

EUROPEAN PARLIAMENT  
Committee on Civil Liberties, Justice and Home Affairs

**ROMA AND STATELESSNESS**

Jasminka Dedić, MA

Peace Institute, Ljubljana

e-mail: [jasminka.dedic@mirovni-institut.si](mailto:jasminka.dedic@mirovni-institut.si)

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## 1. Introduction

The phenomenon of statelessness is the most salient in the circumstances of a state dissolution/succession, because it may render the whole collectivities either *de iure* or *de facto* stateless, particularly in those successor states that adopt the principle of *ius sanguinis* as the exclusive or predominant principle in granting nationality/citizenship.<sup>1</sup> Thus, statelessness was widespread in Europe between the two world wars primarily due to the dissolution of the Austro-Hungarian monarchy, the establishment of the Baltic states and mass displacements after the 1st world war,<sup>2</sup> however, after the dissolution of multi-national federations in the beginning of the 1990s (i.e. of the SFR Yugoslavia, the Soviet Union and Czechoslovakia), stateless populations again emerged in Europe in larger numbers. With the accession of some of the newly established post-socialist countries in the EU in May 2004 and, furthermore, with the remaining of Yugoslav successor states – all aspiring to become full EU members – the problem of mass statelessness has become a problem of the EU as well.

The main cause for the appearance of statelessness in many of the newly established states lies with the nationality laws, which, as a rule, defined the initial body of citizens on the basis of ethnic belonging according to the *ius sanguinis* principle and disregarded the "genuine and effective link" of some residents with the concerned state. This entailed the development of two opposite tendencies in the field of settling the nationality issues in the "new" countries.<sup>3</sup> Thus, on one hand, the citizenship has been generously granted also to ethnic kins living outside of the concerned countries.<sup>4</sup> On the other hand, the nationality and immigration legislation were designed in such way that it sought to exclude the members of ethnic minorities from the citizenship, or, in some cases, even to remove them from the country.

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<sup>1</sup> On the relationship between "nationality" and "citizenship", see Guild, Elspeth (1996), "The Legal Framework of Citizenship in the European Union". In Cesarani, David and Mary Fulbrook (eds.), *Citizenship, Nationality and Migration in Europe*. London and New York: Routledge.

<sup>2</sup> Hannah Arendt was the first to analyze the mass phenomenon of statelessness in the period between the world wars in depth. In her influential *The Origins of Totalitarianism*, "she considered the sudden emergence of stateless masses to be one of the most intractable problems of the twentieth century" (Bernstein 2005: 51).

<sup>3</sup> When I refer to "new" countries I do not have in mind the distinction between the "old" and "new" EU member states, but the newly established post-socialist countries that are either already EU member states (i.e. the Czech Republic, Estonia, Latvia, Lithuania, Slovakia and Slovenia) or are pretending to become full EU members (i.e. Bosnia-Herzegovina, Croatia, Macedonia, Montenegro, Serbia, and plausibly Kosovo in the future).

<sup>4</sup> The case in point is Croatia, which granted Croatian citizenship to all persons who felt themselves to be members of the Croatian nation. As a result, a huge majority of Croats from Bosnia-Herzegovina obtained the Croatian citizenship (Dedić 2003: 42). Slovenia went even further with granting special benefits and rights for Slovenes without Slovenian citizenship (art. 5, para. 2 of the Constitution of the Republic of Slovenia).

These measures have been particularly targeted against the so-called "new aliens", who constituted ethnic minorities originating from other former federal republics, such as the Russian speakers in Estonia and Latvia, ethnic non-Slovenes from other parts of the former Yugoslavia in Slovenia, Roma from Slovakia in the Czech Republic etc.

The majority of the concerned countries have also failed to adhere to the fundamental principles of international law aiming at the prevention of statelessness as enshrined in the 1961 Convention on the Reduction of Statelessness<sup>5</sup> and Chapter IV of the 1997 European Convention on Nationality.<sup>6</sup>

## **2. Stateless Roma in the newly established post-socialist countries**

In all "new" countries, where a Roma population is present, the nationality laws have had the most devastating impact on the Romani communities, which have evidenced to be particularly vulnerable to the occurrence of statelessness and the lack of citizenship. Namely, Roma have been facing difficulties in the access to citizenship due to their social marginalization, acute impoverishment, living in informal settlements and widespread racist prejudice among the majority population. As the immediate causes for the statelessness significantly vary from one country to another, this phenomenon cannot be addressed straightforwardly and, therefore, the specificity of every country must be taken into account. For example, statelessness among the Bosnian-Herzegovinian and the Kosovar Roma can be largely imputed to mass forced displacements triggered by war, whereas statelessness among Roma in the Czech Republic and in some successor states of the former Yugoslavia (Croatia, Macedonia, Slovenia etc.) has been rather an outcome of discriminatory naturalization requirements (see Struharova 1999; Perić 2003; Linde 2006).

Nevertheless, we must bear in mind that the "original sin" (Jalušič 2003) for the emergence of statelessness primarily lies with the national authorities, which have failed to recognize the unique position of European Roma as a "nation without a state" and have overlooked the negative "side" effects of the conflation of the citizenship status and of ethnic belonging. Namely, in the system of ethnicized citizenship, if they are deprived of a citizenship of a state,

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<sup>5</sup> Among the above listed countries, only Bosnia-Herzegovina, the Czech Republic, Latvia and Slovakia acceded to the 1961 Convention.

<sup>6</sup> Among the above listed countries, only the Czech Republic, Slovakia and the former Yugoslav Republic of Macedonia ratified the 1997 Convention.

with which they have established the genuine and effective link, Roma cannot effectively claim a citizenship of any other state.<sup>7</sup>

Although the phenomenon of statelessness is practically unavoidable in the circumstances of states' dissolution, successor states sometimes exacerbate the situation by creating insurmountable administrative burdens in the access to citizenship and/or to legalization of residence status of marginalized social groups, such as Roma. Such cases are the Czech Republic and Slovenia (both EU member states), which have actively engaged in ethnically discriminatory practices in relation to nationality and immigration issues. Thus, the Czech Republic has been excluding from its citizenship Roma from Slovakia for years, because the naturalization requirements included verification of a five-year period of residence, unobjectionable criminal record and unwieldy fees and administrative processes (Linde 2006). Although the 1999 and 2003 amendments to the Czech nationality legislation remedied the most of problems, however, the Czech government has never provided for any compensation to persons rendered arbitrarily stateless by the 1992 Nationality Act (Perić 2003).

Slovenian authorities, however, contributed to the creation of stateless persons with an unlawful and unconstitutional administrative measure known as "the erasure", which still has not been remedied in accordance with the Constitutional Court ruling.<sup>8</sup> With "the erasure", the Slovenian authorities removed some 18.300 persons from the register of permanent residence in February 1992. In some cases, erasure from the register resulted in *de facto* statelessness, particularly in cases where a person was born in Slovenia to a father of non-Slovenian republican citizenship (Dedić, Jalušič and Zorn 2003: 61). Although targeting ethnic non-Slovenes originating from other republics of the former Yugoslavia indiscriminately, the "non-autochthonous" Roma<sup>9</sup> have been collectively injured by "the erasure". Namely, according to some estimates, more than two thirds of "non-autochthonous" Roma remained without Slovenian citizenship in 1992 (Perić 2001: 35; Dedić 2003).

One emblematic case of a stateless Roma is the case of a erased Romani man (I. S.) originating from Macedonia, who spent most of his life in Slovenia. After he and his family

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<sup>7</sup> According to author's opinion, a parallel can be drawn with the situation of European Jews during the 1930s, when the problem of statelessness was particularly acute for them. As Hannah Arendt put it, being stateless is the most problematic, because "they no longer belong to any community whatsoever" (Arendt 1968: 295).

<sup>8</sup> See Constitutional Court decision U-I-246/02 (3 April 2003).

<sup>9</sup> I.e. Roma from Bosnia-Herzegovina, Kosovo, Macedonia, Serbia etc.

lost the legal status in Slovenia due to the erasure from the register of permanent residence, he emigrated with his family to Germany and applied for temporary protection. He applied also for re-acquisition of permanent residence in Slovenia and for the Macedonian citizenship, however, both countries rejected his applications. Macedonian authorities claim that he is not a Macedonian national, because he does not satisfy a residence requirement, whereas the Slovenian authorities reject to restore his permanent residence in Slovenia under the Act on Settling the Status of Citizens of Other Successor States of the Former Yugoslavia, because he could not prove to be a citizen of any successor state. Nevertheless, the Slovenian authorities do not consider him to be stateless, because he possessed a republican Macedonian citizenship before the dissolution of Yugoslavia, and therefore, according to them he could not have become stateless.<sup>10</sup> This interpretation is in line with extreme legalistic position, according to which every citizen of the former Yugoslavia also held a citizenship of one of its six republics, however, this legal fiction has not always work in practice (Dedić, Jalušič and Zorn 2003: 60-61).

### **3. Role of the European Union**

Although there are no reliable data on the size of stateless Romani population in Europe, various international NGOs, such as Refugees International, estimate that there are sizeable stateless Romani populations not only in Central, Eastern and Sout-East European countries, but also in some Western European countries, such as Belgium, Germany, Italy, the Netherlands and the UK.<sup>11</sup> In the latter countries, stateless Roma have emerged mainly as a consequence of migrations to these countries driven by wars in the former Yugoslav countries and/or extreme poverty. In addition, because there was a considerable internal (inter-republican) migration in the former Yugoslavia and Czechoslovakia, many stateless Roma in the Western European countries face insurmountable legal obstacles in obtaining citizenship of any of the successor states (see above case).

In the past decade, we have witnessed a tendency of facilitating of the naturalization of stateless persons in the "new" countries, which can be largely assigned to pressure from the nongovernmental organizations and to international influence coming from - inter alia – also

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<sup>10</sup> Meeting with the director of Directorate for Internal Administrative Affairs, Ministry of Interior, on 4 June 2007.

<sup>11</sup> See Refugees International, [http://www.refugeesinternational.org/section/publications/stateless\\_europe/](http://www.refugeesinternational.org/section/publications/stateless_europe/) (accessed June 13, 2007).

from the EU institutions. This tendency has resulted in the decrease of stateless populations, however, as some countries still fail to fully conform with the human rights standards,<sup>12</sup> the EU institutions should act towards the integration of stateless persons in the EU citizenship. Namely, if the EU citizenship continues to be granted only to the nationals of member states also after a prospective EU constitution will be passed, the discriminatory practices concerning citizenship within some member states will be legitimized at the EU level as well. In order to avoid this, the EU institution should consider the possibility of the introduction of the EU citizenship status not contingent upon the member states' nationality and/or adopt the mechanisms for the evaluation of the practices granting nationality in the member states based on the UN and the Council of Europe standards for the prevention of statelessness and the protection of stateless persons.<sup>13</sup>

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<sup>12</sup> Such is the case of the Slovenian authorities that are still maintaining unlawful effects of the erasure

<sup>13</sup> Presently, the only EU legislation prohibiting racial and ethnic discrimination (Council Directive 2000/43/EC of 29 June 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin) excludes from its scope "the difference of treatment based on nationality and is without prejudice to provisions and conditions relating to the entry into and residence of third-country nationals and stateless persons on the territory of Member States, and to any treatment which arises from the legal status of the third-country nationals and stateless persons concerned" (art. 3, para. 2). According to James A. Goldston, this provision constitutes Directive's "looming weakness" (Goldston 2001: 69).

