



European  
Network on  
Statelessness

PREVENTING

(CHILDHOOD  
STATELESSNESS  
IN EUROPE:

ISSUES, GAPS AND GOOD PRACTICES



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This is a publication of the European Network on Statelessness (ENS), a civil society alliance with 52 member organisations in over 30 countries, committed to addressing statelessness in Europe. ENS believes that all human beings have the right to a nationality and advocates for the avoidance and reduction of statelessness. ENS firmly supports the call by UNHCR for the eradication of statelessness within the next decade and is convinced that progress can only be achieved if measures are put in place to prevent statelessness among children. This report is therefore intended to contribute to efforts towards the prevention of childhood statelessness in Europe by providing an insight into some of the main issues, gaps and good practices.

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# PREVENTING CHILDHOOD STATELESSNESS IN EUROPE: ISSUES, GAPS AND GOOD PRACTICES

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# 1. INTRODUCTION

Over ten million people worldwide are stateless, including several hundred thousand in Europe. Not having a nationality limits people's life chances and can obstruct the enjoyment of even the most basic rights. It also increases people's vulnerability to poverty, marginalisation, exploitation and detention. As such, statelessness presents an urgent challenge to the fulfilment of human rights, requiring concerted action from governments, international organisations and civil society groups.

The European Network on Statelessness (ENS) is a civil society alliance dedicated to strengthening the often unheard voice of stateless people in Europe and to advocate for the full respect of their human rights. In recognition of the immediate and pressing needs of Europe's stateless people, the first Europe-wide ENS campaign initiative (launched the 14<sup>th</sup> of October 2013) was tailored towards increasing awareness of their situation and strengthening domestic protection frameworks.<sup>1</sup> Notwithstanding the importance of protecting the rights of stateless people, the only truly adequate response to statelessness is to realise its eradication. This is a target that has recently been made explicit by the United Nations High Commissioner for Refugees, António Guterres, who has called on states to work towards ending statelessness within the next decade.<sup>2</sup> ENS wholeheartedly endorses this goal and will actively support it.<sup>3</sup>

While the eradication of statelessness is an ambitious target, a straightforward and practicable first step is to stop the spread of statelessness, in particular by preventing statelessness among children. It is estimated that half of the world's stateless population are children,<sup>4</sup> the vast majority of whom have been stateless since birth and have never known the protection or sense of belonging which a nationality bestows. By realising every child's right to acquire a nationality – recognised as a fundamental children's right<sup>5</sup> – children will be spared the insecurity and indignity of statelessness. Moreover, the often intergenerational cycle of statelessness will be broken, contributing significantly towards the ultimate eradication of statelessness.

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1 See also the ENS publication *Statelessness determination and the protection status of stateless persons. A summary guide of good practices and factors to consider when designing nationality determination and protection mechanisms*, December 2013.

2 The High Commissioner first made this call in his speech to UNHCR's Executive Committee in October 2012 (<http://www.unhcr.org/506986825.html>) and repeated this call in his speech the following year (<http://www.unhcr.org/524ae6179.html>), when it was also echoed by UNHCR's Director of International Protection, Volker Turk (<http://www.unhcr.org/524d26059.html>).

3 A core element of the mission statement of the European Network on Statelessness is the conviction that all human beings have a right to a nationality. See further <http://www.statelessness.eu/about-us/mission-statement>.

4 See UNHCR/Plan International, *Under the radar and under protected. The urgent need to address stateless children's rights*, 2012.

5 Among others in Article 7 of the Convention on the Rights of the Child. See further section 2 on children's right to a nationality.

The Council of Europe Commissioner for Human Rights, Nils Muiznieks, has spoken out strongly on the need for European governments to take measures specifically to prevent childhood statelessness:

**There should be no stateless children in Europe. The UN Convention on the Rights of the Child, ratified by every Council of Europe member state, provides that all children have a right to a nationality. The Convention's overarching principle is that "In all actions concerning children [...] the best interests of the child shall be a primary consideration." It is clearly in the best interest of the child to have citizenship from birth.**

Across Europe today, and among children of European parents in other parts of the world, children are still being born into statelessness. Many have inherited this status from their parents, as one publication has pointed out "as if it were some sort of genetic disease".<sup>6</sup> Others have found themselves the unfortunate and unsuspecting victim of a gap or conflict in nationality laws. The lack of a thorough commitment and diligent efforts to prevent childhood statelessness is currently the most significant ongoing cause of new cases of statelessness in the region.<sup>7</sup>

Yet childhood statelessness is thoroughly preventable. There are international and regional standards that set out not just the obligation to protect a child's right to a nationality, but also concrete norms that can be implemented to achieve this goal. Contained within the 1961 United Nations Convention on the Reduction of Statelessness, the 1997 European Convention on Nationality and the 2006 Council of Europe Convention on the Avoidance of Statelessness in relation to State Succession are detailed safeguards designed to ensure that all children acquire a nationality – while also respecting the overall freedom of states to set the conditions for acquisition and loss of nationality in accordance with their own laws and traditions. These instruments set out a simple, low-cost, yet effective pathway for the prevention of childhood statelessness. Today, the number of accessions to these conventions are climbing,<sup>8</sup> additional guidance on the content and application of the

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6 P. Leclerc, R. Colville, "In the shadows", *Refugees Magazine*, 2007.

7 In terms of overall scale, the majority of stateless people living in Europe today owe their situation to state succession – in particular, the dissolution of the Soviet Union and the Socialist Federal Republic of Yugoslavia. However, in the years since these major political upheavals, new cases of statelessness have emerged, mainly among children and most significantly because the measures in place to prevent statelessness from being passed on from stateless parents are inadequate.

8 Accession to the 1961 Convention on the Reduction of Statelessness, in particular, has massively picked up pace thanks to an effective accessions campaign spearheaded by UNHCR since the Convention's 50<sup>th</sup> anniversary in 2011. Twenty-two new state parties have joined in the last two and a half years – more than during the entire first 30 years after the instrument was adopted. Moreover, at a United Nations Rule of Law meeting at the end of 2012, the European Union announced, on behalf of all of its member states, that "the EU Member States which have not yet done so pledge to address the issue of statelessness [...] by considering the ratification of the 1961 UN Convention on the Reduction of Statelessness.



norms with a view to preventing statelessness among children has been issued<sup>9</sup> and both the European Court of Human Rights and the Court of Justice of the European Union<sup>10</sup> are taking an increased interest in nationality policy and the avoidance of statelessness in Europe.<sup>11</sup> This is an opportune time for Europe to commit to the goal of eradicating statelessness by, at the very least, ensuring that no child born in Europe – or to European parents elsewhere – has to face life without a nationality.

This publication addresses the challenge of preventing childhood statelessness in Europe. It begins by providing a summary of the overall international and regional legal framework relating to a child's right to a nationality, including important elements of the guidance which has been issued on the interpretation and application of these norms. Thereafter, it addresses the specific issues that must be tackled in order to prevent childhood statelessness. For each individual theme discussed, a brief explanation is given of how statelessness may result if insufficient steps are taken to safeguard against it, followed by a description of the specific international and regional norms which are applicable. Then, making use of the comprehensive analysis conducted by the EUDO Observatory on Citizenship of nationality legislation in 41 European states,<sup>12</sup> relevant secondary sources and information gathered through consultation with members of the European Network on Statelessness, as well as a number of other sources, an agenda for change is set out. This involves the identification of both good practices in respect of the prevention of childhood statelessness in Europe which can serve as a model for other states, as well as areas where the law or related practice leaves room for improvement.

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9 Most significantly in the form of *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*, issued in 2012 (available here: <http://www.refworld.org/docid/50d460c72.html>); but also Council of Europe Committee of Ministers Recommendation 2009/13 on *The nationality of children* (available here: <https://wcd.coe.int/ViewDoc.jsp?id=1563529>).

10 Note that, as European Union law currently stands, a stateless person cannot enjoy EU citizenship, regardless of how close his or her ties are with Europe (through, for instance, birth or residence), unless and until he or she is able to acquire the nationality or an EU member state. See article 20(1) of the Treaty on the Functioning of the European Union.

11 As discussed in L.E. van Waas, "Fighting Statelessness and Discriminatory Nationality Laws in Europe" in *European Journal of Migration and Law*, Vol. 14, 2012.

12 The 41 countries included in the EUDO analysis and which are considered in the present report are: Albania, Austria, Belgium, Bosnia and Herzegovina, Bulgaria, Croatia, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Iceland, Ireland, Italy, Kosovo, Latvia, Lithuania, Luxembourg, Macedonia, Malta, Moldova, Montenegro, the Netherlands, Norway, Poland, Portugal, Romania, Russia, Serbia, Slovakia, Slovenia, Spain, Sweden, Switzerland, Turkey, Ukraine and the United Kingdom. Please note that nationality laws often undergo amendments and that interpretation errors may be made in any large-scale comparative legal analysis. As such, it is recommended that the situation and needs in a particular country be reviewed directly on the basis of the applicable legislation in that state at the time that such information is required.

## 2. CHILDREN'S RIGHT TO A NATIONALITY

The Convention on the Rights of the Child (CRC) provides in Article 7 that every child has the right to acquire a nationality and that states must ensure the implementation of this right 'in particular where the child would otherwise be stateless'.<sup>13</sup> The details of what this right entails will be discussed below. At the outset, however, it is important to emphasise that the fulfilment of this right does not require states to grant nationality to every child born on their territory, regardless of their circumstances.<sup>14</sup> Rather, it is about ensuring that every child has a right to acquire a nationality and thus avoid statelessness. A key tool in achieving this is to introduce some *jus soli* elements in each state's nationality law, to address those cases where the child would otherwise be stateless. Yet, the article is not only directed at the state on whose territory a child is born, but also to the state of the parents' nationality.<sup>15</sup>

Apart from the right to a nationality, the CRC also contains general principles which are important for the protection of children. These principles must be taken into account when applying any child rights standards, including those relating to the avoidance of statelessness. One of these principles is that of non-discrimination.<sup>16</sup> This means that discrimination on the basis of the status of the child or the child's parents is not allowed. Another very important principle is that of 'the best interests of the child'.<sup>17</sup> Whenever any decision or action is made which involves a child, the primary consideration must always be what is in the best interests of the child.

The right to a nationality is further laid down in the Universal Declaration of Human Rights,<sup>18</sup> the International Covenant on Civil and Political Rights (ICCPR),<sup>19</sup> the Convention on the Elimination of All Forms of Racial Discrimination (CERD),<sup>20</sup> the Convention on the Elimination of All Forms of Discrimination Against Women

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13 Article 7(1) CRC provides: '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'. In the second paragraph it is stated that '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'. Because the CRC is ratified by all states in the world except two, this is the most widely ratified right to a nationality.

14 Jaap Doek, 'The CRC and the right to Acquire and Preserve a Nationality' (2006) 25 *Refugee Survey Quarterly* 26, 26.

15 Gerard-René de Groot, 'Children, their right to a Nationality and Child Statelessness' in A. Edwards, L. van Waas (eds.) *Nationality and Statelessness under International Law*, (forthcoming). See also Laura E. van Waas, *Nationality Matters* (Antwerp/Oxford/Portland, Intersentia 2008) 63-4.

16 The non-discrimination principle can be found in Article 2 CRC.

17 Which can be found in Article 3 CRC.

18 Article 15.

19 Article 24(3).

20 Article 5(diii).



Photo by: Greg Constantine/UNHCR

(CEDAW),<sup>21</sup> the Convention on the Rights of Persons with Disabilities<sup>22</sup> and the European Convention on Nationality (ECN).<sup>23</sup> The European Convention on Human Rights (ECHR) does not explicitly recognize a right to a nationality, yet through the European Court of Human Rights' case law it has been accepted that a right to a nationality follows from the rights to private life and non-discrimination.<sup>24</sup>

The ways in which states should make sure that every person can obtain a nationality are laid down in the 1961 Convention on the Reduction of Statelessness (1961 Convention).<sup>25</sup> This Convention was created under the UN

21 Article 9.

22 Article 18.

23 Article 4(a).

24 This will also be addressed further below.

25 As of November 2013, there are 54 state parties to the 1961 Convention. UN Treaty Collection, available at: [http://treaties.un.org/pages/ViewDetails.aspx?src=UNTSOnline&tabid=2&mtdsg\\_no=V-4&chapter=5&lang=en](http://treaties.un.org/pages/ViewDetails.aspx?src=UNTSOnline&tabid=2&mtdsg_no=V-4&chapter=5&lang=en).

framework and is closely linked to the 1954 Convention relating to the status of Stateless Persons. Where the 1954 Convention seeks to protect persons without a nationality, the 1961 Convention is established to reduce the number of stateless persons and to prevent statelessness. Articles 1 through 4 of this Convention therefore set out the ways in which persons should acquire a nationality if they would otherwise be stateless at birth.

Under the framework of the Council of Europe, the ECN was adopted in 1997.<sup>26</sup> The ECN is influenced by the 1961 Convention but, as will be seen below, also contains some differences. As mentioned previously, the ECN contains the explicit recognition of the right to a nationality and further provides safeguards that must prevent people from becoming stateless.

The safeguards to prevent childhood statelessness which are set out in the international legal documents must be considered in light of the best interests of the child and cognizant of the difficulties that statelessness can cause for the enjoyment of other children's rights. As such, children should not be left stateless for a long period after birth: they must acquire a nationality at birth or as soon as possible after birth.<sup>27</sup> The Secretary-General of the UN emphasized this in his report on the status of the CRC.<sup>28</sup> He explained that the first eight years of a child's life are crucial for their development.<sup>29</sup> Nationality plays an important role in this development as it is considered to be a part of a child's identity.<sup>30</sup>

The next section will look more closely at the specific safeguards prescribed by international law to prevent childhood statelessness. It will also discuss some examples of good practice and identify where there is room for improvement in respect of the avoidance of childhood statelessness in Europe.

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26 The European Convention on Nationality entered into force on the 1<sup>st</sup> of March 2000. As of November 2013, 20 states are party to the ECN, 17 of which are also a party to the 1961 Convention. Council of Europe, available at: <http://conventions.coe.int/Treaty/Commun/ChercheSig.asp?NT=166&CM=&DF=&CL=ENG>.

27 This is also established in UNHCR's 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, UN Doc. HCR/GS/12/04 of 21 December 2012, para 11.

28 UN Secretary-General, 'Status of the Convention of the Rights of the Child' (UN Doc. A/68/257 of 2 August 2013), para 57ff.

29 Ibid, para 57.

30 In Article 8 of the CRC it is stated that every child has the right to preserve his or her identity, including nationality.

### 3. GRANTING NATIONALITY TO OTHERWISE STATELESS CHILDREN

#### 3.1 THE ISSUE

States determine who can obtain nationality and under what circumstances this is possible in their national laws. Usually, when a child is born, he or she receives nationality either based on the place of birth (referred to as '*jus soli*') or on the nationality of the parents (nationality by descent or '*jus sanguinis*') or on a combination of the two. In some circumstances, a conflict between different nationality laws may mean that a child fails to obtain any nationality, therefore ending up stateless. An, admittedly oversimplified, example is that of a child who is born to parents with a *jus soli*-nationality, but on the territory of a *jus sanguinis* state. In that case the state of birth will presume that the child obtains the nationality of the parents, but the parents cannot pass on their nationality because their state's legal system does not foresee this. Neither country's law is intrinsically wrong, yet the combined effect is to produce a conflict which is catastrophic in its result for the child concerned. International and regional standards provide a framework to ensure that children who would otherwise be stateless *do* obtain a nationality. Safeguards are directed towards the state on whose territory the child is born, and to the state of nationality of the child's parents where the child is born abroad.

#### 3.2 BIRTH ON A STATE'S TERRITORY

##### 3.2.1 THE INTERNATIONAL STANDARDS

Article 1 of the 1961 Convention obliges states to grant their nationality to a person born on their territory who would otherwise be stateless. A state can choose to automatically grant nationality at birth or to make a system in which nationality can be acquired following an application procedure.<sup>31</sup> States may also use a combination of these options.<sup>32</sup> Similarly the ECN tells state parties to provide for the acquisition of nationality *ex lege* or upon application to children born on their territory with at least one parent with the state's nationality.<sup>33</sup> It is important to point out that a system of automatic conferral of nationality at birth to otherwise stateless children is the preferred option given that it does not allow for any – even a temporary – period of statelessness for the child, while it also circumvents any problems that may arise in the context of an application procedure (e.g. lack of knowledge, related costs or other practical barriers to accessing or completing the procedure).

If a state chooses to make use of the application-option, it can make the granting of nationality subject to certain conditions. These conditions must be read in the light of principles on the protection of children; meaning that they may not leave the child stateless for a long period of time.<sup>34</sup> Under the ECN, lawful and habitual

31 These options are laid down in Article 1(1)(a) and 1(1)(b) of the 1961 Convention respectively.

32 This is, for instance, the case in Hungary (see further below).

33 See Article 4 and Article 6(1) and (2) ECN respectively.

34 See also UNHCR Guidelines No. 4, para 34.

residence on the state's territory for a period not exceeding five years immediately preceding the lodging of the application may be required.<sup>35</sup> The manner in which the application must be lodged can be defined in the national law of the state. The conditions that a state can impose under the 1961 Convention are exhaustively summed up in Article 1(2); imposing other conditions would mean that the state violates the 1961 Convention. Moreover, the application procedure must be non-discretionary. Where a person submits an application and has met the conditions set, nationality must be granted. Providing for a naturalisation procedure in which the authorities have the discretion to deny an application is not in conformity with these international standards.<sup>36</sup>

The first condition permitted by the 1961 Convention is a limited timeframe for lodging an application for nationality. This period cannot start later than the age of 18 and may not end sooner than the age of 21.<sup>37</sup> This means that a state is not allowed to require that a person is 19 before he/she can apply for nationality, or that nationality must be applied for already within two years after birth. The ages mentioned in the 1961 Convention ensure that there is always a window of opportunity for adults to apply for nationality, giving them an option when parents or legal representatives did not choose to apply for nationality on behalf of the child. However, when considering the needs of children, applications should be possible at birth or as soon as possible after birth so that a child is left stateless for the shortest time possible.<sup>38</sup>

States are also allowed to require a period of habitual residence prior to making an application. 'Habitual residence' is to be understood as stable, factual residence (not implying a legal or formal qualification). This means that the condition of 'lawful residence' may not be imposed.<sup>39</sup> The period of habitual residence that states are allowed to require may not exceed five years immediately preceding the application or ten years in total. Moreover, a state may not require a certain period of uninterrupted habitual residence since birth.<sup>40</sup> The period of five years is already lengthy when taking the best interest of the child into consideration. It is better to allow for application at birth or as soon as possible after birth so that a child is not left stateless for too long.<sup>41</sup>

The third permitted condition is a criminal conviction test whereby a person should not have been convicted of an offence against national security or sentenced to imprisonment for a term of five years or more for a criminal offence.<sup>42</sup> This requirement relates to the person involved, not the parents, so any convictions of the parent(s)

35 Article 6(2) under (a) and (b) ECN.

36 See further UNHCR Guidelines No. 4, para 37.

37 Article 1(2)(a) of the 1961 Convention.

38 De Groot (n 14) forthcoming.

39 See UNHCR Guidelines No. 4, para 41.

40 Background paper, 29. The Netherlands require for example that a person is born in the Netherlands and has resided there since birth before he or she can obtain citizenship. EUDO Citizenship Database, at <<http://eudo-citizenship.eu/databases/modes-of-acquisition?p=&application=modesAcquisition&search=1&modeby=idmode&idmode=A05>>.

41 In cases where the child is part of a nomadic group and crosses a state's borders regularly, the child must be considered to be habitually resident on both territories. UNHCR Guidelines No 4, para 42.

42 Article 1(2)(c) of the 1961 Convention.





Photo by: PRAXIS

may not be taken into account. Finally, it may be required that an applicant has always been stateless.<sup>43</sup> If a state implements this condition, the burden of proof lies with the state to prove the contrary.

If a state chooses to make the granting of nationality for stateless children born on its territory subject to application, the state is also allowed to implement an additional system of automatic acquisition of nationality upon fulfilment of certain conditions.<sup>44</sup> This means that children meeting certain conditions obtain the state's nationality automatically, and that others must use the application procedure. The 1961 Convention is silent on what is or is not allowed in these conditions. Even so, states must make sure that the conditions for automatic acquisition would not violate general principles such as non-discrimination and the best interests of the child.

In order to determine whether a child would 'otherwise be stateless', a state needs some time to investigate if a child is indeed stateless or whether the child perhaps obtained the parents' nationality. Keeping in mind the right to a nationality and the principle of the best interests of the child, an inquiry into the nationality status

43 Article 1(2)(d) of the 1961 Convention.

44 Article 1(1)(b) of the 1961 Convention.

of a child should be conducted as soon as possible and states should take this into account when cooperating to determine the nationality status of a child.<sup>45</sup> During the time in which a state has not been able to establish whether a child is stateless or can obtain a nationality, the child often receives the status of 'unknown' or 'undetermined' nationality. With this status, persons are not able to enjoy the protection measures in place for stateless persons, for instance those provided by the 1954 Convention. Such an ambiguous status should therefore only be of a temporary nature, and should be resolved as soon as possible.

### 3.2.2 GOOD PRACTICES

In Europe, of the 41 countries analysed by the EUDO Observatory on Citizenship,<sup>46</sup> seventeen states have a system where a child born on the territory and would be stateless automatically obtains the state's nationality which is in line with the international standards: **Belgium,<sup>47</sup> Bosnia and Herzegovina, Bulgaria, Finland, France, Greece, Ireland, Italy, Kosovo, Luxembourg, Moldova, Montenegro, Poland, Portugal, Serbia, Slovakia, and Spain.<sup>48</sup>** As already indicated above, a system of automatic conferral of nationality to an otherwise stateless child at the moment of birth is the most effective way to ensure that childhood statelessness and its harsh consequences are entirely avoided.

There are numerous states which provide for an application procedure to allow otherwise stateless children born on their territory to acquire a nationality. However, only two of these states have a system which is completely in line with the standards outlined in the 1961 Convention - the **United Kingdom and Malta.<sup>49</sup>** All other countries establish requirements that are not in accordance with the exhaustive set of optional conditions outlined in that convention.

In some European countries, a child who is born on the territory to a parent, or a parent *and* grandparent, who was/were also born on the territory is entitled to nationality. Although not specifically designed to safeguard

45 De Groot (n 15) forthcoming.

46 See above, note 12 for which countries were included in the EUDO-Citizenship analytical database on protection against statelessness at the time of writing and are considered in the analysis of this report. Please note that throughout the report where figures are given for the number of European states where particular good practices or problems are found, these refer to the number from among these 41 countries.

47 Note that in Belgium the way in which 'otherwise stateless' is determined in the law may cause difficulties in the implementation in practice, as a child who could acquire the nationality through an administrative (consular) procedure is excluded from the application of the safeguard.

48 Of these seventeen states, eight (Belgium, France, Greece, Italy, Kosovo, Luxembourg, Poland, and Spain) are not a party to the 1961 Convention nor to the ECN (although some of these states signed either of the two). Bosnia and Herzegovina, Bulgaria, Finland, Portugal and Slovakia are parties to both the 1961 Convention and the ECN. EUDO Citizenship Database, at: <<http://eudo-citizenship.eu/databases/protection-against-statelessness?p=&application=modesProtectionStatelessness&search=1&modeby=idmode&idmode=S01>> Note that this provision was added to the Citizenship Law in Kosovo only in July 2013.

49 Ibid.

against statelessness – the provisions being applicable to all children who fulfil the criteria, not just those who are otherwise stateless – such ‘double *jus soli*’ or ‘triple *jus soli*’ regimes can also help to prevent statelessness.<sup>50</sup>

### 3.2.3 ROOM FOR IMPROVEMENT

Although the majority of European states have some form of safeguard in place to confer nationality on otherwise stateless children born on their territory, many of these safeguards are incomplete and do not meet the standards set by international law. The problems encountered in European nationality laws can be grouped into four different categories:

- **No safeguard is provided for otherwise stateless children born on the territory;**
- **The safeguard does not cover all otherwise stateless children born on the territory;**
- **The procedure does not conform with international standards;**
- **Additional conditions are imposed which do not conform with international standards.**

Some countries’ laws exhibit more than one type of problem from this list. Moreover, even where the law is in compliance with the state’s international obligations, there may still be difficulties in practice.

In **Cyprus, Albania, Norway and Romania**, no safeguards are provided at all for children born stateless. Cyprus is not a party to the ECN nor to the 1961 Convention. However, Albania, Norway and Romania are a party to both conventions and are in violation of their obligations due to the lack of incorporation of this key safeguard in their nationality laws.<sup>51</sup>

A number of European states which have opted for automatic acquisition at birth have narrowed the group of beneficiaries such that it does not cover all otherwise stateless children born on the territory. **Croatia, Lithuania and Slovenia** only grant nationality automatically if both parents are stateless or of unknown citizenship. **Ukraine** grants nationality automatically to all children born on the territory who would otherwise be stateless, but only if their parents are lawful residents. All of these states, except for Slovenia, are a party to the 1961 Convention and are therefore only allowed to set conditions for automatic acquisition when there is also an option to obtain nationality through application which meets the terms of the Convention. Yet none of these states provide for an additional application procedure and they are in violation of the Convention: the conditions set for automatic acquisition can leave children who do not meet these criteria stateless.

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50 See for an overview of such rules the EUDO Citizenship database on Acquisition of Citizenship at <<http://eudo-citizenship.eu/databases/modes-of-acquisition?p=&application=modesAcquisition&search=1&modeby=idmode&id-mode=A02b>>.

51 Albania provides for the automatic acquisition of nationality by an otherwise stateless child born on its territory only in cases where the child is born to unknown parents. This provision actually only deals with the situation of foundlings (see further below) and does not address any other circumstances in which a child may be otherwise stateless.

In **Hungary**, there is both the possibility of automatic acquisition and an application procedure for otherwise stateless children born in the country. However, neither route – nor the existence of the two in conjunction – satisfies Hungary’s international obligations under the 1961 Convention, exhibiting several different problems. For the automatic acquisition of nationality, both parents must be stateless *and* have a registered domicile in Hungary, thus unduly narrowing the group of beneficiaries such that it does not encompass all otherwise stateless children. The application procedure meanwhile, falls short both because the procedure does not conform with Hungary’s international obligations and because additional conditions are imposed. The timeframe set under the law for lodging of an application is too short: the procedure is only available up until the person’s 19<sup>th</sup> birthday (rather than until at least the age of 21). In addition, a supplementary condition which is not allowed under the 1961 Convention is imposed, namely domicile – rather than simple habitual residence – of the child. Many stateless children born in Hungary are therefore not able to benefit from the safeguards found in the law and instead of being able to acquire a nationality, they are registered by the state as having ‘unknown nationality’.<sup>52</sup>

Similarly to Hungary, many other states that offer an application procedure demonstrate problematic procedural modalities or require the fulfilment of conditions that are not laid down in the 1961 Convention or the ECN. In **Estonia and Latvia**, for example, a declaration can only be made until a child is 15 years of age.<sup>53</sup> In **Iceland and Sweden**, the age limit is 20. Iceland further requires that the person is lawfully residing in Iceland. As Iceland is only a party to the ECN and not to the 1961 Convention, this last requirement is permissible, but it is nevertheless recommended that Iceland brings its law in line with the 1961 Convention standards. Sweden also requires that the applicant holds a permanent residence permit, a condition not permitted under either convention (Sweden is a party to both). In Dutch legislation, the granting of nationality to a child who would otherwise be stateless only applies to children who have been lawfully (and not habitually) resident in **the Netherlands** for three years, which is again not in line with the 1961 Convention, to which it is a party.<sup>54</sup> According to a recent report by the Dutch Advisory Committee on Migration Affairs, registration statistics suggest that at least 85 stateless children born in the Netherlands would have been entitled to acquire Dutch nationality and resolve their situation by now were it not for the added condition of *lawful* residence, which is not in line with the country’s international obligations.<sup>55</sup>

Besides these areas in which European states’ laws fall short, there are also **problems in the implementation of the safeguards**. A particular concern is the prevalence in some countries of the practice of registering

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52 Gábor Gyulai, ‘Nationality Unknown? An overview of the safeguards and gaps related to the prevention of statelessness at birth in Hungary’, Hungarian Helsinki Committee, 2014, available at: <<http://helsinki.hu/wp-content/uploads/Nationality-Unknown-HHC-2014.pdf>>.

53 It must be noted that Estonia is not a party to the 1961 Convention nor to the ECN. Latvia is, however, a party to the 1961 Convention and is therefore not allowed to set such a condition.

54 See Olivier Vonk, Maarten Vink & René de Groot, ‘Benchmarking the Protection against Statelessness in Europe: Comparative Findings’ (2014) *Tilburg Law Review* Volume 19, Issue 1-2.

55 Advisory Committee on Migration Affairs, ‘No country of one’s own’ [*Geen land te bekennen*], December 2013.



children as having ‘unknown nationality’. While such a registration status can be a useful and legitimate option for administrative purposes as a temporary measure until a child’s nationality – or indeed statelessness – is confirmed,<sup>56</sup> in some cases this affects relatively large groups and can be an enduring status. According to statistics from 2012, in **Germany** a total of 13,413 people are included in the state’s registration system as stateless but a remarkable 42,535 people have an unknown nationality.<sup>57</sup> During the same year, there were 9,596 stateless persons in **Sweden** and 7,820 persons with unknown citizenship.<sup>58</sup> On the 1<sup>st</sup> of January 2012, 88,313 persons were registered as being of unknown nationality in **the Netherlands**, while only 2,005 people were registered as stateless.<sup>59</sup> What is even more problematic in the Netherlands is that of those whose nationality is unknown and who were also born in the Netherlands, 5,641 children were still registered as being of unknown nationality more than five years later.<sup>60</sup> The scale and duration of this practice in the Netherlands and other countries suggests that, in fact, not enough is being done to (subsequently) verify and resolve a child’s nationality status.

Another significant problem in terms of state practice is where the child will only acquire nationality through the requisite safeguard if the parent has been officially recognised as stateless through statelessness status determination. Such cases have been reported in **Italy**<sup>61</sup> – one of several European states to have a dedicated statelessness determination procedure.<sup>62</sup> It should be emphasised that statelessness status determination is a tool for the identification and protection of stateless people, in particular in the migration context, and is not a requirement for or precursor to the application of safeguards to prevent statelessness at birth.

As a result of these problematic practices, an unknown number of stateless children who could and should benefit from requisite safeguards under European states’ nationality laws are unable to do so because they are not identified as stateless. A recent UN report on arbitrary deprivation of nationality suggests that states are also doing too little to track cases or collect information about the extent to which safeguards against

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56 See further on the legitimacy of such practices UNHCR Guidelines No. 4, paras 22-23.

57 In German: *Ungeklärt und ohne Angabe*. Statistisches Bundesamt, ‘Bevölkerung und Erwerbstätigkeit: Ausländische Bevölkerung . Ergebnisse des Ausländerzentralregisters 2012’ (Statistisches Bundesamt, Wiesbaden 2013) 41.

58 A further 38 cases were under investigation. Statistics Sweden, ‘Foreign Citizens by Country of Citizenship and Period’ available at: <[http://www.scb.se/Pages/SSD/SSD\\_TablePresentation\\_\\_\\_340508.aspx?layout=tableViewLayout1&rxid=443832c7-92cc-42f5-879d-d82484835788](http://www.scb.se/Pages/SSD/SSD_TablePresentation___340508.aspx?layout=tableViewLayout1&rxid=443832c7-92cc-42f5-879d-d82484835788)> (accessed 18 November 2013).

59 Advisory Committee on Migration Affairs, ‘No country of one’s own’ [*Geen land te bekennen*], December 2013.

60 Ibid.

61 For more on the profile of stateless persons in Italy and the problems accessing Italian nationality in practice for otherwise stateless children born in the country, see the report ‘In the Sun’, presented by CIR in 2013, of which an English-language abstract is available here: <[http://www.west-info.eu/files/Abstrac\\_EN.report-In-the-Sun.pdf](http://www.west-info.eu/files/Abstrac_EN.report-In-the-Sun.pdf)>.

62 See on statelessness determination the ENS publication *Statelessness determination and the protection status of stateless persons. A summary guide of good practices and factors to consider when designing nationality determination and protection mechanisms*, December 2013

statelessness for children born on their territory are being utilised in practice.<sup>63</sup> The absence of reliable data on this issue makes it difficult to draw firm conclusions about the effectiveness of the relevant safeguards, even where they are in place in a state’s legislation.

### 3.3 BIRTH OUTSIDE A STATE’S TERRITORY

#### 3.3.1 THE INTERNATIONAL STANDARDS

Where a child is born to a national of a state party to the 1961 Convention, yet on the territory of a non-state party, there is an obligation for the state party to grant nationality if the child would otherwise be stateless.<sup>64</sup> Also in this case the options are automatic acquisition at birth or upon application, where certain conditions may be included. These conditions must be interpreted in the light in the rights and principles for the protection of children, meaning that nationality must be granted as soon as possible after birth. Also the ECN provides that state parties must facilitate the acquisition of nationality for children of a national born abroad, and also that of children of (a) parent(s) who acquired the state’s nationality; children adopted by one of the state’s nationals; and to stateless persons and recognized refugees lawfully and habitually residing in the territory.<sup>65</sup>

If a child is born on the territory of a state party to the 1961 Convention and has not been able to obtain that state’s nationality (or any other nationality), the child should obtain the nationality of the state of which the parents are nationals.<sup>66</sup> This can happen when the child has passed the age limit laid down for lodging an application or cannot fulfil other requirements.

It can finally be asked what should be done with cases in which a child remains stateless due to decisions made (or inaction) by the parent(s) – for instance where the parents do not undertake the necessary procedures to ensure that the child acquires a nationality. When taking the CRC and the 1961 Convention together it leads to the conclusion that a state should take action to make sure that a child is not left stateless, but this is problematic in cases where acquisition of nationality depends on application. At a minimum, states should actively inform parents of the consequences of their decisions or inaction with respect to the nationality of their children and of the procedures for acquisition of nationality.

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63 According to this report, just 3 states had been able to provide the Secretary General with statistical information on this question – although notably all three were in Europe (Serbia, Denmark and Hungary). UN Report of the Secretary General, *Human Rights and Arbitrary Deprivation of Nationality*, A/HRC/25/28, 19 December 2013, para 13.

64 Article 4 of the 1961 Convention.

65 Article 6(4) under b), c), d) and g) ECN.

66 Article 1(4) of the 1961 Convention. In Article 1(5) of the 1961 Convention an exhaustive list of conditions is provided that states may impose in this case.

### 3.3.2 GOOD PRACTICES

Generally speaking, *jus sanguinis* conferral of nationality (i.e. by descent) is the preferred system in Europe. In total, 29 European states<sup>67</sup> have unconditional, automatic granting of nationality to all children born abroad to a parent who is a national. Such regimes are fully in line with the international standards.<sup>68</sup> Twelve states have opted for a system of declaration or registration (often alongside a rule offering automatic acquisition) which is fully in line with international standards.<sup>69</sup> **Ukraine** has a noteworthy system which allows the child of stateless parents who are permanent residents of Ukraine to acquire Ukrainian nationality even if born abroad, if they would otherwise be stateless.<sup>70</sup> **Kosovo** has recently amended its law to introduce a safeguard against statelessness. The main rule is that if a child is born abroad and only one parent is a Kosovar national, nationality will only be conferred if both parents give their consent and this is done *before* the child reaches the age of 14. The July 2013 amendment to the nationality law has introduced a safeguard which allows for the acquisition of nationality regardless of consent if the child would otherwise be stateless and either parent is a national.<sup>71</sup>

### 3.3.3 ROOM FOR IMPROVEMENT

Some states have set conditions in their legal systems that do not comply fully with international standards. There are two main types of problem in evidence. The first is where additional criteria must be met for a child to acquire nationality through the *father*, if born out of wedlock. Although in several of these countries amendments are imminent, under current **Austrian** and **Danish** law, a child born abroad and out of wedlock whose father is a national will only obtain citizenship if the father marries the mother while the child is still a minor. The child of a **Swedish** or **Finish** father, if born out of wedlock and outside the country, can only acquire nationality if the father lodges a declaration, posing a problem where the father does not want any contact with the child. Other states require biological proof that the citizen is indeed the child's father in cases where the child is born out of wedlock (i.e. in **Germany**, **Iceland** and **the Netherlands**) and may require filiation to be

67 I.e. Albania, Belgium, Bosnia and Herzegovina, Bulgaria, Croatia, Cyprus, Czech Republic, Estonia, Finland, France, Germany, Greece, Hungary, Italy, Lithuania, Moldova, Montenegro, Norway, Poland, Portugal, Romania, Russia, Serbia, Slovakia, Slovenia, Spain, Switzerland, Turkey, and Ukraine. Of these 29 states, 12 are not a party to the 1961 Convention or the ECN (i.e. Belgium, Cyprus, Estonia, France, Greece, Italy, Poland, Russia, Slovenia, Spain, Switzerland, Turkey).

68 EUDO Citizenship Database, at: <<http://eudo-citizenship.eu/databases/protection-against-statelessness?p=&application=modesProtectionStatelessness&search=1&modeby=idmode&idmode=S04>>.

69 These are Albania, Belgium, Bosnia and Herzegovina, Croatia, Germany, Italy, Malta, Montenegro, Portugal, Serbia, Slovenia, and Spain. Of these twelve states, five are not a party to the 1961 Convention or ECN (i.e. Belgium, Italy, Malta, Slovenia, and Spain).

70 Article 7 of the Law on Citizenship of Ukraine.

71 Several significant improvements were made for the prevention of statelessness in this reform of the Citizenship Act. The new law can be accessed here: <http://www.kuvendikosoves.org/?cid=2,191,1043>.

established before a particular deadline for the child to acquire nationality through the father in this manner. Such conditions are, in many cases, imposed without adequate safeguards in place to prevent statelessness. This is not in accordance with international law. In addition, treating a child born out of wedlock differently to one born within marriage is a violation of the human rights principle of equality before the law (see further below).<sup>72</sup>

The second type of problem involves registration requirements imposed in cases where a child is born outside the state's territory. For instance, in certain circumstances and where only one parent is Latvian, **Latvia** requires the mutual consent of the parents before nationality is passed to a child who is born abroad. There is no safeguard against statelessness in place if such a declaration is not made. In the case of **Cyprus**, a child born to a national abroad can acquire nationality through simple registration, but this must occur *within two years* of the child's birth. There is no safeguard against statelessness if this deadline is missed. **Belgium** requires a child born abroad to register in order to acquire nationality (within 5 years), if their parent was also born abroad - i.e. second generation born outside Belgium. However, if this deadline is missed and the child remains stateless, Belgian nationality is conferred automatically at age 18. This is broadly in line with international standards because statelessness will not endure into adulthood, but the approach taken may still be problematic from the point of view of the child's right to a nationality and the best interest of the child, given the extended period before statelessness is resolved if the initial registration period has elapsed. In the **United Kingdom**, if a child is the *third* generation born abroad (i.e. British parent(s) and British grandparent(s) were also born outside the country), there is no provision for the acquisition of nationality by descent and no safeguard against statelessness.

As with cases of otherwise stateless children born on the territory of a state, problems may equally arise in the implementation of safeguards for otherwise stateless children born to a national abroad. For instance, the United Kingdom has been hesitant to grant nationality to stateless children born overseas to British nationals where the government has contended that the country of birth is responsible for resolving their status: "we distinguish those who are perpetually stateless from those who find themselves in practice to be 'citizens in waiting' as a result of their ability to register as a citizen in their birth country on acquiring a particular age".<sup>73</sup> Such an approach can result in stateless children remaining in limbo.

72 See section 6.4, also for details of pending legal reform.

73 From a letter written on 20 May 2009 by Lord Brett to Lord Avebury. See A. Harvey, 'Statelessness: The 'de facto' statelessness debate' in *Journal of Immigration, asylum and nationality law*, Vol. 24 (3), 2010.



## 4. FOUNDLINGS

### 4.1 THE ISSUE

When a child is found abandoned on a state's territory or has unknown parents, it is a challenge to establish the identity and nationality of the child. Usually, authorities will try to locate the biological parents of the child to find out who the child is. During such an inquiry, the child may be left in a state of uncertainty with regard to identity (including nationality) and depending on the progress of the investigation this period could be quite lengthy. Moreover, if the lineage of the child cannot be established, a safeguard is needed to ensure that the child nevertheless acquires a nationality.

### 4.2 INTERNATIONAL STANDARDS

According to Article 2 of the 1961 Convention, children found abandoned on the territory of a State party should acquire the nationality of that state. This is achieved by implementing the legal presumption that the child is born in the state in which it was found to parents with the nationality of that state (so fulfils the criteria for both *jus soli* and *jus sanguinis* acquisition of nationality).<sup>74</sup> The ECN contains a similar rule in Article 6(1) (b), although this only provides that nationality must be conferred *ex lege* to 'foundlings found in [the state's] territory who would otherwise be stateless'. The effect of this rule is the same as that of Article 2 of the 1961 Convention.

These international standards do not provide a definition of 'foundling'. One question which therefore arises is what the age limit should be for being considered a person as a 'foundling'. The UNHCR Guidelines advise states to apply the rule to 'all young children who are not yet able to communicate accurately information pertaining to the identity of their parents or their place of birth'.<sup>75</sup> A second question that may present a challenge in practice is how states should respond if evidence is later uncovered as to the child's identity and parentage. According to the 1961 Convention, the legal presumption that a foundling fulfils the criteria for *jus soli* and *jus sanguinis* acquisition of nationality is valid 'in the absence of proof to the contrary'. It is conceivable that nationality acquired by a foundling in this manner may be lost if evidence later emerges that the child was born abroad or to parents who are not, in fact, nationals.<sup>76</sup> However, nationality should only be

<sup>74</sup> A comparable provision on foundlings was already laid down in Article 14 of the 1930 Hague Convention on Certain Questions Relating to the Conflict of Nationality Laws, stating that 'a foundling is, until the contrary is proved, presumed to have been born on the territory of the State in which it was found'. There is widespread state practice of implementing this rule in legal systems across the globe.

<sup>75</sup> UNHCR Guidelines No 4 (n 9) para 58. According to the Guidelines, this follows from the object and purpose of the 1961 Convention.

<sup>76</sup> See also Article 7(f) ECN which provides that a person can lose nationality 'where it is established during the minority of a child that the preconditions laid down by internal law which led to the *ex lege* acquisition of the nationality of the State Party are no longer fulfilled'.



Photo by: PRAXIS

lost if it is proven that the child already has another state's nationality and, even then, taking into consideration the best interests of the child.<sup>77</sup>

### 4.3 GOOD PRACTICES

The vast majority of European laws provide for the prevention of statelessness among foundlings in a manner which is in line with the international standards and does not impose any problematic conditions. Some countries have explicitly determined in their national laws that the protection for foundlings is applicable to all persons, minors, or children found on the territory.<sup>78</sup> For instance, **Albania**, **Bosnia and Herzegovina**, and **Kosovo** speak of a 'person found in ...', which includes all ages and offers a wide level of protection. **Latvia** uses the word 'children' and in **the Netherlands** the protection is granted to all minors (so not children), including those found on ships or aircrafts flying under the Dutch flag.<sup>79</sup> **Russia** grants nationality to all persons under the age of 18 of unknown parentage, but only does so when the parents are not traced within 6 months.<sup>80</sup> Even though this stipulation leaves children in an uncertain position for half a year, nationality is subsequently assured.

<sup>77</sup> UNHCR Guidelines No 4 (n 9) para 60.

<sup>78</sup> De Groot (n 15) forthcoming, section 4.2; EUDO Citizenship database, at: <<http://eudo-citizenship.eu/databases/modes-of-acquisition?p=&application=modesAcquisition&search=1&modeby=idmode&idmode=A03a>>.

<sup>79</sup> EUDO Citizenship database, at: <<http://eudo-citizenship.eu/databases/modes-of-acquisition?p=&application=modesAcquisition&search=1&modeby=idmode&idmode=A03a>>.

<sup>80</sup> Ibid.

Problems may arise in practice where a child is born in a hospital and subsequently abandoned there by the mother: the administration may ‘know’ who the mother is and perhaps have reason to believe that she is a foreigner, but her identity may not be officially established. A good practice has emerged in dealing with such situations in **Hungary**. In the past, the child in such circumstances was not treated as a foundling but was unable to invoke the safeguard against statelessness and left labelled by the Hungarian authorities as being of ‘unknown nationality’. After this situation was brought to the state’s attention,<sup>81</sup> a new provision was adopted in the law, providing that an abandoned child whose mother did not prove her identity upon giving birth, nor within 30 days following the birth, shall be considered a foundling.<sup>82</sup>

#### 4.4 ROOM FOR IMPROVEMENT

**Cyprus** is the only country in Europe that in its nationality law does not provide for foundlings to acquire a nationality and it is therefore not certain whether children found on the territory are protected from statelessness.<sup>83</sup> This is not in accordance with international law.

Elsewhere, a number of European countries have chosen to implement a rather restrictive reading of what a foundling is which may operate to exclude some children. **Austria** imposes the age limit of six months for a child to qualify for nationality as a foundling.<sup>84</sup> This approach is not in line with the recommendation of the UNHCR: children of six months old are not able to communicate any information on their descent. Similarly, Ireland provides a restrictive interpretation by requiring that the found person must be a ‘new-born infant’.<sup>85</sup> While no concrete age limit is fixed, a new-born infant will likely exclude slightly older children who still cannot communicate information on their identity. The same approach is taken in **Malta, Portugal, Ukraine** and the **United Kingdom**.<sup>86</sup>

In **Greece**, nationality is only granted to foundlings of whom it is proven that they are born in the country. This poses a problem since it may be difficult to determine where an abandoned child has come from and where they were born. The rule imposed in Greek law may prevent the safeguards in international standards which are transposed into national law from being applied effectively.

81 Including by way of the following reports: Parliamentary Commissioner for Civil Rights, *Report on cases no. AJB 2629/2010 and AJB 4196/2010*, September 2010; Gábor Gyulai, *Statelessness in Hungary – The protection of stateless persons and the prevention of reduction of statelessness*, December 2010, pp. 43-46.

82 Gábor Gyulai, ‘Nationality Unknown? An overview of the safeguards and gaps related to the prevention of statelessness at birth in Hungary’, Hungarian Helsinki Committee, 2014, available at: <<http://helsinki.hu/wp-content/uploads/Nationality-Unknown-HHC-2014.pdf>>.

83 EUDO Citizenship database, at: <<http://eudo-citizenship.eu/databases/modes-of-acquisition?p=&application=mode-sAcquisition&search=1&modeby=idmode&idmode=A03a>>.

84 Ibid.

85 Ibid.

86 Ibid.

## 5. BIRTH REGISTRATION

### 5.1 THE ISSUE

Birth registration ensures official recognition of the facts of a child’s birth – birthplace, date of birth and parentage. An effective and inclusive system of birth registration is an important tool in combating statelessness, because these same facts are decisive in determining which nationality a person acquires.<sup>87</sup> The vast majority of children actually acquire their nationality automatically at birth, by operation of the law, simply because they have fulfilled the conditions (e.g. having a parent who is a national is sufficient for *ex lege* acquisition of nationality in most cases). As such, not being registered at birth is not the same as being stateless. Conversely, having a system of birth registration in place is not a guarantee that no children will be left stateless.

Nevertheless, where someone is left out of the national birth registration system, this can cause problems, because the state may not be convinced that the conditions for *ex lege* acquisition of nationality were fulfilled and fail to recognise the person as a national. For this reason, the importance of birth registration in the prevention and reduction of statelessness is widely recognised.<sup>88</sup> The likelihood that lack of birth registration will be an obstacle to recognition as a national increases when other factors come into play. For instance, problems may arise if an unregistered child is born outside the parents’ country of nationality or migrates/becomes displaced subsequent to the birth, if part of the population affected by the break-up of a state is not registered and the facts of birth are relevant to the entitlement to nationality under the laws of the successor states, or if an unregistered child belongs to a minority group whose claim to nationality is generally treated with scepticism or challenged by the authorities.

### 5.2 THE INTERNATIONAL STANDARDS

Article 7(1) of the CRC – the provision containing the child’s right to a nationality – starts with ‘The child shall be registered immediately after birth and shall have the right from birth to a name’. Article 24(2) of the ICCPR also states that ‘every child shall be registered immediately after birth and shall have a name’.

### 5.3 GOOD PRACTICES

Worldwide, only half the children under five years old are registered, but within Europe national birth registration rates are far higher, some reaching almost 100%.<sup>89</sup> This gives the appearance that birth registration

87 Jaap E. Doek, ‘The CRC and the Right to Acquire and to Preserve a Nationality’ (2006) 25 Refugee Survey Quarterly [3] 26, 27.

88 See, for instance, UNHCR Executive Committee, *Conclusion on Civil Registration*, No. 111, 17 October 2013, available at <<http://www.refworld.org/pdfid/525f8ba64.pdf>>.

89 See for the latest information on birth registration trends globally, the birth registration section in UNICEF’s statistics on *Monitoring the situation of children and women*, available at: <[http://www.childinfo.org/birth\\_registration\\_challenge.html](http://www.childinfo.org/birth_registration_challenge.html)>.



is not problematic in the region. Indeed, birth registration procedures are in place across the region and broadly effective. However, there are countries in which the system is highly cumbersome and there are also particular groups which remain vulnerable to lack of registration in Europe, as discussed below.

In Montenegro and Serbia, as in the other countries of the former Yugoslavia, problems around birth registration and confirmation of nationality are closely related and disproportionately affect the Roma population. In many cases, lack of documentation is an intergenerational issue – parents or grandparents were never registered (or the registry books in which they were recorded were destroyed in the region’s conflicts) and now children are not able to be registered because of this. An opinion issued by the Ombudsman in Montenegro in December 2013 highlighted the problems that this situation creates, including the possibility that it can lead to statelessness: “Apart from the hard material situation and social exclusion of the Roma population, undocumented Roma represent a special and the most vulnerable category of the population [...] The impossibility of exercising basic rights, such as the right to a name and nationality, as well as the right to protection from any form of discrimination, makes the problem more complex and the position of Roma children even more unfavourable”. In his report, the Ombudsman further noted that administrative procedures for the registration of children who are born outside health facilities are especially problematic and there are cases which have already been pending for more than three years. Since early 2014, there are signs of improvement, in particular in Podgorica, where this problem is the most widespread. The Ministry of Interior has amended its practice and is allowing witness testimony or alternative forms of documentation (e.g. school certificates or vaccination records) to be submitted as evidence in the procedure. Over a dozen children were registered within the first two months of 2014 alone and the registration of birth allows these persons to also regulate or confirm their citizenship status (most are Kosovar or Serbian nationals).

In Serbia, the issue has been closely studied by UNHCR, the Ombudsman and civil society organisation Praxis. Discussions with the Ministry of Justice and Public Administration led to the adoption of a Law on Amendments to the Law on Non-Contentious Procedure in September 2012 which prescribes a non-contentious procedure for determination of time and place of birth (on the basis of witness testimony) for those who cannot register birth through an administrative procedure (subsequent registration). This provides an opportunity to break the cycle of lack of documentation and ensure that those who had no proof of birth are now at least registered. As in Montenegro, it is a first key step to preventing and reducing statelessness, as it can then be followed by a process of citizenship determination before the Ministry of Interior. While both the procedure for subsequent birth registration and, even more so, for citizenship determination can still be challenging and time-consuming, there is now a framework in place under which existing problems can be addressed.

#### 5.4 ROOM FOR IMPROVEMENT

Although there is high birth registration coverage in Europe overall, in a number of countries, there are pockets of the population that experience severe problems accessing birth registration. This is particularly the case for people of Roma, Ashkali and Egyptian descent in the **countries of the former Yugoslavia**, but also elsewhere



Photo by: PRAXIS

in Eastern and Southern Europe, who have historically faced obstacles registering births and where difficulties continue for new generations of children today. Within the former Yugoslav states, the process of birth registration broadly consists of two steps: registration by the health facility where the child is born and completion of the registration by a parent or guardian through a visit to the municipal registry office.<sup>90</sup> Roma, Ashkali and Egyptian children are often not born in health facilities (but rather at home), making registration completely dependent on

90 UNHCR, ‘Report on Statelessness in South Eastern Europe’ (September 2011) 27, available at: <<http://www.refworld.org/pdfid/514d715f2.pdf>>.

the parents having the knowledge, desire and ability to file for the registration of their child. Moreover, health facilities do not always register the child within the tight timeframe that they are given under the law.<sup>91</sup> In some cases, lack of documentation affects several successive generations and can only be resolved for children by first completing complex late registration procedures for their parents or even grandparents. The states in this region have taken some measures to solve these problems, make late registration easier and confirm people's nationality. UNHCR and civil society organisations have been supporting this process. Even so, problems persist, in many cases because the requirements for registration cannot be met by these groups (e.g. paying a fee or showing the identity documents or marriage certificate of both parents). Against a background of migration, displacement and state succession, this problem of intergenerational lack of birth registration has led to cases of statelessness and put many others in a position where their nationality status is currently undetermined.

## 6. DISCRIMINATION

### 6.1 THE ISSUE

Statelessness can affect children as the result of discrimination in nationality law or in its implementation. Discrimination can prevent (groups of) people from transferring the nationality they hold to their children as well as increasing the likelihood that statelessness will be transmitted from one generation to the next. For example, statelessness can result from national laws that do not allow women to transfer their nationality to their child. This will present problems, for instance, where the child's father is stateless or unknown; where the father's nationality is not transferrable, e.g. because the child is born abroad; or where the father is unwilling or unable to complete the administrative process to transfer nationality.<sup>92</sup> In other cases, it is the *father* who is discriminated against when it comes to passing on nationality. This is a problem that generally receives less attention and predominantly arises in situations where children are born out of wedlock. Although in most cases, a child born out of wedlock can obtain the father's nationality if the father recognizes the child, this is not always possible under the law or additional conditions are set - such situations also amount to discrimination against so-called 'illegitimate' children.

Sometimes the law itself is not discriminatory, but its effects are. For instance, one of the factors contributing to the problems experienced by members of the Roma community in acquiring or confirming nationality after the break-up of Yugoslavia was that the documentation required by the authorities as proof of their entitlement to nationality under the law was widely unavailable in this community. As a result of such policy and the failure to take into account the specific circumstances of the Roma, they are disproportionately affected by statelessness and situations of undetermined nationality as compared to the other populations in the countries concerned. In cases where nationality is acquired following an application procedure, or even through naturalisation, the criteria set, access to the procedure itself or the margin of discretion that the authorities may have in determining the case can all leave room for discrimination to seep into state practice. For instance, persons with disabilities may be disadvantaged in such circumstances and could be at greater risk of being left stateless.

### 6.2 THE INTERNATIONAL STANDARDS

Non-discrimination is a general principle of international law and is expressed in all major human rights treaties. The CRC contains a general provision on non-discrimination, which is applicable on all other provisions of the CRC.<sup>93</sup> This means that Article 7 on the child's right to a nationality must be applied without discrimination. The CRC prohibits discrimination on grounds of the child's or the child's parent's race, colour, sex, language, religion, political or other opinion, national, ethnic or social origin, property, disability, birth or

<sup>92</sup> For example when being unwilling to do so; because the father died; because of divorce; for practical reasons; etc. See UNHCR & CRTD.A, 'Regional Dialogue on Gender Equality, Nationality and Statelessness: Overview and Key Findings', 1. See also UNHCR, 'Revised Background Note on Gender Equality, Nationality Laws and Statelessness'.

<sup>93</sup> Article 2 CRC.





Photo by: PRAXIS

other status. States have an active duty to protect children against discrimination.<sup>94</sup> Article 24(1) of the ICCPR also provides that a child enjoys the right to acquire a nationality without any discrimination ‘as to race, colour, sex, language, religion, national or social origin, property or birth, the right to such measures of protection as are required by his status as a minor, on the part of his family, society and the State’. In addition, a general non-discrimination provision stressing that all persons are equal before the law can be found in Article 26 of the ICCPR.<sup>95</sup> The ECN contains a general provision on discrimination in the context of nationality in Article 5. This article prohibits distinctions or practices which amount to discrimination on grounds of sex, religion, race, colour, or national or ethnic origin.<sup>96</sup> It further declares that state parties must not discriminate between their nationals, whether nationals by birth or nationals who have acquired nationality subsequently.<sup>97</sup>

With regards to discrimination on particular grounds, there are a number of more specific international standards that are also applicable. For instance, CEDAW determines that *women* shall enjoy equal rights with men with respect to pass their nationality to their children.<sup>98</sup> The Human Rights Committee has stressed in particular, that ‘no discrimination with regard to the acquisition of nationality should be admissible under internal law as *between legitimate children and children born out of wedlock* or of stateless parents or based on the nationality status of one or both of the parents’.<sup>99</sup> The Convention on the Rights of Persons with Disabilities stresses in Article 18 that children with disabilities have a right to acquire a nationality and that persons with disabilities should not be deprived of their nationality or documentation of nationality on the basis of disability.

### 6.3 GOOD PRACTICES

It is important to emphasise that discrimination in nationality law is very rare in Europe today. Legislation which denies or deprives whole groups of their nationality on the basis of ethnicity or religion has been eradicated. Similarly, although women were generally unable to pass on their nationality to their children in early to mid-20<sup>th</sup> century Europe, such laws have now all been reformed. Today, the nationality laws of European states, do not contain any discrimination against women, although the present day effects of historical discrimination live on in some cases (e.g. where a person’s mother or grandmother was unable to pass on her nationality to her child). Nor do any of them contain problematic clauses in relation to children with disabilities and

<sup>94</sup> Article 2(2) CRC.

<sup>95</sup> Stating: ‘All persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status’.

<sup>96</sup> Article 5(1) ECN.

<sup>97</sup> Article 5(2) ECN.

<sup>98</sup> This is laid down in Article 9(2) CEDAW.

<sup>99</sup> The Human Rights Committee is the body of experts that monitors state compliance with the ICCPR. General Comment No 17 on The Rights of the Child (Art. 24) para 12.

discrimination against children born out of wedlock is increasingly rare.<sup>100</sup>

Nevertheless, it is of great importance to be aware of the persistence of discriminatory nationality laws in some other countries around the world, since these laws can affect those who have settled in Europe as migrants or refugees. For instance, in the context of displacement from Syria, it is important to be aware of the fact that under Syrian law, a woman is not entitled to transmit her nationality to her children.<sup>101</sup> Furthermore, as many European states have adjusted their legal systems over the past few decades to remove discriminatory elements, these states can play an active role in promoting the eradication of discriminatory nationality laws in other regions - especially those European states that have close historic and cultural ties with other countries.

## 6.4 ROOM FOR IMPROVEMENT

Although discrimination in nationality laws is to a large extent addressed in Europe, there are still remaining elements of concern. The most evident problem is that some countries do not allow men to pass on their nationality on the same terms as women, where a child is born out of wedlock.

This situation was addressed in a landmark ruling by the European Court of Human Rights (ECtHR) in the *Genovese v. Malta* case.<sup>102</sup> Ben Alexander Genovese was born out of wedlock to a British mother and a Maltese father. The father did not want any contact with the child and refused to recognize him. His paternity was however established by a court, both in Scotland and in Malta. Yet, under Maltese nationality law, a child born out of wedlock to a Maltese father can only acquire Maltese nationality if the child is legitimated, i.e. if the parents marry. This, the ECtHR ruled, is a violation of Article 8 on the right to private life (the lack of nationality is considered by the ECtHR as impacting the private life) and Article 14 prohibiting discrimination in the rights set out in the European Convention on Human Rights. The ECtHR came to this conclusion because children born out of wedlock to a Maltese father are treated differently from children born within wedlock to a Maltese father and differently from children born out of wedlock to a Maltese mother.

The Genovese case illustrates a broader problem that endures in Europe today, namely where discrimination against men and against children born out of wedlock combine in a number of nationality laws. Malta has

100 EUDO Citizenship Databases, available at: <<http://eudo-citizenship.eu/databases/protection-against-statelessness?p=&application=modesProtectionStatelessness&search=1&modeby=idmode&idmode=S03>>.

101 Worldwide, 26 countries do not allow women to transfer their nationality to their children, most are Asian, African and Middle-Eastern states.

102 The ECtHR has been set up to deliver decisions on violations of the ECHR. This instrument does not, however, contain a provision on a right to nationality. Even so, over the years, the Court has provided rulings on nationality-related issues by considering it a part of a right that is recognized in the Convention, like the right to a fair hearing upon withdrawing nationality, the right to private/family life, degrading treatment, and/or non-discrimination (Article 14 in combination with another provision). For a more detailed analysis, please see Laura E. van Waas, 'Fighting Statelessness and Discriminatory Nationality Laws in Europe' (2012) 14 *European Journal of Migration and Law* 243, 250-3.

since reformed its law on this point, but comparable problems can currently be found in the nationality laws of **Austria, Denmark, Sweden and Finland** (as already noted earlier in this report).<sup>103</sup> In both Denmark and Sweden, legislative proposals to amend the nationality acts on this point have already been tabled and are expected to be passed in summer 2014 and spring 2015 respectively.<sup>104</sup> In Sweden, in particular, the bill which has been put forward to amend the nationality law was motivated not just by the Genovese case, but also by the desire to prevent statelessness.<sup>105</sup>

While overt discrimination in nationality laws is otherwise absent in Europe, there may be laws and practices which are discriminatory in effect. Other than with respect to the challenge of discrimination against Roma communities in the **former Yugoslavia**, research into this issue is scarce. A few individual cases have come to light and been reported internationally, but these are only anecdotal and do not illuminate the scale or spread of the problem. In Italy, attention was drawn to cases in which the Ministry of Interior denied citizenship to second generation immigrant-applicants when these applicants have Down syndrome, arguing that these persons are 'incapable of discernment and unable to take the pledge' which is required for obtaining Italian citizenship.<sup>106</sup> Also in Italy, a case was reported of a stateless, disabled child who was living in state-sponsored home at the time he reached the age of majority and who was not duly informed of the 1-year window of opportunity to apply for Italian nationality, thereby missing out on this chance to resolve his statelessness.<sup>107</sup> This latter case demonstrates the type of problem that may arise with regards to application procedures that are introduced as a means of safeguarding against statelessness, unless all due effort is taken to ensure access to relevant information (e.g. about deadlines) for all members of the population.

103 See section 3.3.3.

104 In the interim, a modification to the Danish naturalisation circular in June 2013 has eased the requirements for acquisition of nationality by *naturalisation* for a child born out of wedlock to a Danish father.

105 See also the pledges made by Sweden at the 2011 UNHCR Inter-ministerial Meeting, one of which was to "intensify its efforts for the avoidance of statelessness at both the national and international level". An overview of the state pledges is available at <<http://www.unhcr.org/commemorations/Pledges2011-preview-compilation-analysis.pdf>>.

106 Guido Tintori, 'Second Generation Immigrants Denied Italian Citizenship when Affected by Down Syndrome' (2013) EUDO Citizenship News, available at: <<http://eudo-citizenship.eu/news/citizenship-news/792-second-generation-immigrants-denied-italian-citizenship-when-affected-by-down-syndrom>>.

107 This is the case of Roberto Iseni, reported for instance in L. Bingham, *Statelessness Status Determination in Italy: Quality Assurance Needed*, European Network on Statelessness Blog, 23 January 2013, available at: <<http://www.statelessness.eu/blog/statelessness-status-determination-italy-quality-assurance-needed>>. In the United Kingdom, the law was amended to address precisely this problem, see British Nationality Act 1981, section 44A.



## 7. ADOPTION AND SURROGACY

### 7.1 THE ISSUE

It is widely recognised that the legal position of adopted children should, as far as possible, be identical to the position of biological children.<sup>108</sup> In cases of cross-border adoption, the nationality of the adopted child will usually become that of the adoptive parents. Problems arise when a child loses the former nationality because of an intended adoption, yet never receives the new nationality, for example because the adoption is never finalized or is not recognised.<sup>109</sup>

A closely related issue is that of surrogacy. In most legal systems, the woman who gives birth to the child is that child's legal mother. In cases of surrogacy, commissioning parents will seek to be recognised as the legal parents. However, depending on nationality legislation and/or the genetic relationship between the commissioning parents and the child, they may face various impediments. In some instances, they must adopt the child after the surrogate mother has made a declaration that she is not the mother. Where the surrogate mother has a different nationality from the biological parents, this may result in problems concerning nationality including statelessness. The fact that (international) commercial surrogacy is not recognised – or even prohibited – under the laws of some countries can be a further complicating factor.<sup>110</sup>

### 7.2 THE INTERNATIONAL STANDARDS

The 1961 Convention provides that in cases of adoption, loss of nationality shall be conditional upon possession or acquisition of another nationality. In addition, the CRC tells states that where a child is deprived of nationality, states must provide assistance and protection with a view to re-establishing the nationality 'speedily'.<sup>111</sup> As such, there are certain safeguards to prevent statelessness upon change in nationality due to cross-border adoption. The ECN goes one step further and also provides for the actual facilitation of acquisition of nationality of the adoptive parents' state.<sup>112</sup>

International and regional law is silent on rules surrounding surrogacy, as this is a relatively recent development in the use of modern reproductive technology which has yet to be regulated. It must nevertheless be stressed

<sup>108</sup> See *inter alia* the European Convention on the Adoption of Children.

<sup>109</sup> The latter is a common problem in the context of Kafala adoptions, a form of fostering that exists in countries with an Islamic tradition.

<sup>110</sup> For more details on the complex relationship between surrogacy, nationality and statelessness, see J. Kanics, 'Preventing and reducing statelessness in the context of international surrogacy arrangements' in *Tilburg Law Review*, Vol. 19, Issue 1-2, 2014.

<sup>111</sup> Article 5(1) of the 1961 Convention and Article 8(2) CRC.

<sup>112</sup> Article 6(4)(d) ECN. The ECN also foresees in prevention of statelessness in cases of adoption in Article 7(1)(g) juncto (2).

that such situations must be considered in the light of general principles of law, the child's right to a nationality and the best interest of the child principle. Also, Principle 12 of the CoE Recommendations 2009/13 provides some advice: if a state chooses to recognize the parenthood of the biological parents in case of surrogacy, it should also acknowledge the consequences in the nationality laws. Note that the Hague Conference on Private International Law is currently investigating the legal challenges surrounding international surrogacy arrangements and this project will lead to more clarity on the issues concerned.<sup>113</sup>

### 7.3 GOOD PRACTICES

A number of European states have foreseen in automatic acquisition of nationality when a minor is adopted by at least one citizen.<sup>114</sup> The majority of European states have no provision on loss of nationality in cases of adoption.<sup>115</sup> In four of the states that do allow for loss in the context of adoption (**Italy, Montenegro, Russia and Ukraine**), such loss cannot result in statelessness.<sup>116</sup>

In **Georgia**, the Citizenship Law now provides explicitly for acquisition of Georgian nationality for a child born in the context of surrogacy arrangements if that child would otherwise be stateless. In the **United Kingdom**, where surrogacy has caused problems for the acquisition of a nationality, this has been addressed through a discretionary power provided under the British Nationality Act to register a child as a national upon application.<sup>117</sup>

### 7.4 ROOM FOR IMPROVEMENT

Ten European states provide for loss of nationality in the event of adoption without making this conditional on the child holding a new nationality. As such, it may be possible for adoption to result in statelessness where there is a cross border adoption of a child from one of these countries of origin. At the receiving end, the law in **Austria** does not foresee in the acquisition of nationality by adoption. Some other states have age restrictions for (automatic) acquisition of nationality upon adoption. The **Czech Republic and Poland**, for instance, have an age limit of sixteen, while **Denmark, Finland, Iceland, and Sweden** maintain an age limit of 12.

<sup>113</sup> Visit the website of this project of the Hague Convention of Private International Law at <[http://www.hcch.net/index\\_en.php?act=text.display&tid=178](http://www.hcch.net/index_en.php?act=text.display&tid=178)>.

<sup>114</sup> EUDO Citizenship Database, at: <<http://eudo-citizenship.eu/databases/modes-of-acquisition?p=&application=modesAcquisition&search=1&modeby=idmode&idmode=A10>>.

<sup>115</sup> Ibid. A total of 27 states do not foresee in such a provision.

<sup>116</sup> EUDO Citizenship Database, at: <<http://eudo-citizenship.eu/databases/modes-of-loss?p=&application=modesLoss&search=1&modeby=idmode&idmode=L13b>>.

<sup>117</sup> Section 3(1) of the British Nationality Act 1981. See also the UK guidance on the exercise of this discretion to register minors as nationals, where the surrogacy context is laid out, at <[https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/274302/chapter9.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/274302/chapter9.pdf)>.

With regards to the emerging practice of commercial surrogacy: in some countries, it is illegal to make use of a surrogate mother. This has already been seen to cause difficulties in obtaining citizenship of that state, as was the case in Austria where an Austrian couple made use of an American surrogate mother.<sup>118</sup> The Austrian parents were recognized as the legal parents before the American Courts, yet upon return to Vienna, the children were not recognized as Austrian nationals since surrogacy is illegal. In the US, the children were considered as Austrian nationals as a result of the recognition of the biological Austrian parents, but this was not accepted in Austria. The Austrian Court however ruled that considering the best interest of the child and the family life being centred in Austria (and not with the American surrogate mother), failing to grant Austrian nationality would have disproportionately negative consequences and could not be upheld.<sup>119</sup> In this case, therefore, an appropriate remedy was found and statelessness was avoided, however many countries have yet to put a framework in place to deal with such situations.

## 8. LOSS AND DEPRIVATION OF NATIONALITY

### 8.1 THE ISSUE

As has been detailed previously there are a number of ways in which a child can lose or be deprived of its nationality. If, for example, a foundling is granted nationality of the state in which is the child is found but it becomes clear later that the child already had the nationality of another state, the nationality granted can be lost. Also, children can lose their nationality in cases of cross-border adoption. The problem is that in some cases a child may lose nationality upon the assumption that another nationality is or will be obtained, but if this other nationality is not obtained the child is rendered stateless. Moreover, there are numerous other circumstances in which adults can lose or be deprived of their nationality and this loss or deprivation will sometimes be extended to their children. For instance, where nationality has been acquired by fraud it may be withdrawn, also from any children whose acquisition depended on this. A person may also be entitled to voluntarily renounce their nationality, including, in some cases, making such a decision on behalf of their children.

Even though there is a danger of statelessness, the option of renunciation, loss and deprivation of nationality is necessary to make sure that people can change their nationality, for example when migrating to another country or in cases of cross-border adoption. It also grants certain flexibility to states to withdraw nationality when mistakenly given, potentially lowering the threshold for granting nationality to people who would otherwise be stateless. These are powers that must be exercised with caution in order to avoid statelessness.

### 8.2 THE INTERNATIONAL STANDARDS

Article 8 of the CRC protects children from unlawful interference in respect of their identity, including nationality, which may stand in the way of loss or deprivation of nationality of the child. Article 5(1) of the 1961 Convention provides that in cases of loss of nationality due to a change in personal status (e.g. in cases of recognition or adoption), ‘such loss shall be conditional upon possession or acquisition of another nationality’. A child may therefore not be left stateless as a result. Similarly, article 6 of the 1961 Convention determines that if a nationality law provides for the loss or deprivation of a person’s nationality, the effects may not be extended to the children if this would leave them stateless. Nationality may also not be renounced if this results in statelessness.<sup>120</sup>

The ECN provides that if a child born stateless on the territory of a state party is granted nationality and if it becomes clear that the legal preconditions on which this is based are no longer fulfilled, a state can withdraw the nationality of a minor.<sup>121</sup> This has also been mentioned in the case of foundlings as it provides for the option that if it becomes clear that a foundling already had another nationality the nationality of the state on which territory it was found can be withdrawn. It is evident from the object and purpose of the ECN however, that

118 This was recognized by an Austrian Court in 2011 (Case B 13/11-10 of 14 December 2011).

119 See De Groot (n 15), section 4.4.

120 Article 7(1) of the 1961 Convention.

121 Article 7(1)(f) ECN.



such loss or deprivation of nationality cannot proceed in cases where the child would be rendered stateless. Under article 7, the ECN also clearly prohibits the loss or deprivation of nationality from a child as an effect of loss or deprivation of their parent's nationality, if that would leave the child stateless.

It is important to note that it does not matter what construction is used under domestic law to withdraw a person's nationality, the aforementioned international norms regarding avoidance of statelessness still apply. This is explained in a December 2013 report of the UN Secretary General on arbitrary deprivation of nationality: 'In some instances, the withdrawal of nationality — for example, on the ground of fraud — may be deemed under domestic law to be an act of nullification rather than loss or deprivation of nationality. Regardless of the terminology or legal construction in domestic law, measures that result in the loss or deprivation of nationality should be qualified as such and are subject to relevant international norms and standards'.<sup>122</sup>

### 8.3 GOOD PRACTICES

A number of countries explicitly acknowledge, as a general rule, that loss of nationality cannot result in statelessness. These countries are **Albania, Belgium, Denmark, Iceland, Lithuania, Luxembourg, Macedonia, Montenegro, Norway, Russia, Serbia, Sweden, Switzerland** and **Ukraine**.<sup>123</sup> Many more protect a child from loss or deprivation of nationality – at least where statelessness would result – as a consequence of the loss or deprivation of nationality of a parent.<sup>124</sup>

In January 2014, the Federal Constitutional Court of Germany issued an interesting and important ruling, declaring the nationality regulations relating to paternity disputes unconstitutional.<sup>125</sup> Under German law, if a child's paternity is discovered to be false, all of the related rights cease and if the paternal link is the ground for the child's acquisition of German nationality, this will also be lost. However, invoking arguments which included the fact that the child cannot influence any of these proceedings and should not be 'punished' for a fault in the system of acquisition of nationality, the Federal Constitutional Court determined that such loss of nationality was in violation of Germany's Constitution. This case also sets a good example of how international standards relating to children's enjoyment of a nationality can be implemented in practice.

<sup>122</sup> UN Report of the Secretary General, *Human Rights and Arbitrary Deprivation of Nationality*, A/HRC/25/28, 19 December 2013, para 3.

<sup>123</sup> EUDO Citizenship Database, at: < <http://eudo-citizenship.eu/databases/modes-of-loss?p=&application=mode-sLoss&search=1&modeby=idmode&idmode=L11>>.

<sup>124</sup> EUDO Citizenship Database, at: < <http://eudo-citizenship.eu/databases/protection-against-statelessness?p=&application=modesProtectionStatelessness&search=1&modeby=idmode&idmode=S17>>.

<sup>125</sup> Sentence nr. 4/2014, 30 January 2014.



Photo by: PRAXIS

## 8.4 ROOM FOR IMPROVEMENT

In **Slovenia**, and **Turkey** the loss of nationality of the parent(s) can in some cases result in statelessness of the child (e.g. when the parent(s) obtained nationality through fraud).<sup>126</sup> In Slovenia, parents can also voluntarily renounce nationality on behalf of their child, potentially causing their own child to be left stateless as there is no safeguard in the law to prevent this.<sup>127</sup> Many European countries provide for the possibility of withdrawing a nationality acquired by fraud, even if statelessness would result and do not explicitly limit the application of such clauses to adults.<sup>128</sup> Although there is no data available on state practice in this area, a child whose nationality was acquired on the basis, for example, of false information provided by a parent could see that nationality withdrawn and be left stateless under such provisions in the law.

126 EUDO Citizenship Database, at: <<http://eudo-citizenship.eu/databases/protection-against-statelessness?p=&application=modesProtectionStatelessness&search=1&modeby=idmode&idmode=S17>>.

127 Article 22 of the Slovenia Citizenship Act of 1999.

128 EUDO Citizenship Database, at: <<http://eudo-citizenship.eu/databases/protection-against-statelessness?p=&application=modesProtectionStatelessness&search=1&modeby=idmode&idmode=S13>>.

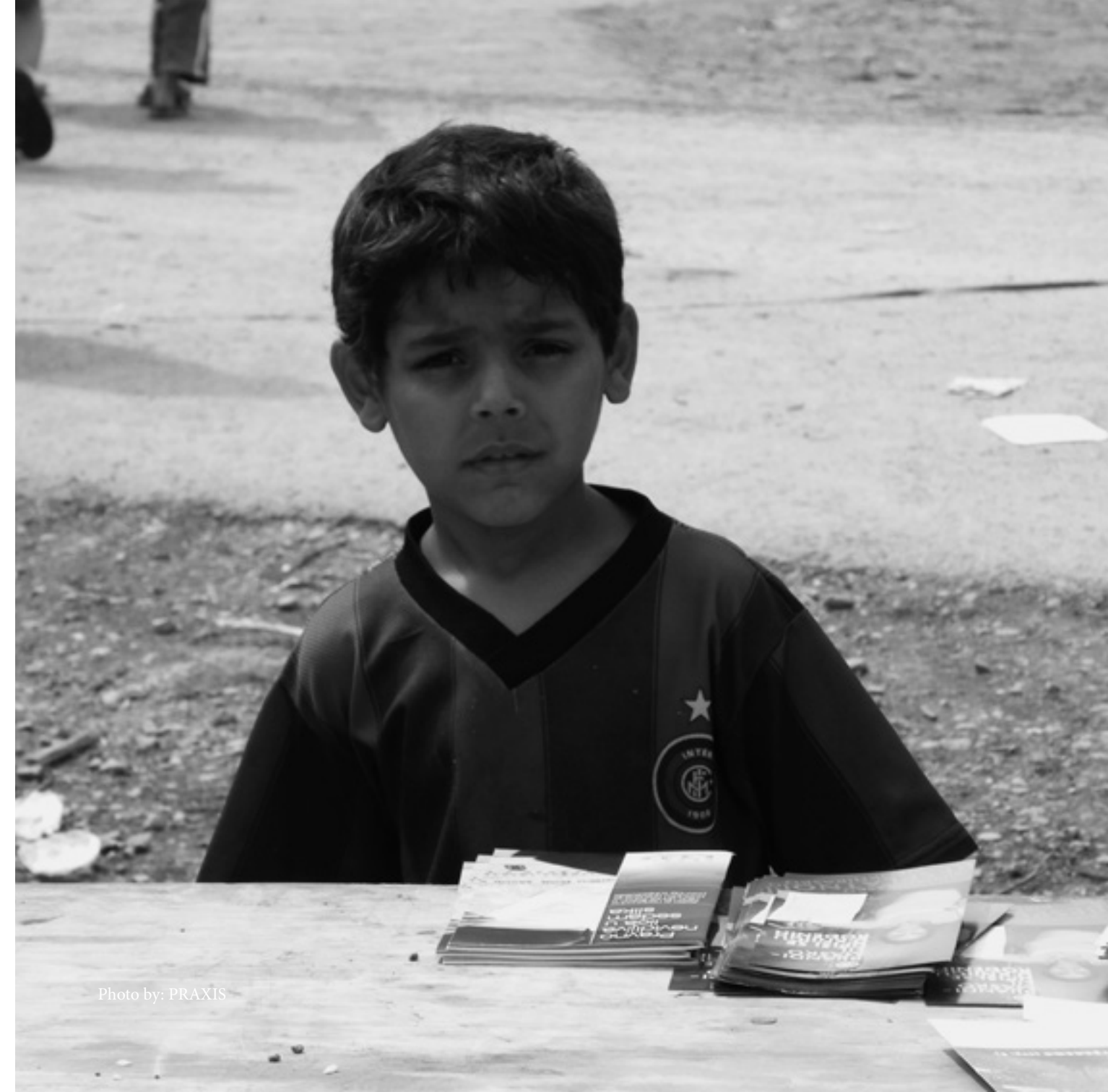


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## 9. CONCLUSIONS AND RECOMMENDATIONS

Europe's nationality laws are in reasonably good shape from the point of view of the prevention of childhood statelessness.<sup>129</sup> Most have safeguards in place to ensure that children acquire a nationality in various circumstances where there is a risk of statelessness – such as the case of foundlings, or children who are unable to acquire a nationality from their parents. The instances in which a child could lose their nationality under the operation of Europe's laws and be rendered stateless are also limited.

Nevertheless, this report has identified a worrying array of problems in the finer details of the region's nationality laws and the laws governing civil registration procedures, such as birth registration. There can be no doubt that on the basis of the gaps in these laws alone – let alone any difficulties encountered in the implementation of the various safeguards – **Europe continues to produce childhood statelessness**. This is even the case in 'simple' conflicts of laws for which clear international standards have been around for more than half a century and at times in direct violation of individual states' international commitments. From this analysis, an agenda for action can be distilled, as set out by the recommendations listed below.

It must be recalled that this paper addresses the problem of prevention of childhood statelessness in Europe largely on the basis of the content of the region's nationality laws. What remains unclear is how Europe is performing in practice. There is a distinct **lack of readily available information or research relating to state practice, jurisprudence and statistical data regarding those affected**. In the future, there is a need to closely monitor, not just on the mechanics of Europe's laws, but on the effect they are having in practice.

It lies fully within the power of Europe's governments to put in place and implement nationality laws that will ensure that the region stops producing stateless children and secures every child's right to a nationality. The following are recommendations for immediate action to strengthen the prevention of childhood statelessness in Europe:

**1. Ensure that all otherwise stateless children born on the territory of a European state acquire a nationality promptly.**

Be it through misinterpretation of the relevant international norms or misunderstanding of the circumstances in which statelessness can arise, many of the existing safeguards either do not cover all children who are born stateless on the territory or have added conditions that must be met before the child in question can secure a nationality. Those countries without *any* safeguard in place<sup>130</sup> must act immediately to introduce one – especially where they have accepted a clear obligation to do so under the 1961 Convention and are currently in violation of these commitments.

**2. Address the inadequacy of safeguards to prevent statelessness for children born on the territory as a matter of priority in those countries with large, existing stateless populations.**

Within Europe, Ukraine, Estonia, Russia and Latvia are home to the greatest number of stateless people and the lack of fully comprehensive safeguards in these countries especially is helping to perpetuate the problem onto a new generation.<sup>131</sup> Ukraine and Russia both require the parent(s) to be residents (or in the case of Ukraine, *lawful* residents), which may present difficulties for some children to acquire nationality through the safeguards. Latvia and Estonia both require an application procedure to be completed on behalf of the child by his or her parents before the child reaches the age of 15. This places great responsibility on the parents to ensure that the child does not remain stateless and if the parents fail to take action for whatever reason, or the further conditions stipulated under the law are not met, solving the child's statelessness at a later date is far more complicated. A number of other European countries that are also home to a significant stateless population today – such as Sweden, with almost 10,000 stateless people – were found to have similarly inadequate safeguards. If Europe is to put a halt to the spread of statelessness, these laws will need to be carefully reviewed and amended.

**3. Ensure that restrictions on the conferral of nationality *jus sanguinis* to children born abroad does not lead to statelessness.**

While Europe favours *jus sanguinis* conferral of nationality at birth, a number of states have imposed limitations or conditions for acquisition of nationality by descent where a child is born abroad. Where registration requirements are in place or transmission of nationality is restricted to only the first or second generation born outside the territory of the state, safeguards must be introduced to ensure that a child who is otherwise stateless can nevertheless acquire nationality *jus sanguinis*.

**4. Abolish any difference in treatment in nationality laws with regards to children born out of wedlock.**

Following the ruling of the European Court of Human Rights in the case of *Genovese v. Malta*, there can no longer be any doubt that restricting the entitlement of a child born out of wedlock to acquisition of the father's nationality is discriminatory and must be reformed. In those few countries where this problem stands – such as Denmark and Sweden – the process of amending the nationality laws is already underway and this reform should be realised without delay.

**5. Simplify procedures for birth registration and confirmation of nationality in countries with a problem of intergenerational lack of documentation.**

Lack of birth registration can put people at risk of statelessness, especially when combined with factors such as migration, state succession, discrimination or an intergenerational lack of documentation. Greater effort is needed to facilitate birth registration procedures and ensure that proof of a person's birth

129 See also as to the overall performance of European nationality laws in preventing statelessness in Vonk et al, 'Benchmarking the Protection against Statelessness in Europe' in *Tilburg Law Review*, Vol. 19, Issue 1-2, 2014.

130 Albania, Cyprus, Norway and Romania.

131 According to UNHCR's global statistics, at the end of 2012, the stateless populations in these countries were as follows: Ukraine – 35,000; Estonia – 94,235; Russia – 178,000; Latvia – 280,759. See UNHCR Global Trends 2012 – Annexes, table 7, 'Persons under UNHCR's statelessness mandate'.

is readily available. Where the problems of the youngest generation can only be resolved by tracing and documenting the parents' and grandparents' links to a country, this process must be facilitated, to ward off a stalemate that leaves large groups of people stateless or in a situation of undetermined nationality for an extended period of time. In particular, states should review their birth registration procedures, address legal and practical barriers to registration and introduce the possibility of accepting alternative forms of evidence where impossible-to-meet documentary requirements are blocking procedures for birth registration or confirmation of nationality.

#### **6. Review nationality laws to identify and revise any provisions that could lead to loss of nationality of children, leaving them stateless.**

In a range of different circumstances – e.g. adoption, loss of nationality by the parents, or discovery of facts which undermine the basis for a child's original acquisition of nationality – it is possible for a child who enjoys a European nationality to forfeit this status and be left stateless. While states may have legitimate reasons to withdraw a child's nationality, this should not be allowed to result in statelessness.

The European Network on Statelessness (ENS) is a network of non-governmental organisations, academic initiatives, and individual experts committed to address statelessness in Europe. We believe that all human beings have a right to a nationality and that those who lack nationality altogether – stateless persons – are entitled to adequate protection. We are dedicated to strengthening the often unheard voice of stateless persons in Europe, and to advocate for full respect of their human rights. We aim to reach our goals by conducting and supporting legal and policy development, awareness-raising and capacity building activities.

ENS currently has 86 members in over 30 European countries. Six serve on its Steering Committee, 46 are associate member organisations, and 34 are individual associate members.

**Steering Committee members:** Asylum Aid, UK \* The Equal Rights Trust, UK \* Hungarian Helsinki Committee, Hungary \* Open Society Justice Initiative \* Praxis, Serbia \* Statelessness Programme -Tilburg University, the Netherlands

**Associate member organisations:** Aditus Foundation, Malta \* AIRE Centre, UK \* Archway Foundation, Romania \* Association for Integration and Migration, Czech Republic \* Association for Juridical Studies on Immigration, Italy \* Asylkoordination. Austria \* Bail for Immigration Detainees, UK \* Belgian Refugee Council, Belgium \* British Red Cross, UK \* Caritas Vienna, Austria \* Civil Rights Programme, Kosovo \* Danish Refugee Council, Denmark \* Detention Action, UK \* EUDO Citizenship, regional \* European Roma Rights Centre, Hungary \* Faith Hope Love, Russia \* Forum Refugies, France \* Greek Council for Refugees, Greece \* Halina Nicc Legal Aid Centre, Poland \* Helsinki Citizens Assembly, Turkey \* Helsinki Foundation for Human Rights, Poland \* HIAS, Ukraine \* Human Rights League, Slovakia \* Immigrant Council of Ireland \* Information Legal Centre, Croatia \* Innovations and Reforms Centre, Georgia \* Interights, UK \* Italian Council for Refugees, Italy \* JRS Romania \* Kerk in Actie, Netherlands \* Latvian Centre on Human Rights, Latvia \* Law Centre of Advocates, Moldova \* Legal Centre, Montenegro \* Legal Clinic for Refugees and Immigrants, Bulgaria \* Legal Information Centre on Human Rights, Estonia \* Lithuanian Red Cross Society, Lithuania \* Liverpool University Law Clinic, UK \* Macedonia Young Lawyers Association, Macedonia \* Migrant Rights Network, UK \* NGO Vitality, Moldova \* Peace Institute, Slovenia \* People for Change Foundation, Malta \* Portuguese Refugee Council, Portugal \* Refugee Action, UK \* Refugees International, regional \* Va.a Prava, Bosnia and Herzegovina

**Individual associate members:** Marine Antonyan, Armenia \* Katia Bianchini, UK \* Adrian Berry, UK \* Zsolt Bobis, Hungary \* Michelle Mila van Burik, Netherlands \* Ivana Canjuga Bedi., Croatia \* Valeriia Cherednichenko, Ukraine \* Arsenio Cores, Spain \* Eva Ersboll, Denmark \* Paolo Farci, lawyer, Italy \* Eric Fripp, UK \* Monika Ganczer, Hungary \* Professor Guy Goodwin-Gill, UK \* Stans Goudsmit, Netherlands \* Stefanie Grant, UK \* Professor Rene de Groot, Netherlands \* Professor James Hathaway, US \* Karel Hendriks, Netherlands \* Erika Kalantzi, Greece \* Manuela Kraus, Germany \* Maureen Lynch, US \* Helena-Ulrike Marambou, Germany \* Reinhard Marx, Germany \* Keelin McCarthy, UK \* Frances Meyler, UK \* Tamas Molnar, Hungary \* Mike Sanderson, UK \* Nando Sigona, UK \* Kelly Staples, UK \* Katia Swider, Netherlands \* Kostas Tsitselikis, Greece \* Jason Tucker, UK \* Caia Vlieks, the Netherlands \* Sarah Woodhouse, UK

**For full member profiles and for more information about ENS visit our website at:** [www.statelessness.eu](http://www.statelessness.eu)

**To keep updated on statelessness developments in Europe subscribe to our mailing list at:** <http://www.statelessness.eu/sign-up>

**For further statelessness resources, including comparative information on nationality laws, visit:**

UNHCR's Refworld Statelessness site <http://www.refworld.org/statelessness.html>

EUDO Observatory on Statelessness <http://eudo-citizenship.eu/>



More than 65 years have passed since the adoption of the Universal Declaration of Human Rights, which affirms the right of every person to a nationality. Yet statelessness remains a serious problem. Indeed, across Europe today, children are actually still being born into statelessness. Many have inherited their statelessness from parents who were stateless before them, while others are the first in their family to experience statelessness, as the unsuspecting victims of a gap or conflict in nationality laws. Whatever the circumstances in which childhood statelessness arises, the vast majority of those affected have been stateless since birth. They have never known the protection or sense of belonging which a nationality bestows.

Childhood statelessness is thoroughly preventable. International and regional standards in the fields of human rights, child rights and statelessness all protect the child's right to acquire a nationality. This report published by the European Network on Statelessness (ENS) looks at how Europe is performing with respect to these standards and in light of the overall goal of preventing childhood statelessness.

The report identifies the principal issues and gaps that, if left unaddressed, can contribute to the creation of new cases of statelessness among children. It then presents an assessment of the performance of Europe's nationality laws across this set of issues, based largely on existing legal analysis and supplemented by examples from case law and practice. Through the identification of both good practices in respect of the prevention of childhood statelessness and areas where the law or related practice leave room for improvement, the report sets out an agenda for change.