from the Government. They hoped to be granted citizenship as well, so in 1993 they renounced Romanian citizenship and became stateless. But in 2002 they were forcibly returned to Romania.

George's father, the head of the family, refused to enter Romanian territory for several years, and consequently they were kept by the authorities in the transit area of Otopeni airport, because – as stateless persons who refused entry – they could not be granted access to the territory. In 2007, after 5 years of staying in the transit Centre, in bad conditions, his father killed himself. This is when the family decided to accept entry on Romanian territory: *'You have to understand, we told my father to stop and leave the Centre, to accept Romanian citizenship again. But he refused until the last moment. After that, my younger sister applied to reacquire Romanian citizenship. My other sister has German citizenship now. I am still stateless'*.

Now George has turned for help to various NGOs. He first became interested in reacquiring Romanian citizenship in 2010 and went to some of the organizations dealing with migrants and refugees, but he was disappointed: *"they had provided counselling but not much else"*. For the past year, he has been attempting to get some support from several different organizations, but unsuccessfully:

*'I know the law. I do not need counselling. They say the procedure is easy if you had Romanian citizenship before, but that is not true because they still ask for proof that you have a certain income. And a proof that you have a place to stay. I do not have a registered lease...that is expensive. And proof of income...that is difficult to get even if you are not stateless: they ask for a legal employment contract, with a certain wage, they don't accept any less. If I had all this, I would apply tomorrow.'*

George says he has difficulties getting work, because any potential employer has doubt about his regime in Romania: many times he was asked to present a work permit, although legally, as a long-term resident, he would not need it. Furthermore, he does not feel he 'belongs'. He would like to vote and have an ID, and would like to be able to travel using a Romanian passport.

Available statistics on citizenship acquisition and reacquisition indicate that the majority of application (69.6%) submitted by stateless persons come from individuals born in Romania. There seems to be an increase in the number of applications approved by the NAC in the past 5 years. Yet, the official data provided by this institution indicated that, for the entire period between 2005 and 2014, 361 applications to acquire or reacquire Romanian citizenship were submitted with the NAC by stateless individuals, out of which 169 persons were granted Romanian citizenship – which only represent 46.8% of the total. There is no publicly available information as to why over 50% of applications were rejected, but the reasons may either be the failure of the applicants to meet the required conditions, or their failure to pass the examination (in the form of an interview). Out of the number of applicants, the vast majority – 322 – were born in Romania and 10 in Germany (so most likely of Romanian origin). There is no data available with regard to the number of children included in these files.<sup>56</sup>

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<sup>56</sup> Letter no. 2902/ANC/27.02.2015.

Table 2: Applications for acquisition or reacquisition of Romanian citizenship, based on Art. 8 or 10 of Law no. 21/1991, submitted between 2010 and 2014

Year	Applications submitted	Country of birth	Application approved by order of the NAC's President*	Citizenship certificates issues during the year**
2010	31	4 Germany 1 Kuwait 2 Palestine 24 Romania	17	11
2011	21	1 Egypt 1 Germany 1 Palestine 2 Lebanon 16 Romania	33	10
2012	25	1 Kuwait 2 Lebanon 21 Romania	17	8
2013	12	1 Egypt 11 Romania	17	7
2014	13	1 Cameron 2 Kuwait 1 Lebanon 9 Romania	14	5
<b>Total</b>	<b>102</b>		<b>98</b>	<b>41</b>

\* The variations in the number of applications approved and the number of applications submitted for the year 2011 may be explained based on the lengthy period of time needed for the application to be assessed - for instance, someone who applied in 2010 may have had his or her application analysed and approved in 2011.

\*\*The number of citizenship certificates issued during each year is different compared to the number of applications approved, because the citizenship certificate is only issued within a 3 months period following the approval of the application, and after the persons take an oath of loyalty to Romania, in a solemn session before the Minister of Justice. Another reason for the difference may reside in the fact that children (under 18) are included in the citizenship certificate of their parent(s).

#### 4. Birth registration and statelessness

##### Access to birth registration

The registration of birth represents the starting point of ensuring the right to an identity and is, as such, important for the effective recognition of citizenship as well. In Romania, universal birth registration is guaranteed under the law and regulated under several major pieces of legislation: Law no. 272/2004 on the rights of the child and Law no. 119/1996 on civil status documents, and the G.D. 64/2011 on the methodological norms for unitary applications of provisions concerning civil status. While these create a general framework in relation to birth registration, they do not address exceptions in much detail, which may potentially lead to gaps and varied interpretations. **Failures or gaps of the birth registration system generate a risk of unregistered births.**

It should again be emphasized that the birth certificate is extremely important in relation to recognition of citizenship in Romania<sup>57</sup>: it represents the proof of citizenship for children younger than 14 (normally, accompanied by the ID/passport of the parents, as per the provisions of Art. 22 para(2) of the citizenship law); this document also contains a CNP (personal numeric code, a sort of personal identification number) which is only granted to Romanian citizens (upon request it may also be granted to children of persons with international protection and asylum seekers) and is extremely important in view of accessing services such as healthcare or the educational system. After the age of 14, children are also provided with ID cards to prove their identity, including their nationality. The birth certificate, issued according to Law no. 119/19976 and its methodological norms<sup>58</sup>, is basically the ‘civil status document’ (Rom.: ‘*act de stare civila*’) that constitutes a proof of birth ‘in the interest of the state and the individual, and serves as information about the number and structure of the population, demographic situation, and the defence of the fundamental rights and freedoms of citizens’<sup>59</sup>. **In this context, the lack of birth registration renders children significantly more vulnerable to statelessness because it leaves them without proof of birthplace, parentage and other key facts needed to establish their position under the nationality law.**

According to applicable legal provisions<sup>60</sup>, children are to be registered at the time of birth and from that date, they have “the right to a name, to a citizenship (...)”<sup>61</sup>. Under the *Law on the rights of the child*, these rights are equally guaranteed for children who are: nationals residing in the country, nationals residing abroad, stateless and find themselves on Romanian territory, children with a form of protection (with either refugee status or subsidiary protection) as well as children who are foreign citizens, in emergency situations noted by public authorities<sup>62</sup>.

Children born on Romanian territory must be registered<sup>63</sup> at the Public Community Service for Persons Record (*servicul public comunitar de evidenta persoanelor*) or the civil registration officer (*ofiterul de stare civila*) within the City Hall (at county/city/town level). There are several deadlines for concluding the birth registration process for all children born on the territory, depending on their particular situation<sup>64</sup>, and a set of documents is needed: the verbal statement of either of the child’s parents (or, if this cannot be obtained, the verbal declaration of the doctor, any person present for the delivery, a representative of the hospital where the child was delivered, or any other person who was present or took act of the child’s birth); the mother’s identity document (and the document of the person declaring the birth); the medical birth certificate (issued by the medical institution where the child was born) and – if applicable – the marriage certificate of the parents.<sup>65</sup> Basically, while either of the two parents is legally able to register the child’s birth, the mother’s identity document – if she is known – is a pre-requisite for the child’s registration.

### Andreea’s story

Andreea is 8 years old and lives with her father and sisters on the outskirts of Bucharest, in a house that resembles an improvised shelter more than a home. She never went to school, but she wants to. She doesn’t understand the reasons she can’t go, but she’s old enough to understand that she has to take care of her younger siblings: ‘*What I do all day is stay with my sisters and we play with the other children (...) those who are my age go to school (...) I don’t know what school is like, maybe it’s nice, I don’t know.*’

<sup>57</sup> Art. 4(2) and 4(3) of Law no. 119/1996 on civil status documents establishes that stateless persons **have an obligation** to register actions and facts relating to their civil status at the Public service for Persons Record or the competent City Hall, and also have an obligation to request the registration of any mentions (additions, changes etc.) on civil status documents registered in Romanian Civil status registries.

<sup>58</sup> G.D. no. 64/2011 [*in Rom: HOTĂRÂRE nr. 64 din 26 ianuarie 2011 pentru aprobarea Metodologiei cu privire la aplicarea unitară a dispozițiilor în materie de stare civilă*]

<sup>59</sup> Art. 1 OF G.D. no. 64/2011

<sup>60</sup> Law no. 272/2004 on the rights of the child

<sup>61</sup> Art. 9 (2) of Law no. 272/2004 on the rights of the child

<sup>62</sup> Art. 3 of Law no. 272/2004 on the rights of the child

<sup>63</sup> Art. 14 of Law no. 119/1996 on civil status documents

<sup>64</sup> Art. 14(3) of Law no. 119/1996 on civil status documents

<sup>65</sup> Art. 14 and 16 of Law no. 119/1996 on civil status documents

Andreea was born outside of a medical facility, in a village in Giurgiu County, and at the time her mother had lost her ID, so she did not go to register the child. Her father tried to register her, but he was told they need to come up with the mother's documents in order to be issued the certificates. Later on, when the mother acquired her new documents, more than one year had passed from the time of her birth; they asked around, her father says, but did not really understand what they had to do for late birth registration. They did understand that they have to go to a court and that it would take a long time, and so they postponed it. *'I know it would have been better to do it then...'*, the father says, *'but it sounded difficult and we thought we would just do that later on. The other children have birth certificates, because my wife went to register these children, she had already gotten a new ID when they were born'*. Andreea's mother indeed acquired new IDs and left to work in Bucharest. After a while, the family stopped getting news of her. *'I don't know where she is or what she is doing'* the father says.

The father collects glass for a living and sells it to a company that's in the business of recycling. He is paid very little and hardly makes enough to take care of the children. *'I take care of them how I know best. They are not neglected. I feed them, we have where to sleep, they know I care for them and they are all I have'*. He admits that if Andreea went to school there would be *'no one left to care for the younger ones'*. For now, Andreea's father does not see it as a priority to initiate the procedures to register his older daughter: *'It is not the most important thing now, for now we need to eat. We will do that also, but we need help because I don't know what to do and I don't have time to go to the judges for this'*. He never sought help, however, from any NGO up to date, or from the child protection authority. He doesn't understand how these could help. *'What are they going to do for me? They can explain, come with advice, but the truth is they don't live our life'* the father says.

The family only receives support (packs of food on occasions and clothes of school supplies for the children) from a church nearby. The priest there knows they are one of the very poor families in the area. *'I never asked for help with the documents of the child, but they never asked or offered either'*, he says. In the meantime, Andreea does not exist, from the point of view of the system: aside from not going to school, she does not receive state allowance and she does not have a family doctor. *'She was not a sick child, luckily. She had a bad flue recently so we went to a clinic to get a prescription for medication, but to get the check-up and medicines free of charge we used the certificate of her younger sister. It's good they have no ID yet, the birth certificate has no picture on it, and she is quite thin and small so she can pass as being younger'*, the father says. Andreea says her father promised that soon he would seek some assistance to get her situation clarified, but meanwhile she tries to help the family in any way she can.

Registration of birth is done with the competent authorities within 15 days following birth (art. 17 para. 3 of Law no. 119/1996); if birth registrations is conducted after the 15 days term, but within one year following birth, the approval of the Mayor of the village / town or city will be needed. When the declaration of birth is done after one year following birth, registration will only be possible based on a final and irrevocable court decision, which will have to include all data necessary for the issuance of the birth certificate (art. 21 para. 1 of Law no. 119/1996).

As far as late birth registration is concerned, this is considered as being any registration taking place after more than one year following birth. If a child is found, whose birth was not registered, the obligation to register him/her falls to the territorially-competent Public Service for Social assistance (from the territorial unit where the child was found).<sup>66</sup> In addition, if this process is carried out within one year of the child's birth, the prior authorization of the mayor is required to finalize the procedure. Should the late birth registration take place after one year from the moment of birth, a final and irrevocable court decision

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<sup>66</sup> Art. 14 of Law no. 272/2004 on the rights of the child

needs to be issued<sup>67</sup>. This decision should include all the data required for issuing the birth certificate. The competent court is the local civil court (*judetatorie*) in the interested party's place of residence or the place where the territorially-competent Public Service for social assistance is located. In taking its decision, the Court will ask the local Public Community Service for Persons Record to verify the child's identity; other proof required is the medical certificate from the medico-legal practitioner determining the age and gender of the person in question.

There are some practical implications of having to undergo a court procedure for late birth registration; these include the need for legal representation (which may be expensive) as well as the need for a medical age assessment conducted by authorized medico-legal units of the National Medico-Legal Institute [*Institutul National de Medicina Legală*]. This, in turn, has financial implications for persons who are over 18 years of age who were never registered. For cases of children, the medico-legal expertise required to register the birth will be free of charge – the costs of the procedures need to be covered by the local authorities. Those subjected to the medico-legal procedure have also reported experiencing this as unpleasant, as it combines a series of age-assessment methods (physical measurements and X-rays) that may be perceived as uncomfortable. Moreover, the complexity of these procedures may lead in practice to persons eluding the system.

**There is no official data about the birth registration rate in Romania.** However, according to the Directorate for Persons Record and Databases Management, *“the number of births that remained unregistered cannot be estimated, since this situation can only be noticed when a case is encountered. The failure to register a birth in the Civil Status Registries within the legal deadline, may be generated by a series of factors, the main reason being that of the lack of interest of persons who were obliged, according to the law, to declare the birth. In this context, we would like to point out that the granting of specialized assistance from authorities and the involvement of NGOs at local level led, in some cases, to a late registration of children in civil status registries and to the issuance of birth certificates”*.<sup>68</sup>

According to the same authority, the number of birth certificates issued over the legal term of one year, based on a court decision, was in total 6900 in the past 5 years, but no additional data is available with regard to the profile of this group or the reasons that led to a delay in registration:

Year	Number of successful late birth registrations (over the 1 year term)
2010	1,646
2011	1,501
2012	1,496
2013	1,194
2014	1,063

At the same time, the National Authority for the Rights of the Child and for Adoption, mentioned that they are in the possession of aggregated data which indicates that there are 58 children at national level ‘who benefit from special protection measures’<sup>69</sup> and ‘whose situation in terms of civil status is not yet legalized’.

Of course, these numbers do not reflect the full situation of children whose births was not registered. While failure to register a child's birth can occur in a variety of circumstances, the factors most often conducting to such failure are related to: extreme poverty<sup>70</sup>, absence of education, lack of documentation

<sup>67</sup> Art. 18 of Law no. 119/1996 on civil status documents

<sup>68</sup> Letter no. 3546577/23.02.2015 of the Directorate for Persons Record and Database Management within the Ministry of Interior, on file with the national researcher.

<sup>69</sup> Special protection measures refer to children placed in state care, children temporarily or definitively placed with foster families or in residential-type facilities, according to the provision of Art. 58, 115 and 120-123 of Law no. 272/2004.

<sup>70</sup> According to Save the Children, 2009 - <http://jurnalul.ro/stiri/observator/romania-locul-3-in-ue-copiii-afectati-de-saracie-526211.html>

on the side of mothers themselves, or even the cultural aspects of particular communities. These factors may lead to birth outside of medical facilities, lack of information or understanding of the administrative procedures required in view of registration, limited awareness or resources to follow the late registration procedure, etc. One of the communities affected is the Roma<sup>71</sup> community, which is facing a complex range of problems, stemming in many cases from extreme poverty and social exclusion that Roma population faces. As a matter of fact, the majority of research and studies show that the Roma community in Romania is the most exposed to social exclusion, is discriminated against and has unequal access to education, to employment, to decent living conditions, social services and healthcare.<sup>72</sup> **There appear to still be many children and young adults, especially from marginalized communities or from families affected by extreme poverty, who remain unregistered at birth and who would need to undergo this complex procedure in order to register later in life. The situation becomes even more complicated, to almost impossible, for people who were not born in medical units and who are not even in the possession of a medical certificate of birth. Vulnerability increases as children are born from parents who do not own documents themselves, thus entering a vicious circle that leads to legal invisibility similar to, or even worse than that faced by stateless individuals.** There may be several reasons feeding this situation – including the lack of interest from the persons and the community itself to resolve the issues of their own status, a lack of awareness or understanding of the importance of registering and holding identity papers, or the challenge of meeting the evidentiary requirements for registration of birth (such as personal identification documentation, legally registered residence, marriage certificates, and the associated costs)<sup>73</sup>.

### Ionela's story

Ionela is about 30 years old and has never had documents. She lives in the small village of Valea Seaca, with her partner and their 3 children, and with her eldest daughter, aged about 12, from Ionela's previous relationship. Three of the children could not receive birth certificates or even medical certificates as proof of birth, because the mother herself is undocumented. One of her children, who is around 5, has a birth certificate, but according to the document, Ionela is not the mother: *'The ambulance would not take me to*

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According to a Eurostat Report OF 2011 - *Children at risk of poverty or social exclusion*, available at the following link:

[http://ec.europa.eu/eurostat/statistics-explained/index.php/Children\\_at\\_risk\\_of\\_poverty\\_or\\_social\\_exclusion](http://ec.europa.eu/eurostat/statistics-explained/index.php/Children_at_risk_of_poverty_or_social_exclusion), Romania in came second, after Bulgaria, in the list of countries with the largest population at risk of poverty or social exclusion by age group (%). The percentage of children affected by the risk of poverty and exclusion: 49.1%

<sup>71</sup> According to the latest Census conducted in Romanian in 2011, there are officially 619.007 Roma in Romania, making the Roma the second largest minority group in Romania, after the Hungarians. According to unofficial data however, it is expected that the actual figure be 3-4 times larger. Roma ethnics who many times do not identify themselves as Roma for fear of discrimination. According to a 2013 Report of the National Council for Combatting Discrimination [Consiliul National pentru Combaterea Discriminarii], the Roma were perceived as one of the most discriminated groups in Romania; for instance, 58% of respondents stated that they would never accept to be related to a person of Roma ethnicity. The results of the Study, which was conducted on a sample that is representative at the level of adult population in Romania, are available in English, here: <http://www.cncd.org.ro/files/file/Sondaj%20de%20opinie%20CNCND%202013.pdf>. In 2011, the President of the National Authority for the Roma [ ANR] stated that there were 'over 2 million Roma in Romania' [http://adevarul.ro/news/eveniment/ilie-dinca-ln-romania-2000000-romi-1\\_50ad498f7c42d5a663924d12/index.html](http://adevarul.ro/news/eveniment/ilie-dinca-ln-romania-2000000-romi-1_50ad498f7c42d5a663924d12/index.html). According to national NGOs such as Romani CRISS, who cited official reports, 80% of Roma live in poverty. [2010]. Information may be found also at the following links [in Romanian]: <http://stirileprotv.ro/stiri/social/80-dintre-romi-traiesc-in-saracie-o-etnie-in-statistici.html>; <http://www.protv.ro/stiri/500-000-de-romi-saracie-extrema-doar-17-dintre-tinerii-romi-urmeaza-un-liceu.html>. Since the late 1990s, many researchers, politicians and Roma representatives, also used to say the number was much higher. In a national research conducted in 1998, the Research Institute for Quality of Life (IRQL) estimated Roma population to be about 1.5 million, or 6.7% of the total population. In a report prepared for UNDP in 2006, Kalman Mizsei shows that the estimated actual population Roma in Romania in 2003 was approx. 10%, advancing a minimum and a maximum (quoting the Vašečka et. Al.) between 1.8 and 2.8 million Roma.

Sources: Kalman Mizsei, Development Opportunities for the Roma in Central and Southeast Europe - Impediments and Challenges. Introduction in Comparative Economic Studies (2006) 48, 1-5; Vašečka M., M. JURÁSKOVÁ and T. Nicholson, a pale Čačipen Rome. A global Report on Roma in Slovakia, Institute for Public Affairs in Bratislava, Slovakia, 2003.

<sup>72</sup> According to Mariea Ionescu, Simona Maria Stănescu – 2014 Report *'Politici publice pentru romi - Raport de evaluare a programelor naționale finanțate de Uniunea Europeană pentru incluziunea romilor'*, quoting Zamfir, Zamfir 1993, Zamfir, Preda,(coord.) 2002, Fleck, and Rughiniș, 2008, ICCV, 2010, FRA, UNDP and CE 2012, World Bank and CE, 2012).

<sup>73</sup> These were among the main issues identified also in a discussion with a cultural mediator for the Roma community, working with the Intercultural Institute in Timisoara (interviews in Timisoara, June 2014).

*the hospital to give birth, since I told them I had no documents. So I took my sister-in-law's ID and now the child is registered as hers, on her name. (...) it doesn't bother me; at least she has a birth certificate'.*

Ionela was born somewhere near Medgidia and when she was around 7, after her mother died, her father put her on a train to Bucharest. When she got to the train station in Bucharest, someone asked her where she was from and, when she told them, they put her back in the train to Medgidia. Somewhere on the way, she encountered some Roma families who were traveling as seasonal agriculture workers, who took her with them. The woman who cared for her tried to go to the local Police station from the town that the girl was originally from, but they could not find out anything. Surprisingly, the local doctor recalled her, but said she never had documents, even when she was with her family, because she was born outside of hospital and there was no medical certificate to be used as proof of birth. The remaining family that she knew of was not to be found. So she travelled with the Roma families to Valea Seaca and finally remained there.

She never went to school. Never went to the doctor. Her partner tried to solve her problems with the documents and started filing petitions; to the City Hall, to the Social services and so on. Finally, following his efforts, in 2004, the Social assistance services initiated a court procedure for late birth registration. It took about one year and a half for a decision to be issued by the Court, according to which the Town Hall was responsible to take her to the Medico-Legal Institute of Bucharest for an age assessment, which cost about 2,000 lei (roughly 450 EUR). The Town Hall stated in Court that there were no financial resources available at local level to pay for this examination, so the case was closed until 2013, when accidentally, the president of a feminist organization in Bucharest, who was doing some research in the area, found out about the case. In the meantime, she had 3 children with her current partner, one of which should be enrolled in school already. *'Now they let him attend school, informally, they let him stay in the classroom and the teacher told me that if he gets a birth certificate, she will just register his grades as well, in order for him not to miss or have to repeat the first grade'.*

Ionela has no income, no medical insurance; the children cannot receive state allowance. She lives in miserable conditions, in a one-room improvised dwelling, with her 4 children, while her partner left the country to make some money begging on the streets of Sweden. *'He is able to send about 50 Euro or so, every 2 weeks. It is hardly enough to make a living here. He endures cold and very bad conditions; he is sick, he lives on the streets to save and send more money home'.* Since she has no ID, her partner has to send money to a neighbour – otherwise, she could not collect it. She is very much aware of the implications of her situation, and she tries to do what's best for her children: *'I work in the village; I try to, at least. I occasionally find something to do for a day or so, like carry fire-wood and sell it'.*

In June 2013, after a series of actions from an NGO based in Bucharest (including with local authorities and even with the Ombudsman) the court case was initiated again. On 19 January 2015 there was a final hearing, where the Court decided that the City Hall is responsible to pay for the procedures of late birth registration (that is, for the medico-legal age assessment procedure), but it takes several weeks for the court decision to become final. After she receives her documents, 3 other files need to be opened for the children: her 12 year-old daughter and her 2 sons. This would have been long solved in the City Hall had paid the costs of the procedures in 2004, and the 3 children would not have been deprived of their basic rights for so long.

*'It is so difficult! I would have never done it without help [from this organization] (...) I did it all for the children...my children. I want them to have what I did not have. I don't want them to live my life. I can't read or write. I am nobody. If I disappeared from the face of the Earth, nobody would have known'.*

And she is not the only one in this situation, in Valea Seaca: *'There are several people like me, more than 10 persons that I know of, anyway. There was one girl, she was 19 and had 2 children. She died a few days ago, had an accident or something. But it's like nobody died. She did not exist.'*<sup>74</sup>

One NGO dealing specifically with Roma and community development<sup>75</sup> made some important statements in this regard, highlighting that since 2006/2007 the lack of identity documents no longer represents a problem at national level (when huge amounts were invested in technical assistance for activities focused exclusively on addressing the issue of lack of documents) but may still constitute an issue at local level, in particular communities and counties. What was also emphasized throughout several discussions with various actors<sup>76</sup> was the need for inter-institutional cooperation and multi-stakeholder intervention at local level, as well as the need for a facilitated procedure to acquire at least the medical certificate confirming the birth, which would render even the process of late birth registration far easier.

It is therefore difficult to provide an accurate estimate of the number of persons who lack documentation and/or who face various barriers in acquiring documentation, and reports as well as sources quoted in the media indicate very different numbers<sup>77</sup>. In 2012, the NGO Agentia Impreuna carried out a research project with the Romanian Institute for Evaluation and Strategy – IRES. The result was a Report called *"A comparative Study on the needs of Roma communities in the context of establishing the strategic intervention priorities for their social inclusion"*.<sup>78</sup> While the full results are not public, they indicated that a total percentage of 1.7 (1.5% Roma and 0.2% not Roma) of the respondents did not have birth certificates – while 4.4 and respectively 7.8 % did not respond. *"Even if we refer only to those who stated they did not have birth certificates, if you apply the proportion to the total number of the population, though the percentage as such seems very small, we are still talking about roughly 15,000 persons"*<sup>79</sup>.

This is undoubtedly a very large potential number, despite the programmes implemented in the past by civil society organizations as well as state authorities. For instance, according to the 2014 Report *'Public Policies for the Roma'*<sup>80</sup>, the authors conducting an assessment of the national programmes for Roma inclusion funded by the EU in the in the pre-accession period stated that, between 2001 and 2011, 16,102 ID cards and 12,611 birth certificates were issued for persons of Roma ethnicity.

Also, at the moment, there seems to be no particular programme focused specifically on documentation and assistance for birth registration, but some civil society organizations continue to provide some support in individual cases that they identify or that are referred to them<sup>81</sup>. At the same time, actions on increasing birth registration are not consistent or systematic – but instead conducted occasionally, at the local level,

<sup>74</sup> Currently, Ionela still does not have documents; despite having completed the procedure, she is still waiting for her be issued [10 April 2015].

<sup>75</sup> Interview with Mr. Gelu Dumina, the Director of 'Together' Agency [Agentia de Dezvoltare Comunitara 'IMPREUNA']

<sup>76</sup> Impreuna Agency, UNICEF etc.

<sup>77</sup> Article talking about 'over 200 Roma without documents in Botosani county, in 2014: [http://adevarul.ro/locale/botosani/oamenii-oficial-nu-exista-sute-romi-botosaneni-nu-acte-identitate-domiciliu-stabil-1\\_544a5dc40d133766a8348966/index.html](http://adevarul.ro/locale/botosani/oamenii-oficial-nu-exista-sute-romi-botosaneni-nu-acte-identitate-domiciliu-stabil-1_544a5dc40d133766a8348966/index.html) ; article referring to 'over 20,000 persons at the outskirts of Timisoara, in the western part of the country, in 2012: <http://www.opiniatimisoarei.ro/traiesc-dar-nu-exista-avem-aproape-20-000-de-oameni-fara-identitate-in-timisoara/03/08/2012>

<sup>78</sup> The Research was conducted through a field study, involving face to face interviews in the respondent's households. Two samples of at least 1000 respondents were selected in order to allow for an accurate comparison: one sample of respondents of Roma ethnicity and one of Romanian ethnicity. The results are considered representative at national level, with a margin of error of +- 3%, and the data is apparently used as primary data even by the World Bank.

<sup>79</sup> This would be based on a total estimated Roma population of 1 million persons. According to the 2011 Census, in Romania there were 621.600 Roma (3,3%). Since this is based on self-identification, it is assumed that the number is much higher. Other estimates, for instance presented here: [http://adevarul.ro/news/eveniment/ilie-dinca-in-romania-2000000-romi-1\\_50ad498f7c42d5a663924d12/index.html](http://adevarul.ro/news/eveniment/ilie-dinca-in-romania-2000000-romi-1_50ad498f7c42d5a663924d12/index.html) point to a total number of 1.7 to 2 million Roma in Romania.

<sup>80</sup> Maria Ionescu, Simona Maria Stănescu – 2014 Report *'Politici publice pentru romi - Raport de evaluare a programelor naționale finanțate de Uniunea Europeană pentru incluziunea romilor'*, available in Romanian at the following link: <http://www.anr.gov.ro/docs/Site2014/ProiectePrograma/ProiectelnCurs/140616%20PAIRS%20RO%20final.pdf>

<sup>81</sup> For instance, information is available about a local project implemented in 2014-2015 by the Association for Community Partnership in Brasov, which also has an activity called 'the Identity Caravan' and provides assistance with documentation to persons from the Brasov County. Other specific actions, implemented at local level in different towns and cities, are reported in the media or rare occasions.

mostly through health and school mediators<sup>82</sup>, with no impact assessment (made public). On the other hand, there seems to be limited interest in the topic from authorities at a local level, since even positive measures that were implemented and that could contribute to improving the situation of birth registration to some extent, have not been consistently developed and maintained. For instance, the introduction of healthcare mediators: in the context of Law no. 435/2006 on administrative decentralization, these mediators were moved under the coordination of local authorities and, according to estimates from the National Authority for Roma [Agenția Națională pentru Romi], the number of social mediators diminished considerably, from 800 in 2002 to 450 in 2011.<sup>83</sup> More recently, UNICEF has been involved in the Project 'Helping the invisible children', with a purpose to increase the impact of social protection policies for poor and socially excluded ('invisible') children and families. The project looked at 96 communes from eight counties in the North-east of the country and conducted a community census (to identify cases of vulnerable children) and, correspondingly, tried to identify and put into practice solutions to their problems with the help of the Community Consultative Structure (CCS) and local authorities. Out of the 5758 'vulnerable' children identified in the course of the fieldwork, 264 were without ID papers or documents, boys and girls of all ages, Roma and Romanians, particularly children who dropped out of school, from households in severe poverty.<sup>84</sup>

The limited interest in this topic at the level of policy and decision makers is demonstrated by the lack of systematic action to address this matter: for instance, **there is no strategic action in relation to increasing or encouraging timely or late birth registration included in the draft National Strategy on Social Inclusion and the Reduction of Poverty 2014-2020. However, it should be stated that the National Strategy for Roma Inclusion 2015-2020<sup>85</sup> includes a 'direction for action' which refers to the "continuation of the process of identification of persons who do not hold civil status documents and identity documents, in view of registering them (...) and of procuring civil status certificated and ID's".**

It is nonetheless clear that, regardless of the matter of numbers, children of parents who have not been registered themselves or who hold no ID documents are particularly vulnerable and unable to access birth registration procedures, because the mother's identity document (if she is known) is mandatory for issuing the child's birth certificate. The law includes no exception for such cases, and in practice in such situations it is necessary for the mother to first undergo the birth registration procedure, obtain a favourable court decision, and receive identity documents – and only then would it be possible to issue identity documents for the child or children. This again entails both financial resources (to cover the costs of the medico-legal expertise and of the court proceedings) as well as time and support for undergoing the legal and administrative procedures required.

In light of the above, one could only conclude that the absence of identity documents, and in particular of birth certificates, renders these children invisible to the system. Finally, the current legal provisions as well as other administrative barriers may lead to situations where Romania runs a risk of violating its obligation under the CRC to register all children immediately after birth. As a matter of fact, the situation of stateless children and that of children whose birth was not registered, though perhaps similar in some ways, still has very different contexts. While stateless children, registered as such, may still have access to the rights granted according to applicable legislation, children whose births was never registered are practically

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<sup>82</sup>For details on available programs, see the 2014 EC evaluation of the implementation of Roma integration strategies:

[http://ec.europa.eu/justice/discrimination/files/country\\_assessment\\_2014/romania\\_en.pdf](http://ec.europa.eu/justice/discrimination/files/country_assessment_2014/romania_en.pdf)

and the 2014 Assessment report of national programs financed by European Union for Roma inclusion

<sup>83</sup> Mariae Ionescu, Simona Maria Stănescu – 2014 Report 'Politici publice pentru romi - Raport de evaluare a programelor naționale finanțate de Uniunea Europeană pentru incluziunea romilor', available in Romanian at the following link:

<http://www.anr.gov.ro/docs/Site2014/ProiecteProgramme/ProiecteInCurs/140616%20PAIRS%20RO%20final.pdf>

<sup>84</sup> The Project is expected to finalize soon, so the results and conclusions will be made available in 2015, but relevant information is also to be found in the 2 evaluation reports: [http://www.unicef.org/romania/Raport\\_HIC\\_engleza.pdf](http://www.unicef.org/romania/Raport_HIC_engleza.pdf) and <http://www.unicef.org/romania/HIC.eng.web.pdf>

<sup>85</sup> Decision no. 18/2015 for the approval of the Government Strategy on inclusion of Romanian citizens belonging to the Roma minority, for the period 2015-2020 [Hotărâre nr. 18 din 14 ianuarie 2015 pentru aprobarea Strategiei Guvernului României de incluziune a cetățenilor români aparținând minorității rome pentru perioada 2015-2020], available here:

<http://www.anr.gov.ro/docs/Site2015/ANR/Strategia/Strategia%20ANR%202015%20Monitor.pdf>

speaking not just deprived of a constitutive element of their identity, but also invisible from a legal standpoint, and thus faced with an impossibility to access even basic rights.

## Conclusions and recommendations

Situations of statelessness and unregistered birth in Romania affect children first and foremost by depriving them of one of the most important elements of their right to identity, but other severe effects may include violations of their right to education, healthcare, freedom of movement etc. While these phenomena are recognized as constituting critical issues and can breach other human rights – specifically in relation to the rights of the child – interest to address the systemic gaps is limited, from both lawmakers and politicians alike.

The establishment of a statelessness determination procedure would contribute to a more accurate identification of situations of statelessness or conflicting nationality legislation and to the granting of appropriate protection to vulnerable children. Amendments to the citizenship law are urgently required, as the current framework is in clear violation of Romania's international commitments in relation to the nationality regime of children born on the territory and who would otherwise be stateless. Such amendments should ensure full compliance with international and regional standards and would allow for enhanced prevention and reduction of statelessness, and the proposal that has already been tabled with regard to amending the nationality law must be revised to ensure this. Facilitated citizenship acquisition procedures for stateless persons, the automatic granting of Romanian nationality to children born from stateless parents or from parents who cannot convey their nationality to their children (with effective, adequate verifications conducted in that regard) and other measures to prevent new cases of statelessness, such as a general prohibition of withdrawal of citizenship in the case it would lead to statelessness, would constitute relatively simple solutions to some of the issues identified.

In addition, existing legislation is not always consistent and clear, and does not include provisions for exceptional situations, such as in the case of parents who are not registered themselves and who in turn will encounter difficulties in registering the birth of their children. Facilitating the birth registration process through active measures, reducing its costs by providing for an expedited court procedure, consistent and systematic inter-agency and multi-stakeholder partnerships between central or local authorities, civil society actors and community leaders, as well as cooperation between local authorities and the Medico-Legal Institute to render examinations free of charge, would play a key role to ending the invisibility of children who are unregistered. Such measures, combined and strengthened by information campaigns to encourage more responsibility taking and awareness raising for both parents as well as local authorities to the effects of unregistered birth, will enable the state to gradually reduce and finally eliminate this phenomenon which affects children, families and communities as a whole – ultimately also contributing to the documentation of nationality and prevention of childhood statelessness.

## **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>86</sup>

- General Directorate for Social Assistance – Bucharest [*Direcția Generală de Asistență Socială a Municipiului București*]
- The National Authority for the Protection of the Rights of the Child and Adoption [*Autoritatea Națională pentru Protecția Drepturilor Copilului și Adopție*]
- ‘Impreună’ Agency [*Agenția de Dezvoltare Comunitară ‘Impreună’*]
- Directorate for Persons Record and Databases Management [*Directia pentru Evidenta Persoanelor si Administrarea Bazelor de Date*]
- National Authority for Citizenship [*Autoritatea Națională pentru Cetățenie*]
- The General Inspectorate for Immigration [*Inspectoratul General pentru Imigrări*]
- Directorate for Social Assistance – Sector 5, Bucharest [*Direcția de Asistență Socială, sector 5*]
- FILIA Centre [*Centrul de Dezvoltare Curriculară și Studii de Gen – FILIA*]
- Carusel Association [*Asociația Carusel*]
- UNICEF
- National Authority for Roma [*Agenția Națională pentru Romi*]
- ADO SAH Rom Association [*Asociația pentru Dezvoltarea Organizației - SAH ROM*]
- The National Romanian Council for Refugees [*Consiliul Național Român pentru Refugiați*]
- ARCA – The Romanian Forum for Refugees and Migrants [*ARCA – Forumul Român pentru Refugiați și Migranți*]

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<sup>86</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 Albania, Estonia, Italy, Latvia, Macedonia, Poland 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”*