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Statelessness and Discriminatory Nationality Laws: The Case of the Roma in Bosnia and Serbia

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Abstract

With the further development and integration of Bosnia and Serbia into the EU the problems that the Roma minorities face in are drawing more and more attention. The Roma in Bosnia and Serbia are experiencing discrimination and violations of their most fundamental rights, such as healthcare, education and employment. However, one issue that has been neglected in the region has been the lack of nationality, which particularly affects the Roma. During the state succession in the early 1990's and the following years of transition and instability many Roma were left without a nationality and a legal identity, and therefore vulnerable, unprotected and stateless. These Roma have not been able to resolve their status for almost two decades and are transferring their predicament of 'legal invisibility' and statelessness to their children. The emergence of new cases of statelessness shows that the deprivation of nationality among the Roma is not an event that occurred during the breakup of Yugoslavia but is a perpetuating problem that affects both Romani children and their parents. This paper aims to point out some of the main reasons for statelessness among the Roma. Therefore, it firstly points out the some of the main characteristics of the situation that the Roma are in. Secondly, it points out the main modes of acquiring a nationality in Bosnia and Serbia. Lastly, it presents an analysis on whether the Bosnian and Serbian nationality laws are discriminatory towards the Roma and whether the nationality laws of these countries are creating statelessness among the Roma. Since Bosnia and Serbia have a range of international obligations with regards to non-discrimination and the prevention of statelessness, their compliance with international law is also assessed.

List of Abbreviations and Acronyms

BiH- Bosnia and Herzegovina

CERD- Concention on the Elimination of Racial Discrimination

CRC- Convention on the Rights of the Child

ECHR- European Convention on Human Rights

ECN- European Convention on Nationality

ECtHR- European Court of Human Rights

FBiH – Federation of Bosnia and Herzegovina

FRY- Federal Republic of Yugoslavia

ICCPR- International Covenant on Civil and Political Rights

IDP- Internally Displaced Person

NGO- Non-Governmental Organisation

RS- Republika Srpska

SFRY- Socialist Federal Republic of Yugoslavia

UDHR- Universal Declaration of Human Rights

UNDP- United Nations Development Programme

UNHCR- United Nations High Commissioner for Refugees

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Chapter I: Introduction

The breakup of the Socialist Federative Republic of Yugoslavia (SFRY) in 1991 marked the beginning of a problematic transitional period that still prevails in Bosnia and Serbia, and the Western Balkans. SFRY once a strong economic and political power in the region, was dissolved into several states with weak economies and fragile political and legal systems. One issue that has surfaced due to this political and legislative instability is statelessness. Even though, the newly formed states have avoided large-scale statelessness since their independence, there is a significant population of stateless individuals spread across the region.[1] One ethnic group that has been overrepresented in this population are the Roma. In almost all of the former Yugoslav states the majority of the stateless persons are of Romani origin.[2] The Roma are among the most vulnerable groups in the region, often living in extreme poverty, without basic healthcare, education, employment and housing and face strong societal and institutional discrimination.[3]

For many Romani individuals the lack of nationality has marginalized them even further and has exacerbated their predicament. Stateless Roma do not only lack healthcare, education, employment and housing on the basis of their ethnicity, but also lack the *access to* such services due to their legal status. This means that the stateless Roma are not only discriminated against on the basis of their ethnicity, but also due to their lack of a nationality. Even though they are the most marginalized community, the stateless Roma have received little attention. International and local organisations have made efforts to identify and assist individuals that are experiencing problems with regards to their nationality, however due to the lack of information on the scope of the problem that task has been proven to be cumbersome and many Roma remain without a nationality or at risk of becoming stateless.[4] Out of the seven former Yugoslav states, Bosnia and Serbia are particularly affected by this problem. Bosnia and Serbia are hosts to the largest population of refugees and IDPs and to one of the most numerous Roma communities in the region.[5] These countries have also experienced several state successions and changes to their nationality laws which have contributed to the emergence of statelessness.

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[1] UNHCR, "Report on Statelessness in South Eastern Europe" (September 2011) UNHCR Offices in Bosnia, Macedonia, Serbia, Kosovo, Croatia and Montenegro, p.6 (UNHCR Report on Statelessness in SSE)
[2] Ibid.
[3] Human Rights Watch, "Second Class Citizens- Discrimination Against Roma, Jews and Other National Minorities in Bosnia and Herzegovina" (April 2012) (HRW Report 2012)
[4] See Gazela Puzdar, "Persons at Risk of Statelessness in Serbia" (June 2011); and UNHCR, "Report on Statelessness in South Eastern Europe" (September 2011) UNHCR Offices in Bosnia, Macedonia, Serbia, Kosovo, Croatia and Montenegro
[5] UNHCR, **"**2013 UNHCR regional operations profile - South-Eastern Europe**"** <http://www.unhcr.org/pages/49e48d766.html> accessed 01 November 2013

The reasons often given for the prevalence of statelessness or the risk of statelessness among the Roma are the state successions, lack of interest of the authorities to address the issue effectively, poverty, lack of interest among the Roma to acquire a nationality, social marginalisation and lack of education. While all of these reasons are valid and can undoubtedly contribute to the emergence of statelessness among the Roma they do not present a clear and comprehensive image of the problem in the region.

Therefore, this research will aim to analyze the reasons for statelessness among the Roma. In particular, it will identify the causes for the lack of nationality among the Roma in Bosnia and Serbia emerging from the nationality laws and procedures. By pointing to the most problematic regulations it will examine whether the nationality regimes of these two countries are discriminatory toward the Roma, impeding their access to nationality and therefore rendering them stateless or at risk of statelessness.

1. The Stateless Roma

There are between 200 000 and 500 000[6] Roma in Bosnia and Serbia. They are the most vulnerable group experiencing perpetual discrimination and living in extreme poverty on the margins of society. Even though in some regions they are recognized as an official minority and as a group in need of special protection, their rights are often undermined and they lack equal access to basic services such as healthcare, education and meaningful employment.[7] This discrimination against the Roma is not a new phenomenon. As a group, Roma communities have lived in protracted poverty and marginalisation for many years.[8] However, their situation has worsened with the political and economic destabilisation of the region and the violent conflicts. Following the wars in the 1990's and the subsequent independence of the different states, the weak rule of law regimes have allowed the Roma to be further excluded from the political sphere and strengthened the institutional and societal discrimination they were facing.[9]

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[6] Minority Rights Group International, "Country Profile: Serbia-Roma" <http://www.minorityrights.org/4032/serbia/roma.html> accessed 01 November 2013; Gazela Puzdar (n 4), p.8; and European Roma Rights Centre, "Rights Deprivation in Post-Genocide Bosnia" (February 2004), p.19

[7] European Roma Rights Centre, "Rights Deprivation in Post-Genocide Bosnia" (February 2004), p.13-17 (ERRC 2004)

[8] Julia Sardelic, "Romani Minorities on the Margins of Post-Yugoslav Citizenship Regiemes" (2013) CITSEE Working Paper Series, p. 5

[9] ERRC (n 7), p. 13-17

One of the most prominent -and problematic- processes which the Roma were excluded from during the formation of the new countries is the establishment of the nationality laws and procedures.[10] Since the majority of Roma live under significantly different socio-economic circumstances than the other ethnic groups in the region and their vulnerable position was not considered during the drafting procedures, many Romani individuals have not been able to meet the requirements for acquiring a nationality set by the new nationality laws and were therefore left stateless.[11] It is important to note that while not all of the individuals that were rendered stateless or at risk of statelessness were of Roma origin, most of the people that faced difficulties with their nationality, after the dissolution of SFRY, are members of the Roma community.[12] The problematic requirements vary across the region, and can include language, long term residence, permanent residence status, possession of personal identity documents and so on. However, one problem that has allowed statelessness to develop as a trans-generational issue and has been prominent in both Bosnia and Serbia is the lack of birth registration.[13] Children, whose parents fail or are not able to register them in accordance with the established procedures, are at a significant risk of statelessness from their birth, and have limited opportunities to regularise their status later on.

There is limited information available on the size and situation of the stateless Roma population in the former Yugoslav states. In the region, statelessness has gained most attention in Bosnia and Serbia, and consequently most of the available information and research on this topic from the region relates to the situation in Bosnia and in Serbia. UNHCR reports that there are around 25 000[14] stateless Roma spread across the seven former Yugoslav states, and more than half of them, 13 000[15], are residing in Bosnia and Serbia. This may not seem as an alarming figure, considering the total population of the countries[16], but this number is based on UNHCR's conservative estimates of *stateless* individuals. UNHCR also estimates that there are additionally around 30 000[17] Roma at *risk of statelessness* in Serbia and more than 80 000[18] Roma "*in need of durable solutions*" in the region. Even though the latter figure does not refer only to stateless individuals, it is in estimate that includes those that are at risk of statelessness or have difficulties accessing or

[10] Julia Sardelic (n 8)p.4
[11] Ibid.
[12] Ibid. p. 10
[13] UNHCR, Report on Statelessness in SSE(n 1) p.5
[14] UNHCR South-East Europe Operations Profile (n 5)
[15] 8500 in Serbia and 4500 in Bosnia and Herzegovina. Ibid; UNHCR, **"**2013 UNHCR regional operations profile - Serbia**"** <http://www.unhcr.org/pages/49e48d9f6.html> accessed 01 November 2013
[16] Serbia 's population is around 7 million, while Bosnia's is 3,8 million. World Bank (Population-Total) <http://data.worldbank.org/indicator/SP.POP.TOTL>
[17] UNHCR, **"**2013 UNHCR regional operations profile - Serbia**"** <http://www.unhcr.org/pages/49e48d9f6.html> accessed 01 November 2013
[18] UNHCR Regional Operations Profile SSE (n 5)

determining their citizenship. A more recent report from the Parliamentary Assembly of the Council of Europe has indicated that there are 10 000 stateless Roma living in Bosnia and 17 000 in Serbia.[19]

Determining the number of stateless Roma in Bosnia and Serbia, as well as in the region, is further complicated with the fact that there are no consistent figures on the population of the RAE communities in general. Official census data states that there are 225 000[20] Roma in Serbia and Bosnia, while NGO's and human rights organisations have estimated that the number could be around 500 000[21]. The uncertainty on the size of the Roma population, coupled with the facts that little attention is devoted to statelessness in the region and that stateless Roma are not registered anywhere as they are 'legally invisible'[22], show the complexities of asserting the true extent of statelessness among the Roma in Bosnia and Serbia. Even though there are no precise numbers on the stateless Roma population, statelessness - and the risk of statelessness- is a significant problem in these countries as it disproportionately pertains to one of the most marginalized groups, the Roma, and further exacerbates the dire conditions they live in.

While the reasons for statelessness among the Roma are diverse, they all stem from an inability to meet certain nationality requirements and procedures. Even though, the nationality laws are neutral and do not directly discriminate against the Roma, the Roma are the predominant part of the stateless populations in Bosnia and Serbia. Since the Roma are overrepresented in the group that is not able to meet the nationality requirements and is stateless or at risk of statelessness, it follows that those nationality requirements affect the Roma unfavourably than others. It seems that the inability of the Roma to satisfy the specific requirements is a systematic phenomenon rather than a group of individual exceptions.[23] This differential treatment that has significantly more adverse effects on the Roma population than on other ethnic group is an indication that the current nationality laws and procedures in Serbia and Bosnia and Herzegovina might be indirectly discriminatory towards persons belonging to the Roma community.

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[19] Boriss Cilevics (rapporteur), "Access to nationality and the effective implementation of the European Convention on Nationality", *Committee on Legal Affairs and Human Rights- Parliamentary Assembly of the Council of Europe* (2013), p. 10

[20] 150 000 in Serbia (Statistical office of the Republic of Serbia, "2011 Census-Population by Ethnicity" <http://webrzs.stat.gov.rs/WebSite/Public/ReportResultView.aspx?rptId=1216>) and 76 000 in Bosnia (ECRI Report, supranote 7, p.4)

[21] 400 000 in Serbia and 100 000 in Bosnia and Herzegovina. Petar Antic, "Roma and the Right to Healthcare" (2005) Minority Rights Centre

[22] The term 'legally invisible' refers to individuals that are not registered in or in possession of any legal document supporting their birth, residence or identity. Therefore, technically speaking they are invisible in the eyes of the authorities.

[23] UNHCR Report on Statelessness in SSE (n 1), p.16

Bosnia and Serbia have a multitude of international obligations[24] to prevent discrimination against members of the Roma community with regards to their right to a nationality, as well as to protect, assist, and identify those that are stateless or at risk of statelessness. Most prominently, Article 5 of the Convention on the Elimination of Racial Discrimination (CERD) stipulates that states must guarantee the right to a nationality to everyone, without distinction to, among others, national or ethnic origin; Article 1 of the Convention on the Reduction of Statelessness(1961 Convention) places an obligation on states to grant their nationality to persons born on their territories who would otherwise be stateless; and the Convention Relating to the Status of Stateless Persons(1954 Convention), as described by UNHCR, implicitly prescribes an obligation on states to identify stateless persons so as to provide them with the appropriate protection and treatment.[25]

2. Research Question and Aim

The main aim of this paper is to conceptualize the position Bosnia and Serbia's nationality laws have towards the Roma as a vulnerable socio-economic group, overrepresented among the population that is stateless or at risk of statelessness. In particular, it will aim to establish if these laws and procedures are discriminatory towards the Roma. However, since the result of a lack of access to nationality is statelessness this paper will also focus on analyzing whether the nationality laws, either due to the possible discrimination or other factors, are causing statelessness among the Roma. Furthermore, since both the right to a nationality and equal treatment are some of the most fundamental internationally recognized human rights, this study will contextualize Roma's access to nationality in terms of Bosnia and Serbia's international obligations on statelessness and non-discrimination. Ultimately, this thesis aspires to present the context of the nationality issues that the Roma face in Bosnia and Serbia and point to the most problematic laws and procedures, which can help in seeking solutions for and providing assistance to the Roma that are stateless or at risk of statelessness.

Therefore the main research question would have to be twofold:

1. Are the Bosnian and Serbian laws discriminatory towards the Roma in breach of the international standards on non-discrimination?
2. Are the Bosnian and Serbian nationality laws causing statelessness among the Roma in breach of the international standards on the prevention of statelessness?

[24] Both countries are parties to the ICCPR, CERD, CRC, and the two Statelessness Conventions.
[25] UNHCR, "Guidelines on Statelessness No.2: Procedures for Determining whether an Individual is a Stateless Person" (2012)

In order to effectively answer these questions we will first have to provide a theoretical framework for discrimination and statelessness, identify the main problematic nationality rules and identify Bosnia and Serbia's international obligations with regards to non-discrimination and the prevention of statelessness.

3. Structure

This paper will be divided into six chapters. The second chapter will present the theoretical background to this research. It will provide an outline of the right to a nationality, statelessness and discrimination, as well as the international obligations Bosnia and Serbia have with regards to all three issues. The third chapter will elaborate on the situation of the Roma and will establish the main elements of Romani life that can have a particular effect on their access to nationality, namely poverty, discrimination, lack of housing and lack of personal documents. The fourth chapter will present an overview of the nationality laws of Bosnia and Serbia. It will particularly focus on the types of attribution of nationality relevant for this research, such as acquisition of nationality at birth, naturalisation or facilitated procedures. It will also focus on birth registration as a key aspect for acquiring a nationality in Bosnia and Serbia. The fifth chapter will present the main analysis of this research. It will be divided into two main parts which will analyze whether the Bosnian and Serbian nationality laws are discriminatory and in breach of international law on non-discrimination, and causing statelessness and violating the international duty to prevent statelessness. The last chapter will conclude and present some final observations.

4. Relevance and Scope of This Research

The predicament of the Roma in Bosnia and Serbia is not an unknown issue. International and local NGO's as well as organisations such as the OSCE and the Council of Europe, have often reported on and advocated the need for improvement of the rights and conditions of Roma in the region. However, with the exception of several recent local NGO and UNHCR reports, the lack of nationality among the Roma in the former Yugoslav states has not been dealt with in depth. By providing an analysis of the nationality laws of Bosnia and Serbia in specific relation to the access of nationality of Roma, this research can add to the limited literature that is available on this topic. As was pointed out earlier, the identification of the problematic laws and procedures in these countries can assist in finding sustainable and appropriate solutions for the stateless Roma. Lastly, due to the historical, legislative and societal similarity between the former Yugoslav states, this project can also

be used as a framework for conducting research or identifying the specific problems of the stateless Roma in the other Western Balkan countries, such as Montenegro, Croatia, Macedonia and Kosovo.

It is important to point out from the beginning that this paper will present a legal analysis of the laws and procedures for nationality in Bosnia and Serbia. It will make use of primary and secondary sources to interpret the nationality laws that are in force at the moment in Bosnia and Serbia. This analysis will not attempt to comment or analyze the context of citizenship and the socio-political nationality policies of these countries towards the Roma. Therefore, the conclusion on whether the nationality laws are discriminatory or not, should be understood within the scope of this research, i.e. a legal analysis of laws. However, this does exclude the possibility that these conclusions will not be reflective of the nationality polices of Bosnia and Serbia.

Chapter 2 – Theoretical Framework

Nationality is an issue that affects us all in many aspects. It can serve as evidence of a socio-cultural link of an individual to a group as well as a proof of the legal, political and economic connection between an individual and a state. Nationality is a key element in one's identity and sense of belonging, that can reaffirm the common social heritage between a group of individuals. Due to this wide spectrum of effects, definitions and uses, nationality, and the lack of it, has been conceptualized and approached differently. For instance, granting or withdrawing a nationality from a particular group can be used as leverage in interstate relations, as a socio-anthropological concept of belonging and integration, as an inalienable and fundamental human right and so on. At this moment, however, we are interested in the legal definition of nationality or citizenship.[26] Within the study of law, nationality can be simply defined as the legal connection between an individual and a state, i.e. a formal proof of one's connection and relationship with a state.[27]

In order to avoid confusion among the different definitions of nationality and statelessness and provide a sound theoretical basis for this project, this chapter will present the concepts, theories as well as the method of analysis used in this research. The first part focuses on defining the right to a nationality. The second part will focus on the issue of statelessness by discussing the definition and some of the causes of statelessness. The third part will focus on the concept of discrimination, and will present the theories behind direct and indirect discrimination as well as the link between statelessness and discrimination. The international obligations states have with regards to statelessness and discrimination will also be outlined in the appropriate parts.

1. The Right to a Nationality and Statelessness

1.1 The Right to Nationality: Definition and Obligations

All human beings have a set of human rights enshrined in numerous international treaties accorded to them by virtue of being human. These rights apply to everyone and all are equally entitled to them. However, at present, the most effective way to achieve these and access an even broader range of rights is through a state entity. States provide their most extensive protection of

[26] "Citizenship" and "Nationality" are used interchangeably throughout this paper.
[27] Kay Heilbronner, "Nationality in Public International Law and European Law" in Rainer Baubok, Eva Ersboll, Kees Groenendijk and Harald Wldrauch (eds.) *Acquisition an Loss of Nationality- Policities and Trends in 15 European States* (April 2007), p. 35

rights to individuals with which they have a legal connection. Nationality is precisely the legal connection between an individual and a state.[28] Therefore, nationality does not only serve as evidence of one's social and cultural association with a larger group or a state, but is also establishes and defines the relationship between an individual and a state. Nationality serves as the basis for a person's duties towards a state, such as paying taxes or serving in the military, as well as for the state's obligations towards the individual, such as providing safety, public services and protecting one's rights. From a rights perspective, the most important aspect of nationality is that it is a gateway towards enjoying an effective protection of one's rights.[29] This, however, does not mean that the rights of all persons with a nationality are always protected, but rather that nationals of a state are in a better position of having their rights respected than persons that lack any nationality.

Due to its relevance with regards to both a person's identity and legal status, nationality has been recognized as a fundamental human right in international law. The UDHR in Article 15[30], the ICCPR in Article 24[31], CERD in Article 5[32] and the CRC in Article 7[33] recognize a right to a nationality of every person. In each of these instruments the right to a nationality is placed into context with the purpose and theme of the particular convention, for instance the CRC recognizes the right to a nationality of every child while CERD prohibits discriminatory respect of the right to a nationality. Nevertheless, all of these recognize an express right of all persons to a nationality. Furthermore, on the European level there are also several key instruments that have recognized this right as well. The most prominent human rights instrument in Europe, the ECHR[34], does not contain a right to a nationality in its text as such. However, in recent judgements the ECtHR has recognized nationality as a fundamental right implied under the right to private and family right in Article 8.[35] The establishment of the right to a nationality in the European rights society has also furthered by the adoption of the ECN.[36] This convention, aside from affirming the right to a nationality, also extensively addresses the obligations member states have with regards to a range of

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[28] UNHCR, "Self –Study Module on Statelessness" 2012, p.18
[29] Laura van Waas, *Nationality Matters – Statelessness Under International Law* (Intersentia, 2008), p.217
[30] Universal Declaration of Human Rights (adopted 10 December 1948 UNGA Res 217 A(III) (UDHR)
[31] International Covenant on Civil and Political Rights (adopted 16 December 1966, entered into force 23 March 1976) 999 UNTS 171 (ICCPR)
[32] International Convention on the Elimination of All Forms of Racial Discrimination (adopted 7 March 1966, entered into force 6 January 1969) 660 UNTS 195 (CERD)
[33] Convention on the Rights of the Child (adopted 20 November 1989, entered into force 2September 1990) 1577 UNTS 3 (CRC)
[34] Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention on Human Rights, as amended) (ECHR)
[35] *Genovese v Malta* App no 53124/09 (ECtHR 11 October 2011).
[36] European Convention on Nationality (adopted 6 November 1997, entered into force 1 March 2000) Council of Europe ETS 166 (ECN)

aspects relating to nationality, such as acquisition and loss[37], state succession[38] and multiple citizenships.[39]

Bosnia and Serbia are parties to all of the aforementioned international conventions, namely the ICCPR, CERD, CRC and the ECHR, but only Bosnia, has ratified the ECN. Therefore, both countries have recognized the right to a nationality as a fundamental human right and have accepted the responsibility to protect it. Even through this brief introduction to nationality, it can be safely concluded that the right to a nationality is a recognized right under international law, which Bosnia and Serbia have an obligation to protect. However, in order to present a more comprehensive image of what this right entails it is important to also comment on the methods of attribution of nationality and its main principles.

1.1.1. Attribution of nationality

As it was already pointed out, states provide their most extensive right's protection to persons that have a connection with the state in question and nationality serves as this legal link between the individual and the state. However, in order for states to grant their nationality to a person, they require some kind of factual link between the person and the state.[40] Usually the evidence of such connection is either a geographic tie to the country, such as birth or long-term residence on the territory of the state, or a personal association to a national of the state such as descent or marriage.[41] This means that states can confer their nationality to individuals at the moment of their birth, following an application procedure for naturalisation, the marriage to a national and so on. Even though it falls within the state's sovereignty to decide on the strength and type of connection required for the attribution of nationality, there are certain international standards that they need to follow. Some of the main principles on the attribution of nationality are non-discrimination, the avoidance of statelessness, the prohibition of the arbitrary deprivation of nationality and the respect of the right of nationality of all persons.[42] In other words, when states adopt their rules on the attribution of nationality they must ensure that those laws will not create statelessness, will not unjustly discriminate on protected rounds, such as race, ethnicity or political affiliation for instance, and will recognize the right to a nationality. However, since these are to a certain extent general principles they can often be in conflict with the state's sovereign right to

[37] Ibid. Art. 6 and Art. 7
[38] Ibid. Art. 18
[39] Ibid. Art. 14
[40] Laura van Waas (n 29)p.32
[41] UNHCR Self Study Module, (n 28), p. 18
[42] The only treaty that clearly lists these principles is the ECN in Article 4. The reference to these principles in the international treaties will be dealth with all thought the chapter.

delineate the rules on nationality and its pool of citizens. In order to clarify this issue, let us not turn to the two main modes of attribution of nationality relevant for the context of statelessness, namely conferral of nationality at birth and through naturalisation.

a) Conferral of nationality at birth

The acquisition of nationality at birth is a relatively straightforward concept. It refers to the obtainment of nationality at the moment of a person's birth based on the fact that he or she satisfies the requirements for a factual link with the state in question. The two alternatives of this method of conferral are the so called *jus soli* ('law of land') and *jus sanguinis* ('law of blood') principles.[43] States that use a *jus soli* conferral of nationality consider every person born on their territory as a national. The *jus sanguinis* principle, on the other hand, considers all persons whose parents are nationals of the state in question are as nationals. In both instances, the persons that satisfy these factual requirements are, most often, considered as nationals from the moment of their birth. Irrespective of whether states will use the *jus soli* or *the jus sangunis* method of conferring nationality at birth they have to adhere to the aforementioned international principles. Since non-discrimination and arbitrary deprivation of nationality will be discussed later on in this chapter as separate issues[44], let us focus on the prevention of statelessness at birth. The principle of the prevention of statelessness is perhaps one of the most important international obligations when discussing matters on the attribution of nationality at birth. On the international level, the most comprehensive safeguards against statelessness at birth are contained in the 1961 Convention on the Reduction of Statelessness[45] (1961 Convention), while the ECN is the most elaborate instrument on the European level.

For instance, Article 1 of the 1961 Convention affirms that "a contracting state shall grant its nationality to a person born in its territory who would otherwise be stateless."[46] The ECN contains a similar provision in Article 6(2)[47]. Both articles indicate that the conferral of nationality to children that would otherwise be stateless can be granted either *ex lege* at birth or following an application procedure prescribed by law. The main difference between the two however lies in the permitted conditions states may require when granting nationality though such a procedure. The ECN allows states to require that the application must be lodged before the child concerned reaches 18 years of

[43] UNHCR Self Study Module, (n 28), p. 18
[44] See Section 3.
[45] Convention on the Reduction of Statelessness (adopted 30 August 1961, entered into force 13 December 1975) 989 UNTS 175 (1961 Convention)
[46] ibid
[47] ECN (n 36)

age[48], while the 1961 Convention states that the allowed period for submitting such application must at least be between the age of 18 and 21 and provide at least one year after reaching legal maturity where the applicant will be able to submit an application on his or her own behalf.[49]

Another key difference between the two articles is the with regards to the permitted residence requirement. The 1961 Convention indicates that states are allowed to require applicants to have not more than 5 years of *habitual* residence prior to the application[50], while the ECN requires a maximum of 5 years of *lawful* residence[51]. The difference between habitual and lawful is a key aspect with regards to this research, as the requirement of lawful residence disregards the fact that some stateless persons might have been factually and habitually residing on the territory of the state without a regularized residence since their birth.[52] As we will see later, many Roma have been born stateless and have resided in Bosnia and Serbia their whole lives but have not been unable to obtain a legal residence, and would technically not qualify for nationality under this provision of the ECN. Nevertheless, this difference does not have a significant effect since all state parties to the ECN have also ratified the 1961 convention and the ECN recognizes the supremacy of provisions from other treaties that provide a more favourable treatment.[53] This means that the 1961 Convention establishes a strong obligation on states to grant nationality to children born on their territory who would otherwise be stateless, which can be subject to conditions such as an application deadline and habitual residence.

Another important instrument that enumerates an obligation to grant nationality to children who are born stateless is the ICCPR.[54] Article 24 of this Convention recognizes the right of every child to acquire a nationality. On its own, this article does not seem to imply that countries should grant nationality to children born stateless within their borders, however, the position of the Human Rights Committee indicates the opposite. It has stated that states should adopt measures "to ensure that every child has a nationality when he is born."[55] This includes granting nationality to children who are born stateless on their territory. It can be safely noted that Article 24 of the ICCPR does not only recognize the right of every child to acquire a nationality but also places an obligation on states to grant nationality to children born on their territory who would otherwise be stateless.

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[48] Ibid. Art. 6 (2)(b)
[49] 1961 Convention (n 45) Art.1 (2)(a)
[50] Ibid. Art. 1 (2)(b)
[51] ECN (n 36) Art. 6(4)(f)
[52]Laura Van Waas (n 29), p. 62
[53] Ibid; ECN Art. 26; and Art. 13 of the 1961 Convention
[54] Laura van Waas (n 29), p. 59
[55] UN Human Rights Committee, 'CCPR General Comment No. 17: Article 24 (Rights of the Child)' (7 April 1989), para. 8

Conferring nationality to children that would otherwise be stateless is one of the most relevant obligations with regards to the situation in Bosnia and Serbia. Granting nationality to persons who would otherwise be stateless is a crucial step in discontinuing the cycle of inter-generational lack of nationality. One of the most widespread problems in Bosnia in Serbia is the fact that Romani parents that have difficulties obtaining a nationality, transfer their statelessness –or the risk of it- to their children, which leaves them unprotected and in a position of extreme vulnerability from their birth.[56] Statelessness has a particularly detrimental effect to children as they will most likely be denied education and healthcare, hampering their physical and mental development and limiting their future opportunities. [57]

Bosnia and Serbia are both parties to the 1961 Convention, and only Bosnia has ratified the ECN. However, during the drafting on the current nationality law in Serbia many of the principles outlined in the ECN were incorporated into the law with the express aim to comply with international standards and create a progressive nationality law.[58] This means that both countries, according to the 1961 Convention, have an express obligation to grant nationality to all children born on their territory who would otherwise be stateless. Bosnia also has such obligations arising from the ECN. Even though Serbia has not ratified the ECN, taking into account that the ECN is an international convention dealing with a right that has been recognized by Serbia and that Serbia has incorporated some of the its main principles in the nationality laws, it can be noted that Serbia is implicitly bound by this provision of the ECN. However, since the ECN places more restrictive conditions with regards to the applications for nationality of stateless children, it can be concluded that Bosnia and Serbia are bound by the 1961 Convention when it comes to such procedures. Both countries are also bound by Article 24 of the ICCPR which implicitly requires them to grant nationality to children born on their territory who would otherwise be stateless.

b) Naturalisation

The second method of the conferral of nationality, relevant for this research, is naturalisation. Often defined as the acquisition of nationality by admission or acceptance, naturalisation refers to the conferral of nationality on the basis of long-term habitual residence.[59] With regards to naturalisation, the factual link between the state and the individual is the long term residence, rather than descent or birth on the territory as was with the conferral of nationality at

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[56] Plan and UNHCR, "Under the Radar and Under Protected- The Urgent Need to Address Stateless Children's Rights" (2012), p.8-9

[57] Maureen Lynch and Melanie Teff, "Childhood Statelessness" (2009) Forced Migration Review 32, p.31

[58] Nenad Rava, "Country Report: Serbia" (2013) EUDO Citizenship Observatory, p.11

[59]

birth. In contrast to the acquisition of nationality at birth, a citizenship though naturalisation is most acquired after a successful application procedure. States have a much wider margin of appreciation when delineating the conditions and procedures for naturalisation.[60] They can legitimately place requirements such as sufficient knowledge of the language, an ability to work and sustain oneself, years of residence and so on. However, as was already pointed out the same international principles on the conferral of nationality apply with regards to naturalisation. The rules must not unjustly discriminate, cause statelessness, arbitrarily deprive one of nationality, nor disregard the right of nationality to all. More specifically, for instance, states may not require a residence period exceeding ten years, the language requirements must not be designed to target a specific group and the fees should not be unreasonable.[61] Since discrimination in terms of naturalisation will be discussed later on, it is important to briefly comment on the obligation to prevent statelessness in terms of naturalisation.

Acquiring a nationality through naturalisation is a key aspect in the prevention of statelessness.[62] It provides an opportunity for persons that have not been able to acquire a nationality but have resided habitually in a country to become nationals. As part of their obligations to reduce statelessness states have to establish facilitated naturalisation procedures for stateless persons. On this note, Article 32 of the 1954 Statelessness Convention states that

> "The Contracting States shall, as far as possible, facilitate the assimilation and naturalization of stateless persons. […]"[63]

The wording of this article establishes a very broad obligation, and does not require states to ensure that stateless persons have a facilitated access to naturalisation. On this note, Laura van Waas points out that this article does not recognize a right of stateless persons to facilitated naturalisation but "at most, an *opportunity* to enjoy *facilitated* naturalization."[64] On the other hand, the ECN is far more decisive on this matter. It establishes a clear obligation on states to facilitate the acquisition of nationality for stateless persons that are lawfully and habitually residing on their territory.[65] It is important to stress that the envisaged facilitated procedure by the ECN encompasses only those who are *lawfully and habitually* residing on a state's territory, in contrast to the aforementioned Article 32 which applies to all stateless persons irrespective of their residence status. This means that groups such as stateless irregular migrants, stateless persons that reside habitually on a territory but lack a

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[60] Kay Hailbronner (n 27), p. 60
[61] Laura van Waas (n 29), p.111
[62] Laura van Waas (n 29), p. 360
[63] Convention Relating to the Status of Stateless Persons (adopted 28 September 1954, entered into force 6 June 1960) 360 UNTS 117 (1954 Convention)
[64] Laura van Waas (n 29), p. 365
[65] Art. 6(4)(g) of the ECN (n 36)

legal residence status, or stateless persons that have never registered with the civil authorities and therefore lack any type of legal status are not covered by this provision. To put it simply, states are not obliged to facilitate naturalization for a stateless person that is not residing legally on the state's territory.

Furthermore, the Committee on the Elimination of Racial Discrimination in its recommendation on "Discrimination against Non-Citizens" has dealt with the issue of naturalization within the scope of CERD. It has indicated that states should

> "Ensure that particular groups of non-citizens are not discriminated against with regard to access to citizenship or naturalization, and to pay due attention to possible barriers to naturalization that may exist for long-term or permanent residents."[66]

This indicates an obligation on behalf of states to ensure that stateless individuals are not discriminated in acquiring a nationality though naturalization. Even though such a obligation does not provide for facilitated naturalization of stateless persons it does oblige states to guarantee that the stateless are not discriminated in that regard. The second part of this sentence implies that long-term and permanent residents should be entitled to naturalization and therefore states should "pay attention" to the barriers in achieving that. Even though this part might not indicate an express obligation on states, it indicates that states should respect the right of long terms residence to access nationality though naturalization.

Furthermore, Bosnia and Serbia do not have a strong obligation to facilitate naturalization for stateless persons arising from the 1954 Convention. It remains within their discretion to decide whether they will provide a facilitated naturalization procedure for stateless persons. On the other hand, Bosnia has an obligation to facilitate naturalization for stateless persons arising from Article 6 (4)(g) of the ECN. However, under this article Bosnia has to do so only with regards to stateless persons that are lawfully and habitually residing in the territory. The most important and the strongest obligation arises from CERD. As signatories to this convention, Bosnia and Serbia must ensure that stateless individuals are not discriminated against in their access to naturalization and that long-term residents are not barred from accessing their right to naturalize.

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[66] Committee on the Elimination of Racial Discrimination, "General Recommendation No.30: Discrimination Against Non Citizens" (10 January 2004), para 13

2. Statelessness: Definitions, Obligations and Causes

2.1. Statelessness: Definition and obligations

Statelessness, simply put, is the absence of nationality. If nationality is the legal connection between the individual and the state, statelessness, then, is the absence of that legal connection between an individual and any state.[67] The 1954 Stateless Convention defines a stateless individual as "a person that is not considered as a national by any State under the operation of its law."[68] This would seem to imply that this definition covers individuals that are expressly not considered as nationals by law. However, UNHCR in its Guidelines on Statelessness has clarified that

> "The reference to 'law' in Article 1(1) [of the 1954 Convention] should be read broadly to encompass not just legislation, but also ministerial decrees, regulations, orders, judicial case law [...] and where appropriate, customary practise."[69]

UNHCR has further pointed out that in order to reach the conclusion that a person is 'not considered as a national', one needs to closely examine the laws *and* the position of the competent authorities with regards to the person's nationality.[70] In other words, one has to make sure that both the law and the competent authorities consider an individual as a non-national before it can be safely stated that that person is stateless, provided that he or she does not have another nationality.

The term 'competent authorities' refers to the official governmental body that decides whether an individual is a national or not.[71] In cases of non-automatic acquisition of nationality, or naturalisation, this authority would be the government agency or body in charge of naturalisation.[72] However, where nationality is conferred automatically at birth on the basis of descent or birth on the territory, a person is considered as a national from the moment of his or her birth by the operation of the law. Since there is no authority that decides on a person's nationality under the automatic mode of acquisition, any "state institution that is empowered to make a determination of an individual's nationality status in the sense of clarifying that status, rather than deciding whether to confer it",[73] can be considered as the competent authority. Such institutions are usually civil registration bodies or passport authorities. This issue is particularly relevant when it comes to the lack of birth registration as a source of statelessness and it will therefore be elaborated further later on.

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[67] Laura van Waas (n 29), p.20
[68] Article 1 of the 1954 Statelessness Convention (n 63)
[69] UNHCR, "Guidelines on Statelessness No. 1: The definition of "Stateless Person" in Article 1(1) of the 1954 Convention relating to the Status of Stateless Persons" (2012), para. 15
[70] Ibid. paras 16 and 20
[71] Ibid. para 20
[72] Ibid. para 25
[73] Ibid. para 29

Persons that lack a nationality are entitled to the same internationally recognized human rights as others, however problems arise when it comes to the protection and fulfilment of their rights. Since stateless individuals lack a legal bond with any state and states often deny responsibility towards stateless populations within their territory, the rights of these individuals are most often not effectively protected and are violated. Currently there are around 12 million stateless people around the world, which often live in protracted conditions of extreme poverty, discrimination and marginalisation, with little opportunities to improve their situation.[74] Stateless individuals face numerous difficulties. Most often, they are unable to acquire any type of identification document which in many countries is crucial in receiving medical attention, enrolling in education programmes, acquiring property, being legally employed or receive any type of public service.[75] On the other hand, even if some stateless individuals succeed in obtaining some kind of identification papers or a legal status they will still not be able to access all of their right but rather those that the state in question provides for non-citizens.

Almost every international human rights instrument contains a clause that obliges states to ensure and respect the rights, enshrined in the particular convention, of all individuals within their jurisdiction without distinction on, among other things, nationality. Due to the large body of knowledge on the rights enshrined in international conventions, in particular the ICCPR, CERD and CRC, it is not necessary to into detail about the rights enshrined in these instruments. For the purposes of this discussion it is important to take into account that that states have an obligation to extend the protection of fundamental rights to stateless persons that are on their territory, irrespective of the fact that they lack a nationality. However, aside from the general obligation of states to protect the international human rights of all persons, including the stateless, the 1954 Statelessness Convention sets out the specific rights of stateless persons.

The 1954 Statelessness Convention, aside from providing a definition of statelessness, lists the rights of stateless persons that member states have pay particular attention to and have an obligation to protect. Countries must ensure that stateless individuals have access to, among other things, legal employment, education, housing, social and administrative assistance, as well as to provide them with identity documents.[76] Even though the 1954 Statelessness Convention enshrines many more rights, as we will see later, these are the most relevant in terms of the present research. Another obligation that arises from this Convention, relevant to the situation in the former-Yugoslav region, is statelessness determination. As UNHCR has pointed out,

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[74] UNHCR, "Stateless People" <http://www.unhcr.org/pages/49c3646c155.html> accessed 1 November 2013

[75] Laura van Waas (n 29), p.12-13

[76] Articles 12 though 32 of the 1954 Statelessness Convention deal with the rights of stateless persons.

> "it is implicit in the 1954 Convention that States must identify stateless persons within their jurisdiction so as to provide them appropriate treatment to comply with their convention commitments."[77]

This means that states have an obligation to identify the individuals that are stateless on their territory. Statelessness identification is usually done either through statelessness determination procedures or nationality verification efforts.[78] Statelessness determination procedures are mostly applicable within a migratory context and are part of the state's asylum and immigration procedures. Nationality verification efforts, on the other hand, are used with regards to domestic or in-situ statelessness populations, i.e. persons that are stateless in their own country. Considering that the Yugoslav wars created large refugee populations, there are both displaced and in-situ stateless persons in the region. This means that in the context of the Roma in Bosnia and Serbia, both statelessness determination and nationality verification procedures are necessary in order to address the problem comprehensively.

As it was already pointed out, Bosnia and Serbia are parties to many international treaties therefore have a range of obligation towards the stateless. They both have ratified the 1954 and the 1961 Statelessness Conventions, CERD, ICCPR and CRC. Bosnia has also express obligations arising from the ECN, while Serbia has an implicit or a soft law duty to respect the provisions of the ECN since it has not ratified it but it has recognized the principles that are enshrined in it. Nevertheless, both countries have a responsibility to indentify the stateless, protect and fulfil their rights to education, employment, identification, housing and welfare, among others. Furthermore, as was pointer out in the previous section in order to reduce and prevent statelessness make sure that their naturalisation procedures do not discriminate against stateless individuals and grant nationality to persons born on their territory that would otherwise be stateless. Having outlined some of the main characteristics and obligations with regards to statelessness, it is important to comment on the main causes of statelessness relevant for this research.

2.2. Statelessness: Causes

Statelessness can arise in many situations. Some of the most common causes include state succession, discriminatory nationality laws, arbitrary deprivation of nationality, displacement, birth to a stateless person, lack of birth registration or the inability to satisfy certain requirements for the

[77] UNHCR Guidelines No. 2 (n 25), p. 2
[78] Ibid.

acquisition of nationality.[79] The arbitrary withdrawal of nationality is perhaps the most straightforward way for a person or a group to become stateless. For instance, in 1962 the Syrian government denationalized a large part of its Kurdish population as part of its Arabisation policies. This meant that, overnight, 120 000 Syrian Kurds were stripped of their nationality and became stateless.[80] Forced migration can be a strong source of statelessness as well, since often the persons concerned cross international borders illegally, lack appropriate identification documents and are unable to prove their citizenship or regularize their status.[81] During state succession the risk of statelessness is significantly high since states have often used the period of instability to denationalize or exclude parts of their population from their citizenry and render them stateless.[82] Ill-defined or discriminatory nationality laws can also be a cause of statelessness where the law simply does not consider certain individuals as nationals, which can stem from deliberate discrimination or a failure to take into account the needs and situation of certain groups. However, in cases of denial of citizenship where certain groups are barred from accessing nationality the problem is usually more complex because it involves a mix of political, social and legal factors, and is often coupled with discrimination.

Statelessness can arise in many other situations, however with regards to the current situation in Bosnia and Serbia two crucial causes of statelessness need to be addressed. The first is the lack of birth registration as a cause for statelessness. UNHCR and local NGO's have reported that one of the key issues that is at the core of the problem and characterises the situation of the stateless Roma in the Balkans is the widespread lack of birth registration among the Roma communities.[83] The second cause of statelessness is the arbitrary deprivation of nationality. The fact that the Roma are overrepresented in the population that is stateless alludes to the possibility of discrimination on the basis of ethnicity and unequal access with regards to the acquisition of citizenship. Such discrimination, if present, would violate the right of nationality of Romani individuals and thus arbitrarily deprive them of nationality. However, due to the close connection between arbitrary deprivation of nationality and discrimination in the context of the Roma, arbitrary deprivation of nationality will be discussed in Part 3 which deals with the principle of non-discrimination.

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[79] For an outline of the possible causes see UNHCR's Self Study Module on Statelessness (n 28), p.18-30. For an in-depth analysis of all the different causes of statelessness see Laura van Waas (n 29), pgs. 49-192
[80] Zahra Albarazi, "The Stateless Syrians" (2013) *Tilburg Law School Research Paper*, No. 011/2013
[81] Laura van Waas (n 29), p.99
[82] UNHCR Self-Study Module (n 28), p.29
[83] UNHCR Report of Statelessness in SSE (n 1), 24; Praxis, "Person at Risk of Statelessness in Serbia" (2010); ERRC (n 7) p.61

2.2.2. Birth Registration

As was noted before, a significant cause of statelessness among Roma children in Bosnia and Serbia that has been identified by UNHCR and local NGO's is the lack of birth registration, and therefore it deserves to be explained in this chapter. Birth registration is the "process by which a child's birth is recorded in the civil register by the applicable government authority"[84]. In general terms, birth registration is the initial point where a child becomes "visible" to the authorities, by being written down in the appropriate registry books. A registered child usually receives a birth certificate which serves as an "official, permanent and visible evidence of a state's recognition of that child's existence and identity"[85]. The reason why birth registration is important is because in most countries, some type of identification document is required to receive medical attention, enrol in schools, be legally employed, conclude marriages, acquire property, and register a residence address.[86] The most basic form of such identification is a birth certificate, which usually includes the person's name, date and place of birth, the names of the parents and serves as a certified copy of the registration of a birth, i.e. the entry made in the registry books. Birth registration, therefore, is not only crucial for acquiring a legal identity and but is one of the most important steps in being able to access ones human rights. Since unregistered children do not "exist" in the eyes of the authorities, because there is no civil record of them, they are excluded from censuses and other demographic statistics, making it difficult to identify all of the unregistered persons, assess the extent of the problem and extend the necessary legal and humanitarian assistance they need.[87] Unregistered persons, especially children, are often marginalized and live unprotected in extreme poverty without access to basic public services such as education, employment, basic healthcare, housing, legal assistance and welfare. However, persons that are living in an socio-economically vulnerable position, such as minorities, refugees and impoverished populations are more likely to be left unregistered.[88]

There are over 48 million children that are annually not registered at birth across the world.[89] Even though the regions that are most affected by deficient birth registrations are South East Asia and Sub Saharan Africa where over 50 percent of the children born are not registered, "the issue of unregistered children is a global problem" affecting both developed and developing countries. [90]

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[84] Plan, "Universal Birth Registration-A Universal Responsibility" (2005), p.11
[85] ibid
[86] Plan, "Count Every Child-The Right to Birth Registration" (2009), p.9
[87] Jonathan Todres, "Birth Registration: An essential First Step Toward Ensuring the Rights of All Children" (2003) Human Rights Brief 10-3, p.3
[88] Plan 2005 (n 84), p.14
[89] Ibid, p.13
[90] ibid

There are also disparities within countries, where children living in rural and low income areas have significantly higher chances of being left unregistered. The reasons for non-registration are diverse and vary between and within countries, but in general relate to either "governmental practices or parental inaction."[91] The parents may fail to register their child at birth due to high administrative costs, difficulties in reaching civil registration offices, lack of knowledge of the registration procedures, or simply because they fail to realize the importance of birth registration.[92]

Like the parents, governments may also fail to adequately address and understand the importance of birth registration. Lack of appropriate funding for establishing an efficient civil registration system, will result in a shortage of adequate and accessible civil registration offices across the country and an inability to ensure an equal application of the registration rules and regulations.[93] Furthermore, the aforementioned inability of parents to bear the costs of registration and access the civil registration authorities can also be the result of problematic legislation.[94] The deadlines, the cost or the documents needed for both regular and subsequent[95] registration might not be adequately adapted to the needs and abilities of the population or particular ethnic or socio-economic groups. For instance, if the deadline for registration is 10 days after the birth, a person living in a desert or in a dense forest area in a country with poor infrastructure might find it difficult to reach the civil registry offices in time and will fail to register his child. This person will have to register his child through the "late registration" procedures which are often costly, complex and last longer. Furthermore, birth registration can also be used by governments for political goals. Government authorities can refuse to register children belonging to a minority or a migrant population, blocking their access to a range of public services and creating serious obstacles for their acquisition of a nationality.[96]

a) Birth registration and statelessness

Birth registration is one of the crucial elements in establishing a person's connection or genuine link to a state. Therefore, it is not only the legal proof of a child's existence but also serves as a source of evidence for the location of the birth and the identity of the newborn's parents. This

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[91] Laura van Waas (n 29), p. 154
[92] Ibid.
[93] Ibid.
[94] Ibid. p.155
[95] Subsequent registration refers to the so called "late registration" procedures. Such procedures provide an opportunity for a person to be registered even after the deadline has passed. However, "late registration" procedures usually require more extensive or different documents to be presented and have a higher administration fee.
[96] See Bridget Wooding, "Contesting discrimination and statelessness in the Dominican Republic" (2009) Forced Migration Review 32, p.23-25

proof of location and parentage is crucial with regards to the acquisition of nationality, since most countries grant nationality on the basis of the *jus soli* (birth on the territory) or the *jus sanguine* (descent) principles.[97] The lack of evidence that a child has been born on the territory of the state or to parents that are nationals, *can* cause problems with regards to the child's acquisition of nationality.[98] It is crucial to note such deficiency of evidence does not mean that the child will automatically or definitely be left without a nationality and become stateless. The absence of birth registration does not mean statelessness. Statelessness can arise later on in an unregistered person's life when the lack of birth registration remains unresolved and is coupled with other factors such as problematic nationality laws and procedures, refusal of the authorities to conduct subsequent registration, discrimination or if the parents of that child are stateless and lack appropriate identification documents.[99]

Children that do not "exist" in the registry books are not automatically stateless since on the basis of fact and according to the nationality laws of most countries they are considered as nationals of a state from the moment of their birth. This is particularly evident in cases where newborns automatically acquire nationality by birth on the territory or by descent.[100] For instance, if a country grants nationality by descent (*jus sanguinis*), a child is automatically considered as a national due to the fact that his or her parents are nationals of that state. The same applies in the case of the *jus soli* principle, where a child is automatically considered as a national based on the fact that he or she has been born on the territory of that state. This means that in countries where automatic modes are used to confer nationality at birth, newborn children are considered as nationals *ex lege,* i.e. "as soon as the factual criteria set forth by law are met, such as birth to on a territory or birth to nationals of a state".[101] In such cases, the newborn children are considered as nationals irrespective of whether they have been registered or not. The birth registration then serves as "proof of place of birth and parentage and thereby provides *evidence of acquisition* of nationality, [...], rather than being the formal basis for the acquisition of nationality [emphasis added]."[102] Since unregistered children lack the evidence that they have acquired a nationality, rather than the nationality itself, they are not stateless as such. They do not expressly fall under the 1954 Convention Article 1 definition of a stateless person, which requires that a person is not considered as a national by any state under the operation of its laws.

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[97] UNHCR Self Study Module (n 28), p. 22
[98] Plan 2009 (n 86), p.24
[99] Plan 2005 (n 84), p. 15
[100] UNHCR Guidelines No. 1 (n 69), para 19
[101] Ibid.
[102] Ibid. para 28

Analyzing the lack of registration in the context of statelessness is complex from both a legal and a practical standpoint because on the one hand unregistered children might be considered as nationals according to the nationality laws while on the other hand the civil registration authorities might not recognize their status and treat them as non-nationals. For this reason, UNHCR has clarified that in situations where the competent authorities treat an individual as a non-national even though he or she meets the criteria for an automatic acquisition of nationality, it is the position of the authorities, rather than the law, that is conclusive in determining that a state does not consider the individual as a national.[103] This means that unregistered children that have been born on the territory or to parents that are nationals of a state and that are treated by the competent authorities as non-nationals would be considered as stateless under the definition of Article 1, if they do not have another nationality. Therefore, in order to establish that an unregistered child is stateless one has to look at whether the authorities in question see him or her as a national. It is difficult to establish international standards for determining whether certain civil registration authorities treat a particular unregistered individual as a national because of the variation in the nationality and registration regulations across countries, the specificity of the individual cases and the different, discriminatory or preferential, attitudes the authorities might have towards particular ethnic groups or minorities.[104] Nevertheless, if the civil registration officers do not recognize the fact that a child has been born on the territory of a state or to national parents, i.e. satisfied the factual requirements for acquiring a nationality, and they refuse to accept any evidence showing that, one can conclude that they treat the person in question as a non-national.

b) International Obligations with Regards to Birth Registration

Birth registration has been recognized as one of the most important elements of one's identity and ability to access ones rights and public services. Since deficient birth registration can lead not only to a violation of the right to a nationality and identity but is a floodgate towards violations of almost every basic right a person has such as education, employment, healthcare, a standard of living, marriage and personal property, several international conventions have included birth registration as a treaty obligation and a human right.

The right to birth registration is most clearly recognized in Article 24 of the ICCPR and Article 7 of the CRC, which state that "every child shall be registered immediately after birth".[105] These provisions indicate that states not only have to make sure that people have access to birth registration procedures, but also have an obligation to take positive measures to do so. The Human

[103] Ibid. para 30
[104] Plan 2009 (n 86), p.25
[105] ICCPR (n 31) and CRC (n 33)

Rights Committee and the Committee on the Rights of the Child have often indicated the connection between birth registration and statelessness. Even though they have treated birth registration as a separate issue from statelessness, the CRC Committee in particular, has often pointed out that birth registration is a crucial step towards ensuring the right of a child to a nationality and that effective birth registration has an important role with regards to the prevention of statelessness.[106] As the CRC Committee has noted, even though the treaty obligations require a mandatory and immediate registration after birth, the procedures must be flexible in order to meet the needs of the population.[107] States should ensure the availability of registration procedures that are affordable, should make sure that the civil registration system is sufficiently decentralized so it can be reached without incurring significant costs or hardship, and should conduct campaigns in order to both raise awareness about the importance of birth registration as well as conduct registration campaigns.[108]

An important regional human rights document relevant to this research is the ECHR. Even though this Convention does not explicitly contain a right to birth registration, the ECtHR has interpreted the right to family life under Article 8 as implicitly containing a right to birth registration.[109] Going back to focus of this paper, it can be concluded that Bosnia and Serbia, as parties to the ICCPR, CRC and ECHR, have an obligation to respect and fulfill the right to birth registration. Bosnia and Serbia must ensure that every child born on their territory, irrespective of their nationality status or ethnic origin, is registered. In addition, following the CRC Committee's recommendations they should make sure that the civil registration offices are accessible and that there are late registration procedures that are affordable and lenient enough with regards to the deadlines for registration.

3. Discrimination

Another key concept that is at the core of this research and merits attention in this chapter is discrimination. Since this paper aims to determine whether the Bosnian and Serbian nationality laws are discriminatory towards the Roma in violation of international law, this section will present an

[106] Laura van Waas (n 29) p.159
[107] Committee on the Rights of the Child, "Concluding Observations-Mozambique" (2002) CRC/C/114, para. 284
[108] Committee on the Rights of the Child, "Concluding Observations-Kenya" (2007) CRC/C/KEN/CO/2, para. 31
[109] *Marckx v Belgum* ECHR 1979- 6833/74

overview of the general theories with regards to discrimination and the prohibition of discrimination under international law.

One of the most fundamental notions that human rights are based on are equality and non-discrimination. These two concepts have often been used to describe the two sides of the same notion, namely "equality requires that equals be treated equally, while the prohibition of discrimination precludes differential treatment on unreasonable grounds."[110] Therefore, there are two types of situations where discrimination can arise, namely when persons in an identical situation are treated differently and when persons in different situations are treated identically. These types are labelled as direct discrimination and indirect discrimination respectively. [111] Before going into the details of these concepts it is important to note that discrimination arises when there is a difference in the treatment or the outcome or a certain action or policy, which has negative effects on the concerned individual or group. In order for a difference in treatment to be considered as discrimination is crucial that the reason for receiving such treatment is based on a particular characteristic, or a protected ground.[112] These protected grounds usually include sex, race, age, sexual orientation, disability, political or religious beliefs and ethnic and national origin.

3.1 Direct Discrimination

As was already noted, direct discrimination refers to the "difference in treatment of persons in analogous, or relevantly similar situations, which is based on an identifiable characteristic."[113] There are three key elements that form direct discrimination. The first is evidence of unfavourable treatment.[114] Receiving a lower salary, being denied entry into a country and being excluded from public services such as education and healthcare are just some examples of unfavourable treatment. As one might imagine, such treatment is often relatively easy to prove. For instance, showing that a female lecturer receives a lower salary then her male colleague that has the same duties is sufficient in establishing unfavourable treatment. This brings us to the second element which is a comparator. Showing that one has been treated in a negative manner is not sufficient to prove direct discrimination. There has to be evidence that the person concerned has received a different treatment than another individual which is in the same situation, the only difference between them

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110 Daniel Moeckli, "Equality and Non-Discrimination" in *International Human Rights Law* (eds. by Daniel Moeckli, Sangeeta Shah, Sandesh Sivakmnarian) (2010) p. 190

111 Fundamental Rights Agency and the European Court of Human Rights, "A Handbook on European Non-Discrimination Law" (2010), p.21

112 ibid

113 Ibid, p.22

114 ibid

being the protected ground.[115] Going back to the previous example, this means that the female lecturer would have to show that she has been receiving a lower salary then her male colleague which performed similar tasks and the main difference between them is their gender. However, the requirement for a comparator does not imply a necessity of a specific and exact example of an individual in a similar position, but rather a general indication that individuals without that particular characteristic are treated more favourably. The third element is of direct discrimination is the relationship between the protected ground and the less favourable treatment. In order for a unfavourable treatment to be regarded as discrimination, the reason for the difference must be based on a protected ground. One would have to show that the person that experienced the unfavourable treatment would have been treated differently if he or she did not have the characteristic in question.[116] For instance, the female lecturer would have to establish that the difference in treatment occurred because of her gender, rather than any other factor meaning that the less favourable treatment is being caused by the characteristic in question. However, the reason for the difference in treatment does not have to explicitly be a protected ground, it can be something closely related to one, such as pregnancy, language or a religious ritual.

3.2. Indirect Discrimination

Indirect discrimination arises when people in different situations are treated identically.[117] This implies that the treatment of the individuals concerned is the same, but the effect of that treatment has a different, less favourable, effect on one of them, because of a particular protected characteristic. Indirect discrimination often, but not exclusively, applies to a group of persons formed on the basis of a protected ground, rather than to individuals.[118] This type of discrimination also has three basic elements. The first is the existence of a neutral rule, criterion or practice that seems to treat everyone in the same manner.[119] An example of such a seemingly neutral requirement is a stringent language requirement for children enrolling in basic public education, since it applies for everyone irrespective of their protected characteristics. The second element requires that the neutral requirement or provision has a significantly more negative effect on a group defined by a protected ground. [120] This means that if a policy disproportionally affects, for instance, a religious or ethnic group in a negative way, there is a strong possibility that the policy in question is indirectly discriminatory towards that group. The ECtHR has often accepted statistical evidence to

[115] Ibid, p23
[116] Ibid. p.26
[117] Daniel Moeckly (n 110), p. 198
[118] Ibid. p.199
[119] Handbook on Non-Discrimination (n111), p.29
[120] Ibid. p.30

substantiate such claims, which simply showed that a significantly higher number of persons that belong to a certain group have been affected.[121] Going back to the previous example, the language requirement, even though it applies to everyone, might prevent children that belong to a minority or an ethnic group and do not speak the language in question or lack the required proficiency from being enrolled in schools, leaving them without an education and future prospects. The last element that is required in order to establish indirect discrimination is a comparator.[122] With this regard, the same principle applies as with direct discrimination. There has to be a person or a group that does not share the protected ground with the group in question which in a similar situation would not disproportionately experience the same negative effects. Finding a comparator for indirect discrimination is equally straightforward and flexible as with direct discrimination, there simply needs to be a group does not have the characteristic concerned. For instance, if indirect discrimination against a ethnic group is claimed, the comparator needed would be another ethnic group in the country.

3.3 Non-discrimination in International Law

Almost every human rights treaty contains a provision prohibiting discrimination on numerous grounds. Some of the most prominent are Articles 2 and from the ICCPR, Article 2 of the CRC and Article 14 of the ECHR, as well Article 2 of the CERD. The formulation of these provisions is similar, for instance Article 2 of the ICCPR obliges every state party to

> "respect and to ensure to all individuals subject to its jurisdiction the rights recognized in the present Covenant, without distinction of any kind such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status."[123]

The 'obligation to respect' requires states to refrain from interfering with the rights enshrined in these treaties in a discriminatory manner, while the 'obligation to ensure' indicates that states have to take positive measures so that that everyone's rights are protected and fulfilled equally, without making a distinction based on a protected ground.[124] Therefore, states have to take positive measures to prohibit all types of discrimination as well as to "promote, guarantee and secure equality by taking proactive steps to eliminate structural patterns of disadvantage and to further social inclusion."[125] These proactive steps can include a variety of actions such as awareness campaigns, special integration projects, gender or minority quotas and institutional restructuring in order to

[121] Daniel Moeckly (n 110), p. 204
[122] Handbook on Non-Discrimination (n111), p.31
[123] ICCPR (n 31) Art. 2
[124] Daniel Moeckly (n 110), p. 204
[125] Ibid.205

promote and achieve equality. It is important to note that even though some of these treaties contain a general prohibition against discrimination[126], all of the aforementioned provisions, with the exception of Article 2 of CERD, are subordinate norms, meaning that they do not outlaw discrimination as such, but prohibit discrimination with regards to the protection of the other rights in the Convention.[127] This means that in order for a person to claim a violation of Article 14 of the ECHR, for instance, he or she has to show that the discrimination occurred in exercising or trying to exercise another right in the Convention. This is particularly important with regards to the relationship between discrimination and statelessness, because nationality is both a prohibited ground for discrimination and a right. However, this will be discussed further in the following section.

Since Bosnia and Serbia, are signatories of all of the aforementioned treaties they have both a positive and a negative obligation with regards to non discrimination. They must refrain from discriminating against the Roma and they must take positive measure to ensure that people of Roma origin enjoy their human rights equally as others. Since the Roma are in a vulnerable socio-economic position, aside from awareness campaigns and integration projects, Bosnia and Serbia must ensure that their laws take into account the special position of the Roma and do not affect them disproportionately.

3.4 Linking Discrimination and Statelessness

Statelessness and discrimination have often been coupled together. Even though, statelessness can occur without discrimination, very often one has followed the other. Discrimination can be the cause and a result of statelessness, meaning that statelessness can both arise due to discrimination and be a reason for a person to be discriminated against. As was pointed out earlier, nationality policies have been used by states as a powerful tool in furthering their political goals. For instance, while the government in Bahrain used it to delegitimize opposition leaders by denationalizing them[128], the post-socialist republics in Europe have used it in order to alter the ethnic demographics of their territories, though targeting certain ethnic groups and excluding them

126 Such as Article 26 of the ICCPR and Article 2 of the CERD

127 Daniel Moeckly (n 110), p. 195

128 Zahra Al-Barazi, "Denationalizing Bahrainis, Ousting the Opposition" (16 November 2012) *Statelessness Programme Blog* accessed < http://statelessprog.blogspot.nl/2012/11/denationalizing-bahrainis-ousting.html> 1 November 2013; and Human Rights Watch, "Bahrain: Don't Arbitrarily Revoke Citizenship" (8 November 2012) < http://www.hrw.org/news/2012/11/08/bahrain-don-t-arbitrarily-revoke-citizenship>accessed 1 November 2013

from the pool of citizens.[129] Discrimination in terms of the conferral of nationality can occur on many grounds, such as gender, race, religion, political affiliation and citizenship. The aim of this research, however, is to examine the discrimination against the Roma community as an ethnic group. Therefore, this section will focus on presenting statelessness and the access to nationality in relation to discrimination on the basis of ethnicity.

The discrimination against a certain ethnic group can both perpetuate and cause their statelessness. Nationality laws or procedures that treat a particular group unfavourably might render them stateless or create serious obstacles in their access to nationality. However, ethnic groups that are stateless or at risk of statelessness, often face discrimination both on the basis of their nationality status and ethnic origin. Such discriminatory deprivation of nationality or lack of access to nationality based on ethnic discrimination, as we will show, is in breach of international law.

Every international convention and declaration that contains the right to a nationality also indicates that every right should be ensured on the basis of non-discrimination and no distinction on the basis of, among other things, ethnicity, race, colour, religion and sex. However, when establishing their nationality policies states must discriminate against, or more precisely differentiate among, some in order to be able to delineate their group of citizens. The matters relating to nationality have traditionally been considered as exclusively falling under the sovereignty of states.[130] This means that states have been free to decide upon the criteria that will be applied in order to distinguish between citizens and non-citizens. However, the rapid development of human rights standards and treaties since the establishment of the United Nations has altered this position.[131] As was already pointed out, under international law and practise, states must establish criteria for the acquisition of nationality in accordance with international standards, such as non-discrimination and the prevention of statelessness. A balance has to be found between the states' interests in outlining their citizenry and the interests of individuals protected by international law. Therefore, international law does not prohibit all types of distinction in the conferral of nationality, but rather distinctions that lead to the discriminatory deprivation of nationality.[132] There are several types of arbitrary deprivation of nationality, such as denationalization, denial of citizenship and the lack of due process, however the denial of citizenship is the most relevant is for the purposes of this research.

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[129] The most prominent examples are the ethnic Serbs in Croatia (see Igor Štiks, "Nationality and Citizenship in the Former Yugoslavia: From Disintegration to European Integration" (2006) South East European and Black Sea Studies) and the ethnic Russians in Latvia (see Laura van Waas (n 37), p.125)
[130] Kay Halibronner (n 27), p.35
[131] UNHCR, "Nationality and Statelessness: A Handbook for Parliamentarians" (2005), p.9
[132] CERD General Recommendation 30 (n 66) para.14

3.4.1 Arbitrary Deprivation of Nationality: Denial of Citizenship

Denial of citizenship refers to the unequal access to nationality, or the discriminatory deprivation of nationality. It has been defined as:

> "An individual's inability to obtain or retain nationality in a given State in contravention of international standards on non-discrimination."[133]

This definition indicates that a denial of citizenship occurs when an individual lacks access to nationality due to a different treatment (discrimination) based on a protected ground, for instance race or ethnicity. Due to its discriminatory nature and obvious violation of the right to a nationality, the denial of citizenship constitutes an arbitrary deprivation of nationality which is prohibited under international law.

Discriminatory deprivation of nationality concerns persons and groups that have a factual link to the state, either by descent, birth on the territory or long term residence, in other words, persons that are supposed to acquire a nationality on the basis of fact. [134] This means that a nationality law would be in breach of international norms if it discriminates against persons of a particular ethnic group that is supposed to acquire a nationality either by birth on the territory or by descent. With regards to naturalisation states are allowed to treat persons belonging to a particular group more favourably than others or have a language requirement, but it would be in breach of international law if they specifically bar access to nationality to groups that have an established long-term and habitual residence in the country.[135] For instance, a prominent example of this is the Croatian law on nationality which included several requirements that targeted the ethnic Serb minority living in Croatia and prevent them to acquire a nationality on a equal footing with the ethnic Croats.[136] Nationality requirements that affect a particular group in a negative way and place them at a disadvantage of acquiring a nationality can be considered as indirectly discriminatory. These requirements may come in different forms, such as the language proficiency, ownership of property, a registered address, employment or certain specific documents. It is important to note that these requirements are not discriminatory in themselves. Indirect discrimination with regards to nationality would arise only when these requirements negatively and disproportionately affect a certain group that should acquire, or be eligible for, a nationality. This negative effect includes both a

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[133] Laura van Waas (n 29)p. 98
[134] Ibid. p 109
[135] UN Human Rights Committee, "Individual Complaint- Steward v. Canada" 538/1993 (November 1996) para. 12
[136] UNHCR, Report on Statelessness in SSE (n 1) p.18

complete lack of access to nationality and being at a significant disadvantage of acquiring a nationality. Requirements that persons from a particular ethnic group cannot meet, can also cause widespread statelessness, or at least a risk of statelessness, among members of that group. As was already pointed out, one such requirement can be birth registration. In countries where birth registration is necessary for the acquisition of nationality, minorities and ethnic groups that are denied the possibility register newborns can become stateless. Therefore, in this case if a certain requirement disables a particular ethnic group from obtaining a nationality then it can be concluded that are being arbitrarily denied of their citizenship. Having pointed out some of the main aspects of the denial of citizenship, it is time to turn to the Bosnia and Serbia's obligations with regards to non-discrimination and the right to a nationality.

3.4.1 Obligations with regards to non-discrimination and the right to nationality

Non-equality or differentiation is an inevitable part of nationality. States must treat certain individuals more favourably than others in order to establish their citizenry, i.e. distinguish between citizens and non-citizens. Such separation can legally be based on non-protected grounds, such as birth on the territory, descent, habitual residence or in the case of naturalisation, language and criminal record.[137] If, for instance, a nationality law clearly indicates that a particular religious, ethnic, racial or political group is barred from acquiring a nationality, than it can be stated that that law discriminates against that group on the basis of a protected ground.[138] Such treatment would fall under direct discrimination. However, discrimination can also arise if the legitimate or non-protected grounds place a certain group defined by a protected ground at a particular disadvantage, i.e. have a negative effect over that group. For example, if a nationality law prescribes that the parents must be officially married in order for a child to be recognized as a citizen before the law, ethnic groups among which traditional (unregistered) marriages are prevalent will have difficulties in meeting this requirement. This means that they, as a group defined by a protected ground (ethnicity), are placed at a disadvantage for acquiring a nationality. Such law would be deemed indirectly discriminatory as it creates unreasonable impediments for a particular ethnic group and fails to accommodate their particular situation. This would constitute an arbitrary deprivation of nationality since it 'denies' the nationality of a specific ethnic group.

As was noted earlier, all of the international treaties that contain a right to a nationality also establish a prohibition of discrimination. It follows that discrimination with regards to access to nationality is a violation of a person's right to a nationality. This means that that the ICCPR, CRC,

[137] Laura van Waas (n 29)p. 111
[138] Ibid. p.101

CERD and the ECN recognize that states have an obligation to respect the right to a nationality of persons in a non-discriminatory manner with regards to, among others, race, ethnicity, sex, religion and political affiliation. Discrimination in terms of the access and conferral of nationality "can be qualified as arbitrary deprivation of nationality under international human rights law".[139] Such prohibition of discrimination in the context of the right to a nationality is especially important with regards to the acquisition of nationality at birth. The CRC and the ICCPR specifically establish that every child's right to a nationality must be respected without a distinction on a protected ground.[140]

Aside from establishing that the right to a nationality must be accompanied by non-discrimination with regards to access to 'original' nationality, international law also establishes certain equality standards in terms of the acquisition of nationality by admission, or naturalisation. States enjoy a wider margin of appreciation in establishing the required conditions for naturalisation. Requirements such as long-term residence, knowledge of the official state language, lack of criminal record, declaration of acceptance of the culture and the state in question as one's own are legitimate conditions for nationality. The prohibited grounds of distinction are the same, namely they include race, ethnicity, gender, religion and political affiliation. With regards to the naturalisation specific conditions, it is important to note that even though, for example, states are free to require a clean criminal record and a language proficiency, they "should exclusively be used and regarded as an element of integrating non-nationals and should not be used as a discriminatory means for a state to select its nationals".[141] For the purposes of this research, it is important to point out even though states have the liberty to decide on the non-protected grounds for distinction for the conferral of nationality, those grounds must not create unreasonable impediments for the acquisition of nationality both by birth and by naturalisation for a particular group defined by a protected ground such as race or ethnicity.

It can be concluded that Bosnia and Serbia, as parties to the ICCPR, CERD and the CRC have an obligation not to discriminate against the Roma with regards to the right to a nationality. This means that the Bosnian and Serbia must ensure that their requirements for acquiring a nationality do not create unreasonable impediments for the Roma as an ethnic group, therefore arbitrarily depriving them of nationality. Their laws must allow equal access to nationality to the Roma when compared to other ethnic groups. Such access includes both equal treatment before the law as well as an equal effect from the law.

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[139] Laura van Waas (n 29), p 110
[140] ICCPR Art. 24 (n 31) and CRC Art. 6 (n 33)
[141] Laura van Waas (n 29), p 112

Chapter 3- The Roma in Bosnia and Serbia

In order to determine whether the laws and procedures of Bosnia and Serbia are discriminatory towards the Roma we must first establish the elements of their 'different situation'. The aim of this chapter is to point out the specific conditions that are prevalent among the Roma population in Bosnia and Serbia, which might hamper their ability to meet the nationality requirements. The four specific elements that will be analyzed are: poverty, lack of housing, lack of personal documents and discrimination. A comparative read of the available UNHCR and NGO reports on this issue shows that, to differing levels, these are the most relevant characteristics of the Roma in terms of their access to nationality.[142] This does not mean that there are no other aspects of Romani life that might hamper the acquisition of nationality, but rather than these are the crucial ones. In order to better contextualize the current position and treatment of the Roma, we shall first briefly comment on the treatment of Roma in the past several decades. For this reason, the first part of this chapter will present a brief background on the position of the Roma in SFRY and the dissolution period. The second part will focus on pointing out the relevance of the aforementioned four elements of the situation of the Roma that can hamper their access to nationality. It is important to note that the second part will not present an elaborate image of the situation of Roma in Bosnia and Serbia, but will rather specifically point to the important aspects that differentiate the situation of the Roma from the others in relation to the acquisition of nationality. Even though all of these elements and conditions can apply to non-Roma persons, they are considered as specifically pertaining to the Roma because they are significantly and disproportionately more common amongst the Roma. The last section will present a summary of the conditions and briefly point out how they can affect the ability of the Roma to meet the nationality requirements in Bosnia and Serbia.

1. The Roma during the SFRY and its dissolution

The discrimination against the Roma and their position as the most socio-economically vulnerable group in the former Yugoslav states is not a new phenomenon. Even though some of the

[142] UNHCR, "Report on Statelessness in South Eastern Europe" (September 2011) UNHCR Offices in Bosnia, Macedonia, Serbia, Kosovo, Croatia and Montenegro; Praxis, "Person at Risk of Statelessness in Serbia" (2010); Praxis, "Person at Risk of Statelessness in Serbia- Case Studies" (2011); European Roma Rights Centre, "Rights Deprivation in Post-Genocide Bosnia" (February 2004)

conditions in which they live in have exacerbated during the 1990's, due to the violent conflicts and the transitional instability, Romani minorities have faced discrimination and poverty even in socialist Yugoslavia.[143] The SFRY was a federation of republics which incorporated many ethnicities.[144] As part of its goal to create a unified nation, or a Yugoslav ethnicity, that would include all of the different ethnic groups living on its territory, the socialist leadership placed much attention on policies promoting equal representation, opportunities and equality among the different groups of people. This allowed for the formation of a Romani political elite that was supposed to represent the interests and needs of the Roma on the local, republican and federal levels of government. However, as Sardelic points out,

> "Although individual Romani leaders were able to politically participate [...] and there was a guarantee of cultural rights as well as higher employability rates [for Roma], many individuals categorized as belonging to Romani minorities were living in substandard conditions in comparison to the majority populations in Yugoslavia, involving inadequate housing, higher poverty and illiteracy rates, etc."[145]

Furthermore, many Roma migrated and settled across the different republics seeking better economic and employment opportunities or trying to avoid the harassment from the local population or police.[146] The largest migrations of Roma, though, occurred during the wars in the 1990's. These migrations are important within the context of the Roma and their access to citizenship since they were one of the causes of statelessness among this group. When the newly formed states established their nationality laws, they allowed all persons that had a registered residence on their territory to acquire a nationality. However, because many Roma did not register their residence or were living in informal settlements, they were not able to acquire the nationality of the new state.[147] Many Roma were not registered at birth and lacked birth certificates, which proved detrimental in their efforts to acquire a nationality as they were not able to prove their legal existence

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143 UNDP, "At Risk: Roma and the Displaced in Southeast Europe" (2006) p. 14

144 The ethnicities in Yugoslavia were divided between constitutive nations (*narodi*), which had the right to self-determination, and national minorities (*narodnosti*), which had a substantive amount of constitutionally granted rights. The term *narodi*, was applied to the dominant southern Slavic ethnic groups of the six republics, namely Serbs, Croats, Macedonians, Montenegrins, Bosnians and Slovenes, while *narodnosti* included groups such as the Roma, Albanians, Turks, Hungarians and so on. It is important to note that there has been much discussion among scholars whether the Roma were consistently considered as part of the latter category in all republics or not. For further clarification and insight of the debate on this issue, please see Julia Sardelic (n 8) p. 4-9

145 Julia Sardelic (n 8) p. 5

146 Ibid. p.8

147 UNHCR Report on statelessness in SSE (n 1), p.8

and civil. The problems relating to the lack of personal information were further exacerbated with the fact that many civil registries where the certificates of birth and citizenship are kept were destroyed during the wars.[148]

Another key issue with regards to the Roma and their access to citizenship is their exclusion from the nationality laws of the new states.[149] Since the ethnic tensions were one of the major reasons for the dissolution of SFRY, all of the newly independent states aimed to grant a favourable position for the dominant ethnicity on their territory with regards to the acquisition of nationality. Therefore, for instance ethnic Croats acquired a Croatian nationality much easily than the ethnic Serbs living in Croatia. By aiming to exclude certain ethnic groups from their pool of nationals, these nationality laws also affected the Roma. Even though the Roma were not expressly targeted by these exclusionary regulations, many of them failed to meet the requirements aimed at the other ethnicities, such as language, culture and long-term residence.[150] Since many Roma were left stateless or with an uncertain legal status during the state succession period, most of the problems they experienced were transferred across generations. For instance, persons that were not registered at birth, and therefore did not acquire a nationality according to the new laws, have not been able to register their child at birth due to the lack of documents.[151] The children that have been left unregistered have not been able to access some of their most fundamental human rights, such as education, employment and healthcare, and are either stateless or at the risk of statelessness.[152]

2. The Current Conditions that the Roma live in

As was noted in the previous chapter, one issue with regards to the Roma in Bosnia and Serbia is the inconsistency between the reported figures on the size of the population. Official estimates indicates that there are around 150 000[153] and 76 000[154] Roma in Serbia and Bosnia respectively, however NGO's reports have indicated that the total number in both countries is closer to half a million[155]. Even though, there are uncertainties and discrepancies about the size of the Roma population, there is little doubt about the conditions that they live in. Most of the Roma endure extreme or significant poverty on a daily basis. They live in informal settlements, are not

[148] Ibid.
[149] Julia Sardelic (n 8) p. 10
[150] Ibid. p.11
[151] Ibid. p. 14
[152] Praxis, "Person at Risk of Statelessness in Serbia" (2010) p.8f
[153] Statistical office of the Republic of Serbia, "2011 Census-Population by Ethnicity" <http://webrzs.stat.gov.rs/WebSite/Public/ReportResultView.aspx?rptId=1216>)
[154] ERRC Report (n 7), p.34
[155] UNDP 2006 (n 143), p.12

employed, have little or no education, and do not have access to basic medical care.[156] It is important note that, although not all Roma live under such conditions, most of them share this predicament to varying degrees. There are several key aspects that point to the vulnerability of the Roma with regards to the acquisition of nationality that should be noted, namely poverty, access to personal documents and birth registration, housing and discrimination.

A UNDP study has shown that almost half of the Roma population lives in poverty.[157] This is particularly problematic as poverty is one of the largest obstacles in the attainment of a person's rights. Due to their poverty, many Roma are not able to bear the cost of various school enrolment, hospital or registration administration fees. They cannot afford to travel in order to seek employment elsewhere or obtain documents and certificates that are not issued locally. Living in such poverty is a trans-generational problem, which means that if the parents cannot cover the costs for their child's birth registration, that child will have difficulties gaining meaningful employment or education. The poverty of the Roma is further exacerbated by the lack of employment. Statistics show that unemployment rates among Roma in Bosnia and Serbia are around 50 percent.[158] This means that more than half of the Roma in these countries do not have legal employment, and are either unemployed or working illegally.

An issue closely related to poverty is housing. More than a quarter of the Roma live in informal settlements.[159] These settlements are most often made of temporary dwellings that lack appropriate infrastructure, access and sanitation, such as running water and heating. An important issue, for the purposes of this research, is that these settlements are illegal.[160] This means that the persons living in such houses cannot be legally registered as living there and do not have a legally registered residence address. This is problematic because in both Serbia and Bosnia, a person must be registered on an official address before he or she can acquire a personal identity card or initiate certain administrative procedures such as the birth registration of a child. The Roma living in such settlements often cannot receive social welfare or free public healthcare since they lack a registered address, perpetuating the cycle of poverty and instability. Due to the illegality or informality of such settlements, the Roma are often victims to forced evictions by the municipal authorities, which forces them to often change their place of residence.[161]

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156 Ibid.
157 Ibid. p.18
158 Ibid. p.43
159 Ibid, p. 58
160 Marija Raus, ":Roma in Serbia-Housing and Discrimination" (November 2008) *OHCHR*
161 HRW Report on Discrimination in Bosnia (n 3), p.33

Lack of birth registration and access to personal documents are issues that particularly affect the Roma. There are no official statistics on the number of unregistered Roma in Bosnia and Serbia. However, Human Rights Watch has estimated that at around 10 percent of the Roma in Bosnia of the Roma are completely unregistered, while many more lack different types of documents.[162] In Serbia, the national Ombudsman has reported that there are at least 20 000 Roma that experience such problems.[163] The reasons for the lack of personal identification documents and birth registration are diverse and often relate to the other elements such as lack of hosing, discrimination and poverty. In addition, many are unregistered at birth due to the strict registration deadlines, the complex late registration procedures or the inability to acquire the required documents.[164] The documents that the Roma often lack are personal identification cards, proofs of legal residence and certificates of birth, marriage or citizenship.[165] There is often a domino effect with regards to the failure to obtain personal documents, where the lack of one leads to the inability to obtain many other documents. For instance, unregistered parents must first register themselves and acquire the necessary marriage and citizenship certificates so they can register their child at birth. Many Roma lack appropriate marriage certificates necessary for registering a child, either because they had a traditional marriage or did not have the necessary paperwork to register it.[166] Impediments in acquiring the appropriate documents are often the numerous administrative fees. The Roma in Bosnia and Serbia are often not able to pay the administrative costs for acquiring a document and are therefore left without a crucial piece of evidence for their birth, identity or citizenship. However, as was noted earlier, having personal documentation is not only essential for registering a child or obtaining other documents, it is also a necessity in order to receive medical care, enrol in school, be legally employed and access a range of other social and public services.

The last condition that should be mentioned is the perpetual and widespread discrimination the Roma face. As was noted already several times, the Roma are the most discriminated group in Bosnia and Serbia, both on an individual and a structural level.[167] The Roma are being unfavourably treated with regards to almost every public service. They are being denied medical treatment, education, welfare and often fired from employment on the basis of their ethnicity.[168] Persons from

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[162] Ibid. p.29
[163] Ombudsman of the Republic of Serbia, "Izvestaj o polozaju pravno nevidlivih lica u Republici Srbiji"[Report on the Position of Legally Invisible Persons in Serbia](2012), p.7
[164] UNHCR, Report on Statelessness in SSE (n 1), p. 33
[165] European Roma Rights Centre, "The Non-Constituents: Rights Deprivation of Roma in Post Genocide Bosnia and Herzegovina" Country Report Series 13 (2004), p.77
[166] UNHCR, Report on Statelessness in SSE (n 1), p. 31
[167] HRW Report on Discrimination in Bosnia (n 3), p.1
[168] Ibid. p.2-3

other ethnicities often perceive the Roma as untrustworthy or a lower caste of citizens. As a result, such perceptions can lead to the unequal application of the laws and regulations, where persons of Romani origin will receive unfavourable treatment. Many Roma are often unwilling to approach various governmental authorities out of fear of being mistreated, due to the common harassment the Roma receive by the police and other governmental authorities.[169] These conditions are just some of the factors that contribute to the predicament of instability and vulnerability the Roma experience daily. However, with regards to the access to and acquisition of nationality in Bosnia and Serbia these four elements are the most important aspects of the Romani predicament. In other words, these four elements place the Roma in a "different position", due to which they should be treated differently with regards to the access to nationality.

3. Conclusion

This chapter outlined the four main problems widespread among the Roma that might impede their access to a nationality. These are the inability to cover administrative costs, the widespread lack of personal documents, the lack of legal and registered housing, and the persistent societal discrimination. These elements place the Roma in a 'different position' than other ethnicities with regards to the access to a nationality, because they can create serious impediments in acquiring a nationality and they particularly pertain to the Roma. This means that Bosnia and Serbia must take into account these four elements when imposing the requirements for acquiring a nationality upon the Roma. In other words, the procedures for acquiring a nationality must contain mechanisms that will take into account the fact that the Roma live in extreme poverty, lack legal housing and personal documents and are widely discriminated, and accommodate them in the conferral of nationality. These four elements will considered in assessing whether the nationality requirements of Bosnia and Serbia place Roma in a disadvantaged position for acquiring a nationality, and are therefore discriminatory towards them. In order to do so, we must first focus on the nationality laws of Bosnia and Serbia.

[169] ERRC 2004 (n 7), p.87

Chapter 4 – Nationality laws of Bosnia and Serbia

In order to analyze weather Bosnia and Serbia's nationality laws are discriminatory towards the Roma in violation of international law, and whether they are causing statelessness, it is important to point out the procedures and methods through which one can acquire a nationality in Bosnia and Serbia. However, in order to present a clearer picture of the current Bosnian and Serbian nationality regimes, it is important to contextualize them in terms of the Yugoslav citizenship as well as the developments in the 1990's. Therefore, the first section of this chapter will present a brief historical background, outlining the most important characteristics of the citizenship of Yugoslavia as well as the transfer of nationality during the state succession period. The second and third sections will focus on the nationality and birth registration regimes of Bosnia and Serbia, respectively. Each of the sections will, first, point out the main developments and changes in the nationality laws of each country. Second, outline the provisions regulating the conferral of nationality relevant to this research, such as the ones governing the acquisition of nationality at birth, by naturalization and the transitional articles. Third, it will present an overview of the birth registration regulations, focusing on the regular and late registration procedures as well as the evidentiary requirements needed for registration. The last section will conclude and point out some of the similarities and problems with the nationality procedures in both countries.

1. Historical Background

1.1. Citizenship in the Socialist Federal Republic of Yugoslavia

SFRY was politically organized as a federal union consisting of six socialist republics. Every citizen of SFRY was simultaneously a citizen of one of the republics.[170] This meant that Yugoslav citizens had a two tiered nationality- a federal one and a republican one. There is no consensus on what the exact relationship between the two citizenships had been, as some suggest that the federal had primacy over the republican while others point out that the two had an equal footing.[171] Nevertheless, the federal citizenship was important for accessing state rights and identification across all republics while the republican citizenship found its use in specific occasions such as the

[170] Igor Štiks, "Nationality and Citizenship in the Former Yugoslavia: From Disintegration to European Integration" South East European and Black Sea Studies (2006), p.485
[171] ibid

right to vote and being registered in the civil registry books. However, having a republican citizenship was conditional upon having a federal one, and not vice versa. The republican citizenship was primarily acquired by descent, but citizens from other republics were able to acquire the citizenship of the republic in which they are resided provided that they are registered there. [172] As there was a lack of widespread knowledge of the duality of the SFRY nationality and the federal citizenship at the time seemed more important, many were not in possession of a republican citizenship. Due to the perceived primacy of federal citizenship, when people moved to another Yugoslav republic they often did not register their residential address and thus failed to acquire the citizenship of the republic in which they were residing, which proved problematic during the dissolution of the country.[173]

1.2 Dissolution, state succession and nationality

The dissolution of the SFRY was a violent process triggered by conflicts and disagreements among the political elites of the different republics. Since the republics did not declare independence from the SFRY all at once but did so individually over the course of two years, there was no treaty regulating the transfer of territory, nationality of the person's concerned or the prevention of statelessness. However, the newly enacted nationality laws were mostly based on the concept of legal continuity where Yugoslav citizens would become nationals of the state whose republican citizenship they hold. Persons that resided for a number of years on the territory of the newly established state but were holders of another republican citizenship could also acquire a nationality of the state in question. This was, in general, the way in which nationality issue were dealt with across the newly established countries. The idea to base the new nationality on the old republican nationality partially came from the international community, but it was swiftly accepted by the political leaders of the new states as it fitted well within their policies of providing the major ethnic group a favorable access to the new nationality.[174] This meant that, overnight, the republican citizenship became one of the most crucial legal documents a former SFRY national could have, while the federal citizenship became insignificant. Even though such conferral of nationality allowed for large scale statelessness to be prevented, some groups were left at the risk of becoming stateless. Due to the fact that the new nationality laws were made to allow members of the dominant ethnic group in the country to have an easier access to the new nationality though language requirements or facilitated naturalization procedures, the groups that were most affected were displaced people and 'internal migrants' that did not have the republican citizenship of or registered residence in the

[172] Eldar Sarajlic, "Country Report: Bosnia and Herzegovina" (2013) EUDO Citizenship Observatory, p.5
[173] Julia Sardelic (n 8), p.8
[174] Igor Stiks (n 170) p.487

country that they were residing, and at the same time did not belong to the major ethnic group.[175] Many of the displaced and 'internal migrants' that were not immediately able to acquire a nationality eventually managed to resolve their situation in the following years. However, the Roma, Ashkali and Egyptians that lacked appropriate documentation or republican citizenship still face difficulties in regularizing their status and acquiring a nationality.[176] In order to assess whether the Roma face discrimination with regards to their right to a nationality at present, the following sections will not focus on the previous legislation, but will rather analyze the current nationality laws of Bosnia and Serbia.

2. Nationality in Bosnia and Herzegovina

The war in Bosnia was ended in 1995 with the signing of the Dayton Peace Agreements. One of the key goals of these accords was establishing the legal basis for country that could accommodate the three different ethnic groups living there, the Bosnian Muslims, the Croats and the Serbs.[177] For that reason, Bosnia and Herzegovina was formed as a country composed of two autonomous entities, the predominantly Serb, Republic of Srpska (RS)[178] and, the mainly Croat and Bosnian Muslim, Federation of Bosnia and Herzegovina (FBiH). Due to the autonomy and sovereignty granted to the two entities, Bosnia and Herzegovina's nationality has a dual, or more precisely a two-tiered, nature. Nationals of Bosnia and Herzegovina have the nationality of the state of Bosnia and Herzegovina as well the citizenship of one of the entities.[179] The nationality of Bosnia and Herzegovina is derived from the citizenship of one of the entities, but loss of one of them implies the loss of the other at the same time. It is important to note that both of the entity citizenship laws are identical on almost all matters with the state nationality laws. Therefore, it is not necessary to analyze the individual entity citizenship laws as they contain the same provisions and regulations with regards to the acquisition of nationality. The important thing to remember about the relationship between the entity and state citizenship is that acquiring one of them means the automatic acquisition of the other, without any special procedure or application. Since the provisions of the different citizenship laws that are relevant to this research, such as the ones on the acquisition of nationality, are identical on both levels, this section will focus on the state nationality laws. Therefore, the following section will only refer to the Bosnian state nationality laws, and the term

[175] Julia Sardelic (n 8), p.8
[176] UNHCR Report on Statelessness in SSE (n 1), p.16
[177] Igor Stiks (n 170) p.489
[178] Not to be confused with the Republic of Serbia.
[179] Eldar Sarajlic (n 172), p.8

"Bosnian nationality" will simply refer to the Bosnian state nationality, rather than the entity citizenships.

2.1 Current nationality regime

The law that governs the matters on Bosnian nationality is the "Law on Citizenship of Bosnia and Herzegovina" which entered into force in January 1998.[180] Even though it has experienced several minor changes in the past decade, such as the amendments in 2003 and 2009[181], the provisions relevant to this research, and most of its text, have remained the same. The main mode of acquiring a nationality in Bosnia is by descent. Article 6 states that persons, whose parents are nationals, or whose one parent is a national and the person concerned is born in Bosnia, acquire the nationality of Bosnia at birth.[182] Children, that have only one parent that has a Bosnian nationality, were born abroad and would otherwise be stateless, also acquire a Bosnian nationality at birth. Furthermore, Bosnian nationality can be acquired though the *jus soli* principle as well. Article 7 stipulates that children are automatically considered as nationals at birth if they have been born on the territory of Bosnia and Herzegovina, and their parents are unknown, stateless, or the children themselves are stateless. These provisions are relatively strong safeguards for the prevention of statelessness as they allow every child that would otherwise be stateless who was born in Bosnia or has one Bosnian parent to acquire a nationality. Another way of acquiring the nationality of Bosnia and Herzegovina is though naturalization.[183] Persons that have had a permanent residence in Bosnia for eight years can become naturalized citizens, provided that they do not have a criminal record, are of age and have knowledge of one of the languages spoken in BiH.

When Bosnia and Herzegovina established its new nationality law in 1999, it allowed for a legal continuity of nationality from its predecessor, the Republic of Bosnia and Herzegovina[184]. Therefore, Article 37 of the current nationality law states that everyone who was a national of the Republic of Bosnia and Herzegovina is considered as a national of the newly established Bosnia and Herzegovina. Article 38 on the other hand, allows all former SFRY nationals, which had established

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[180] Zakon o Državljanstvu Bosne i Hercegovine 1999 [Law on Citizenship of Bosnia and Herzegovina], Official Gazette BiH no.13/99

[181] These amendments mostly dealt with issues relating to the nationality of the persons in the Brcko District, which is not part of either of the two entities.

[182] Ibid.

[183] Ibid., Art. 9

[184] The Republic of Bosnia and Herzegovina is the predecessor of Bosnia and Herzegovina and the successor of the Socialist Republic of Bosnia and Herzegovina. The Republic of Bosnia and Herzegovina is, simply the country that existed between the time of the declaration of independence in 1992 until the Dayton Peace Accords in 1995.

a permanent residence in Bosnia between 1992 and 1999[185], to acquire a nationality through a facilitated procedure. These provisions that deal with the transition of nationalities and nationality laws prevented large-scale statelessness in Bosnia since they conferred a nationality to all the nationals of the former state as well facilitated the procedure for anyone that established a habitual residence in Bosnia after the dissolution of SFRY.

Lastly, the provisions of the nationality law that merit attention are the, so called, 'evidence of citizenship' articles. As Article 34 indicates, the nationality of Bosnia and Herzegovina is proved by a certificate of citizenship of one of the entities or of the state.[186] Article 35, however, further elaborates on this issue,

> "Article 35
>
> 1. The certificate of citizenship of BiH and Entity citizenship is issued by the authority in charge of keeping birth registers.
>
> 2. The citizenship is registered in birth registry books without special decision when it is confirmed that the person fulfils the conditions of acquisition under Articles 6, 7 and 8.
>
> 3. In case an authority under paragraph 1 of this Article on an unfounded basis refuses to issue a certificate of citizenship of BiH, the responsible Ministry of the Entity or the Ministry of Civil Affairs and Communications of BiH [will issue] a certificate of citizenship of BiH to the person concerned, on the basis of documentary information which the Ministry of Civil Affairs and Communication and the competent Entity authorities possess within the framework of their competencies. In case of dispute between the respective competent authorities of the Entity and BiH, the matter must be submitted to the Constitutional Court in accordance with Article VI.3 of the Constitution of BiH.
>
> 4. Where documentary information relating to citizenship is not accessible or cannot be obtained within a reasonable time by citizens of Bosnia and Herzegovina, the competent bodies referred to in the previous paragraph shall allow such persons to provide this information by other means including statements made by or for such persons."[187]

This is an important article as it clearly identifies which are the competent authorities that deal with the proofs of citizenship and related disputes. The local birth registration authorities have the responsibility to register the citizenship of a person that automatically acquires a nationality by birth

[185] The precise dates are 6 April 1992 and 26 August 1999. The former date refers to the day Bosnia seceded from SFRY and established the Federation of BiH, while the latter to the day the current nationality law entered into force.
[186] Bosnian Nationality Law (n 180), Art 34
[187] Ibid. Art. 35

to national parents or on the territory of Bosnia, as described in Articles 6 and 7 of the nationality law, without the need for a special decision. This means that in order for one to establish if a person that satisfies the factual requirements for acquiring a Bosnian nationality, under Articles 6 and 7, is considered as a national one would have to first ascertain whether the local birth registration authorities have registered his or her citizenship in the birth registry books and are willing to provide a certificate of that citizenship. If the local birth registration authorities refuse to issue such a certificate, one would have to see whether the competent state and entity Ministries will recognize the person concerned as a national and issue a certificate. However, if both, the local birth registration authorities and the competent state and entity ministries, refuse to issue a certificate of citizenship or there is a dispute between them, the matter can be brought before the constitutional court of Bosnia and Herzegovina. In the case where, all of these institutions refuse to issue a certificate of citizenship, it can be concluded that the person concerned is seen as a non-national by the competent authorities.

It can be concluded that there are four main modes of acquiring a nationality in Bosnia relevant to the present research. These are acquisition of nationality by birth on the territory or to national parents under Articles 7 and 6, respectively, the acquisition of nationality by naturalization under Article 9, acquisition of nationality by being considered as a national in the initial pool of citizens under Article 37 and acquisition of nationality though the facilitated procedure for former SFRY nationals under Article 38.

2.1.1 Birth Registration in Bosnia

As was mentioned earlier, the nationality of Bosnia and Herzegovina is derived from the citizenship of one of the entities, the Republic of Srpska and the Federation of Bosnia and Herzegovina (FBiH or Federation of BiH). Since the two entities have autonomy over the issue of the conferral of nationality, they also conduct their own birth registration. This means that currently in Bosnia and Herzegovina there are two different birth registration systems. It would be incorrect to conclude that the birth registration system in the Federation of BiH is entirely separate from the one in Republic of Srpska.[188] In fact, there is a central civil registry that includes the information from both entities, the competent authorities in each entity have the information about the registries in the other entity, the birth registration procedures have to follow certain national and international standards and in practice both systems are almost identical. This section will not go into the specific

[188] Zakon o Matičnim Knjigama Federacije Bosne i Hercegovine 2012 [Law on Civil Registries of the Federation of Bosnia and Herzegovina], Official Gazette FBiH no. 37/12; and Zakon o Matičnim Knjigama Republike Srpske 2009 [Law on Civil Registries of the Republic of Srpska], Official Gazette RSBA no. 111/09

nuances and differences in the two registration systems but will present an overview of the most relevant regulations and point out the important differences in those articles.

Birth registration in both entities is done by the municipal civil registration officers which are under the authority of the Ministry of Internal affairs in the Federation of BiH and the Ministry of Local and Self-Governance in Republic of Srpska. In order for a newborn's birth registration to be complete there are two steps that need to be finalized. At first, the hospital authorities must report the birth of a child to the local civil registration authorities within 15 days[189]. The second step requires one of the parents, a relative or any other authorized person to visit the civil registry office and provide documents of identification and civil status of the parents. This second step must be finalized within 30 days in the Republic of Srpska and 60 days in the Federation of BiH. However, if the child has not been born in a hospital one of the parents or an authorized person[190] must register the child with the appropriate local civil authorities no later than 15 and 30 days, in Republic of Srpska and Federation BiH respectively, from the day of the birth.[191] Registration after these deadlines is possible, however in the Republic of Srpska there is fine of 25 to 75 euros.[192] The laws of both entities state that late registration is possible only with the approval of and decision by the appropriate municipal authorities.

The information contained in the birth registration entry includes, among other things[193], the child's name, birth place, date of birth and his or her citizenship, as well as the parents' name, marriage status, citizenship, social security number, and registered residence address.[194] The information about the child is derived from the hospital records or, in case of homebirth, a verbal statement from the parent or authorized person that is registering the birth. In order to register a child, the parents need to provide a personal ID card, birth and marriage certificates, as well as a proof of paternity if the parents are not married.[195] The information about the child's, entity and state, citizenship is established at the moment of the registration.[196] This, however, does not mean that the child becomes a national at that point, but rather only receives a proof of the nationality that he or she acquired at the moment of birth on the basis of being born to national parents or on the territory and would otherwise be stateless. Lastly, it is important to note that if the civil registry

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189 Art. 14 of both FBiH and RS Civil Registration Laws (n 188)
190 Article 15.2 defines an authorized person as a family member, a person on whose property the child was born, the attending doctor or a health care worker or any person that has learned of the birth, provided that the aforementioned persons are not available.
191 UNHCR Report on Statelessness in SSE (n 1), p. 28
192 Art. 59 of the RS Law on Civil Registry (n 188)
193 A persons birth registration also includes a social security number, ethnicity, religion and sex
194 Art. 12 of both FBiH and RS Laws on Civil Registry (n 188)
195 Ibid.
196 Ibid. Art. 37

officer handling the registration has reason to believe that the information provided by the applicant is not current, he or she has the right to postpone or refuse to register a person.[197]

3. Nationality in Serbia

The developments of the nationality laws in Serbia follow a similar pattern as the ones in Bosnia. After Bosnia, Croatia, Slovenia and Macedonia had declared independence from SFRY, in 1992 Serbia and Montenegro formed a federal union, the Federal Republic of Yugoslavia (FRY). The FRY declared itself as the successor of the SFRY and therefore claimed a continuity of the nationality regulations that were in force in the SFRY. [198], However, in 1997 the government adopted a new nationality law which established FRY's nationality. The new regulations stated that FRY's nationality can be acquired by persons that held republican citizenships of Serbia or Montenegro on 27 April 1992, the day when the FRY was established.[199] Persons that were habitually residing on the territory of the FRY and held the republican citizenship of other SFRY republics on the aforementioned day were also entitled to FRY's nationality. In February 2003, FRY was transformed into a confederate State Union between the Republic of Serbia and the Republic of Montenegro.[200] Since the two republics gained much more autonomy in this newly formed union, the matters on nationality felt solely under the responsibility of the individual republics. Accordingly, Serbia adopted its own nationality law in December 2004, which is still in force.[201] However, the State Union dissolved in 2006. In order to make its nationality laws in conformity with its new political establishment and constitution, in 2007 Serbia adopted minor technical amendments aimed at removing or changing the provisions that were related to the citizenship of the previous State Union.[202]

3.1 Current Nationality Regime in Serbia

As was mentioned earlier, the current nationality law in Serbia was adopted in 2004. One of the main premises behind this law was to liberalize the access to nationality and allow several

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[197] Ibid Art. 40

[198] This declaration of succession was not internationally accepted. However, the important issue here is the continuity of nationality. Nenad Rava (n 58) p. 8

[199] Nenad Rava (n 58) p. 8

[200] Ibid. p.9

[201] Zakon o Državljanstvu Republike Srbije 2004 [Law on Citizenship of the Republic of Serbia], Official Gazette RS 135/2004 and 90/2007

[202] For instance changing the wording from "Serbia and Montenegro" to "Serbia" and annulling the provisions that dealt with the relationship between the citizenships of the Republic of Serbia and the Republic of Montenegro as part of the State Union.

different groups to acquire a Serbian citizenship "more easily than before"[203], such as emigrants, their descendants and persons of Serb or any other ethnicity form the republic of Serbia. Most prominently, it also provided a solution for the large refugee population in Serbia by establishing a facilitated procedure for acquiring a nationality for refugees from the former Yugoslav states. Even though Serbia is not a party to the ECN, the 2004 law reflected some of the principles enshrined in this treaty. Inter alia, it removed ethno-centric naturalization conditions -such as language and acceptance of culture- as well as the employment and income requirements, and it incorporated certain safeguards against statelessness.[204]

The main mode of acquiring a nationality in Serbia is though the *jus sangunis* principle. A person whose both parents, at the time of his or hers birth, are Serbian nationals acquire the nationality of Serbia by descent.[205] Under the same provision the child who has only one parent that is a citizen and the child is born in Serbia, is also considered as a Serbian citizen. The children that have been born abroad and have only one parent that is a Serbian national, while the other one is unknown or stateless, or the children themselves would otherwise be stateless also become citizens of Serbia by birth.[206] Serbian citizenship can also be acquired by birth on the territory of the country in cases where the newborn is of unknown citizenship or would otherwise be stateless.[207] In general, these provisions form relatively sound safeguards against statelessness for children born in Serbia, and are in line with international standards set out in the 1961 Statelessness Convention and the ECN.

However, before going further with the other methods of acquiring Serbian nationality it is crucial to point out one key issue. The second paragraph of Article 6 reads:

> "By descent and by birth in the territory of the republic of Serbia, citizenship of the Republic of Serbia is acquired pursuant to the recording of the fact of citizenship in the register of births".[208]

In other words, a person entitled to a nationality by virtue of being born to national parents or on the territory and would otherwise be stateless, acquires a Serbian nationality at the moment when his or hers nationality is recorded in the register of births. This means that a newborn child who satisfies

[203] Nenad Rava (n 58) p. 11
[204] Ibid. p.12
[205] Serbian Nationality Law (n 201) Art. 7
[206] Ibid.
[207] Ibid. Art. 13
[208] Ibid. Art 6.

the factual requirements for acquiring a Serbian nationality is not considered as a national from the moment of his or hers birth but rather from the moment his or hers nationality is noted in the birth registry books. If the fact of nationality is not documented in a person's birth registry, but that person is entitled to a Serbian nationality by virtue of descent or birth on the territory, the Ministry of Internal Affairs is the competent authority that will determine that person's nationality at his or hers request, "i.e. at the request of the competent authority that conducts the procedure related to the realization of the person's right to a nationality."[209] This latter "competent authority" is not clearly defined in the nationality laws, however it can be inferred that it is a reference to the birth registry authorities, since they make the initial decision on a person's nationality during the birth registration procedure.

It is important to note that this is a personal interpretation of this provision based on a desk study of the available literature. Even though the law seems to place a stick requirement for birth registration, there is a possibility that in reality this rule is not implemented and is void. In practice, the competent authorities might treat unregistered individuals as nationals from birth even though they do not have a birth registration and the fact of their Serbian citizenship has not been recorded in the appropriate civil registry. If, indeed, the case is such and birth registration is only a proof of rather than a requirement for nationality, the interpretation of the Serbian law would be identical with the approach used with regards to the Bosnian law outlines in the previous section. However, due to the lack of reports or literature dealing with the specifics of this provision, the only conclusion one can reach by just reading the law is that birth registration is a prerequisite for acquiring a Serbian nationality. Therefore, this research will rely on such interpretation of this provision.

Furthermore, under the current nationality law, Serbian citizenship can also be acquired though a naturalization procedure provided that the person concerned is over 18 years old, has an uninterrupted permanent residence in Serbia for three years at the time of application, is released from any previous citizenship, is able to work and provides a written statement declaring Serbia as his or her state.[210] An important facilitated naturalization procedure is enumerated in Article 16 of the nationality law, which allows persons that have been born and have resided uninterruptedly in Serbia for two years to be eligible for citizenship without fulfilling the other naturalization criteria. This means that, under Article 16, a child born in Serbia to non-national parents "can be admitted

[209] Ibid. Art 44
[210] Ibid. Art 14.

into the citizenship of Serbia after the age of two or at any point in his or her life after two years of continuous residence."[211]

Furthermore, as was mentioned earlier, the 2004 nationality law establishes several different categories and groups of persons that have a facilitated access to the nationality of Serbia, such as emigrants, ethnic Serbs and former SFRY refugees. For the purposes of this research, only the last group is of importance. Article 23 (2) allows former nationals of the SFRY republics or nationals of the new countries formed on the territory of the SFRY that reside in Serbia as a refugees, exiles or displaced persons to naturalize through a facilitated procedure.[212] The acquisition of nationality though this procedure is subject to the general naturalization requirements mentioned previously such as age, ability to work and a written declaration. However, the main difference lies in the residence requirement. While the regular procedure requires three years of permanent residence, former SFRY refugees are only required to have a temporary residence, without a minimum time period, in Serbia in order to naturalize.

As was the case with the Bosnian nationality law, the 2004 Serbian nationality law contains several transitional provisions that govern the continuity of nationality from the previous states.[213] Persons that acquired the citizenship of Serbia under the State Union of Serbia and Montenegro are automatically considered as nationals of the Republic of Serbia in accordance with the present law. The Serbian State Union citizenship was acquired by everyone that was a republican citizenship of Serbia under the FRY, which was in turn acquired on the basis of having a republican citizenship of Serbia under the SFRY. Therefore, it can be said that the initial pool of citizens that the 2004 law indentified are persons that had a Serbian SFRY, a Serbian FRY and a Serbian State Union nationality. This automatic continuity of nationality has allowed mass statelessness to be avoided. For instance, a person born in Serbia in 1980 would have automatically been considered as a SFRY national with a Serbian republican citizenship. In 1996, with the establishment of FRY he would have automatically been considered as a FRY national with a Serbian republican citizenship. In 2004, when Serbia and Montenegro formed the state union, this person would have automatically had a Serbian nationality from the State Union of Serbia and Montenegro. Lastly, in 2007 this person would have automatically been considered as a national of the independent Republic of Serbia. Even though these numerous nationality changes might sound as a complex legal issue, in practice there have not been significant problems as the transfer of nationality was automatic and the people

[211] Nenad Rava (n 58) p 14
[212] Serbian Nationality Law (n 201) Art. 23 (2)
[213] Ibid. Art 51

concerned were simply considered as citizens of the new state without the need for any special procedure or application.

Following the trend of most post Yugoslav states, the current Serbian nationality law also provides a facilitated access to nationality to former SFRY nationals that are not refugees. Persons that had a citizenship of another SFRY republic or acquired the nationality of one of the newly formed states, and had a registered permanent residence in Serbia for at least nine years in February 2005, are considered as nationals of Serbia, if they make a written declaration that they consider themselves as citizens of Serbia.[214] Lastly, the citizenship of the republic of Serbia can be proven by a birth certificate or a certificate of citizenship, which are issued competent birth registry authority.[215]

3.1.1. Birth Registration

The current laws and procedures relating to birth registration in Serbia were adopted in 2009.[216] The registration of birth in Serbia is done by the municipal birth registration authorities. In order for a registration of birth to be complete a two-step process needs to be completed, similar with the one in Bosnia. Firstly, the hospital in which the child concerned was born must report the birth to the civil registry and secondly, one of the parents or an authorized person must finalize the registration by providing the documents about the parent's identity and civil status.[217] Children that have not been born in a hospital must be registered- and reported- by the father, the mother or any other authorized person[218]. Both in and out of hospital births must be reported within 15 days.[219] This means that the birth, as a fact, must be reported to the civil registry authorities, but it is not necessary to finalize the second step within this deadline. If the fact that a birth has occurred has not been reported within this time-frame a fine of 450 euro's must be borne.[220] The birth registration, on the other hand, must be completed within 30 days of the child's birth.[221] The law prescribes a possibility for late registration, after the 30-day deadline, but only though a special decision by the supervisory organs, such as the local or regional birth registration authorities.[222]

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214 Ibid. Art. 52
215 Ibid. Art. 46 and 47
216 Zakon o Matičnim Knjigama Republike Srbije 2009 [Law on Civil Registries of the Republic of Serbia], Official Gazette RS no. 20/2009
217 UNHCR, Report of Statelessness in SSE (n 1), p.27
218 Authorized persons under Serbian law are relatives, the person on whose property the child was born, the attending physician or health care worker. If all of them are unable or unavailable the birth can be registered by the person that found out about the birth.
219 Serbian Law on Civil Registries (n 216), Art 45
220 Ibid. Art. 87
221 Ibid. Art 25
222 Ibid. Art 26

A birth registration entry includes information about the child's name, date and place of birth, social security number and nationality, as well as the parents' name, marriage status, social security number, date and place of birth, nationality and residence address.[223] In order to register a child both parents have to provide their birth and marriage certificates as well as valid personal identification cards. In cases where the child is born out of wedlock, together with the other parents' documents, proofs of paternity and maternity have to be provided as well. If a person wishes to initiate a late registration procedure, higher evidentiary requirements need to be met, which apart from the already mentioned documents include hospital discharge papers or testimonies of two witnesses, in cases of hospital and home birth respectively. The decision on late registration is made by the municipal authorities and is subject to appeal before the Ministry of Justice and Public Administration.[224]

As was noted earlier, the entry in the birth registration books includes, among other things, an indication of a person's nationality. This information is established at the moment of registration by the civil servant conducting the registration.[225] There is no special procedure for determining one's nationality. At the moment of registration, the registration officer applies the current nationality regulations of Serbia and simply writes down if the person being registered can be considered as a Serbian national according to the facts of his birth and descent or not. Finally, as was the case in Bosnia, the registration officers have the right to disregard information which they have reason to believe is false.

As in the case of Bosnia, this section pointed out four main modes of acquiring a nationality in Serbia. They are acquisition of nationality by birth on the territory or to national parents under Articles 13 and 7, respectively, the acquisition of nationality by naturalization under Article 14, acquisition of nationality by being considered as a national in the initial pool of citizens under Article 51 and acquisition of nationality though the facilitated procedure for former SFRY nationals under Articles 23 (2) and 52.

4. Conclusion

The Bosnian and Serbian nationality and birth registration laws are similar on several points, but have a few crucial differences. The main mode of acquiring a nationality in both Bosnia and Serbia is through descent. The laws of both countries consider children that are born to two national parents or one parent and on the territory of the state as nationals. Both countries provide a

[223] Ibid. Art. 45
[224] Ibid. Art 26
[225] Ibid. Art 45

safeguard against stateless by conferring a nationality to children born on their territories who would otherwise be stateless and to children that have one national parent, were born abroad and would otherwise be stateless. These regulations form relatively good safeguards against new cases of statelessness, and statelessness among children. It is important to note that this does not mean that they are fully effective and completely prevent the emergence of statelessness, but rather that they prevent large scale statelessness. Another element that has aided the prevention of large scale statelessness in the region are the so called "transitional provisions", which are to a certain extent similar in Bosnia and Serbia. Firstly, they define their initial pool of nationals as all nationals of their predecessor states, the Republic of BiH and Serbia and Montenegro respectively, allowing most of the people living on their territories to acquire a nationality automatically, without any special procedures. Secondly, both nationality laws provide a facilitated access to nationality for citizens of the former SFRY or one of the newly established states, provided that they have had a registered permanent residence in the country. Even though mass statelessness has been avoided, a problem that is prevalent in both countries with regards to the transitional provisions is the necessity of a registered permanent residence. This requirement can create serious problems for those Yugoslav citizens that did not register their residence, but were in fact habitually residing in the country, as they will experience difficulties in acquiring a nationality.

One important difference between the two nationality regimes is with regards to the naturalization procedures. The Bosnian naturalization regulations are significantly more restrictive than the ones in Serbia. While a person in Serbia can naturalize only after three years of habitual residence, the Bosnian law requires that the person applying for naturalization has a permanent residence in Bosnia for 8 years, has knowledge of one of the constituent languages of BiH and has not been criminally charged. Another point where the Bosnian law falls short is the facilitated naturalization procedures. The Serbian law on nationality has a significantly lower requirement threshold for refugees from the former SFRY states and persons that were born and have resided temporarily in Serbia, while in Bosnia such persons do not receive any special treatment. The liberal laws in Serbia have allowed many refugees to acquire a nationality and regularize their status. In general, most of the refugees that had problems with their nationality were able to naturalize shortly after the end of the wars.[226] However, as will be pointed out later, the persons that still experience difficulties with these facilitated procedures are the Roma.

For the purposes of this research, the *most important* difference between the two regimes is the relation between the nationality and birth registration. In Bosnia, a birth registration serves only as a proof that a person has acquired a Bosnian nationality. This means that a child that satisfies the

[226] Igor Stiks (n 170), p.494

factual requirements for acquiring a nationality, by descent or birth on the territory, is considered as a national of Bosnia and Herzegovina from the moment of his or her birth. However, in Serbia the situation is different. The nationality of Serbia is acquired only after the fact of the persons Serbian nationality has been recorded in the appropriate birth registry. Children that are born in Serbia and satisfy the factual requirements for acquiring a nationality by birth, are actually not considered as Serbian nationals from their birth, but rather from the moment the fact that they have acquired a Serbian citizenship has been entered in the birth registry. In other words, persons entitled to a Serbian nationality, become Serbian nationals from the moment of their birth registration.

In both Bosnia and Serbia, the specific relationship between nationality and birth registration has led to the emergence of complex legal situations, especially for persons that lack birth registration. Due to the connection between nationality and birth registration in Bosnia and Serbia, this chapter also presented an outline of the main birth registration regulations. One of the main issues that create significant problems in both countries is the lack of a clearly defined late registration procedure. The Bosnian and Serbian laws recognize the possibility for subsequent registration, which can be done only though an approval by the local birth registration authorities. However, there is no reference to the late registration for persons that cannot provide all of the required evidentiary documents. Unregistered persons, for instance, often lack a proof of the location of their birth or do not have the birth/marriage certificates of their parents, meaning that the late registration procedures for such persons are often inaccessible. The birth registration regulations of both countries also indicate that at the moment of registration some of the required information can be left out or filled in later, however the lack of specificity on which pieces of information can be omitted, can lead to discrepancies and disparate application of the law. This can be particularly problematic taking into consideration that the birth registration officers have the right to refuse a piece of information as valid, and the widespread discrimination against the Roma in Bosnia and Serbia. Having outlined the main characteristics of the nationality and birth registration regulations of Bosnia and Serbia, it is time to analyze weather these laws and procedures are discriminatory towards the Roma and in contravention of the states' international obligations.

Chapter 5 – Analysis

The previous two chapters pointed out the elements that are specific to the "different situation" that the Roma are in and the main requirements for acquiring a nationality in Bosnia and Serbia. This chapter will aim to provide the analysis for answering the twofold research question, namely whether the nationality laws of Bosnia and Serbia are discriminatory towards the Roma in violation of international law, and whether they are creating statelessness in breach of their international obligations. This chapter will be divided into three parts. The first part will focus on assessing whether the nationality laws and procedures are discriminatory against the Roma. In order to do so, it will first analyze if the requirements for the acquisition of nationality set in the nationality laws of Bosnia and Serbia are placing the Roma in a disadvantaged position with regards to their access to a nationality, therefore discriminating against them. The four main modes of attribution of nationality that will be assessed are acquisition by birth on the territory or descent, naturalisation, though the facilitated procedures for former SFRY nationals and though the provisions regulating the initial pool of citizens. As a sub-issue it is also important to show whether the birth registration regulations are discriminatory towards the Roma, due to their close relationship with the acquisition of nationality. This will allow us to not only see if the 'requirement' of birth registration discriminates against the Roma but also if the Roma are enjoying equal access to birth registration. Lastly, this part will also focus on Bosnia and Serbia's compliance with their international obligations on non-discrimination.

The second part of this chapter will answer the second issue raised in the research question, namely whether the nationality laws are causing statelessness in breach of international law. Therefore, it will examine if the aforementioned four modes of acquiring a nationality outlined in the previous chapter are creating statelessness among Roma in the region. The second section of this part will focus on the Bosnia and Serbia's compliance with the international standards on the prevention of statelessness. Before we move further it is important to note that the first and second parts, namely the analyses on discrimination and statelessness, may overlap on a few points. However, it is necessary to analyze discrimination and the emergence of statelessness separately, since different international standards apply to both and there might be laws that are discriminatory but are not causing statelessness and vice versa.

1. Are the nationality laws and procedures discriminatory towards the Roma?

The nationality laws in force today in Bosnia and Serbia were adopted in 1999[227] and 2004[228], respectively. Even though they were adopted in a time of ethnic tensions and instability, both laws are, in general, progressive and incorporate certain international standards for the respect of nationality and the prevention of statelessness. This however does not mean that these laws are not problematic and that they have not caused statelessness, but rather that they allowed large scale statelessness to be avoided during the aftermath of the conflicts.[229] UNHCR has reported that the Roma are overrepresented in the group that has not been able to avoid statelessness and is experiencing problems with their nationality.[230] This overrepresentation, taken into account with the Romani predicament of protracted marginalization and poverty, indicates that the Roma as a group might be in a disadvantaged position with regards to their access to a nationality. In other terms, it provides initial evidence of the possibility that that the nationality laws and procedures are discriminatory towards the Roma. However, since the nationality codes of Bosnia and Serbia do not expressly preclude the Roma from acquiring a nationality, they do not directly discriminate against them.

As it was already pointed in Chapter 2, discrimination can also arise in cases where a law or a policy that is seemingly neutral, has adverse effects on a particular ethnic group.[231] This means that even though the Bosnian and Serbian laws are neutral, they can still be deemed as discriminatory if they have a disproportionate and negative effect on the Roma. The key to establishing indirect discrimination is showing that the seemingly neutral rule treats people that are in different situations in a similar manner, i.e. it does not account for the differences that this group has.[232] The European rights agencies have pointed out that three elements need to be shown in order to establish indirect discrimination. First, there has to be a neutral rule; second, that rule must affect "a group defined on a protected ground in a significantly more negative way"[233]; and third, there has to be a comparator group which does not share the protected ground and is not affected the same way as group in question. For the purposes of this research, this means that we first have to show that the nationality

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227 Zakon o Državljanstvu Bosne i Hercegovine 1999 [Law on Citizenship of Bosnia and Herzegovina], Official Gazette BiH no.13/99

228 Zakon o Državljanstvu Republike Srbije 2004 [Law on Citizenship of the Republic of Serbia], Official Gazette RS 135/2004 and 90/2007

229 UNHCR Report on Statelessness in SSE (n 1), p.8;

230 Ibid. p.16; and UNHCR, "Social Inclusion of Roma, Ashkali and Egyptians in South-Eastern Europe: Real Life Stories" (2009), p.10

231 See Chapter II, section 3.2.

232 Moeckli (n 110) p.205

233 Fundamental Rights Agency and the European Court of Human Rights, "A Handbook on European Non-Discrimination Law" (2010) p.29

laws are stated in neutral terms, that they have a disproportionately negative effect on the Roma, and that non-Roma do not experience the same effects. However, since it is clear that the nationality laws of Bosnia and Serbia are couched in neutral terms the focus needs to be placed on the other elements.

Moreover, in order to establish that the nationality laws and procedures of Bosnia and Serbia are discriminatory towards the Roma, we would have to first point out the specific living conditions that define the Roma as a protected group, i.e. a group in a different position. Second, we have to show that the neutral nationality rules and regulations fail to take into account these special characteristics of the Roma, placing them in a position where they are unable to meet the requirements for acquiring a nationality, and thus obstructing their access to a nationality. The elements, relevant to the acquisition of nationality, that define the 'different' position of the Roma were already pointed out in Chapter 3. These are lack of personal documentation, lack of housing, poverty and widespread discrimination against the Roma. Even though these conditions are applicable to other ethnic groups as well, they are significantly overrepresented amongst the Roma, defining them as a vulnerable and marginalized group. If the analysis shows that the Roma have significant difficulties in acquiring a nationality because they do not meet the nationality requirements, which do not take into account the elements of their special position, it can be concluded that the nationality laws of Bosnia and Serbia are discriminatory towards the Roma.

Even though several different requirements will be analyzed, one of them merits special attention. Birth registration in Serbia is an express requirement for acquiring a nationality, while in Bosnia is an essential proof of nationality. Therefore in order to present a more comprehensive image of the extent of the problem we do not only have to show that the Roma disproportionally lack birth registration, but also establish whether they enjoy equal access to birth registration.

1.1 Nationality Requirements

As the beginning of this chapter had already pointer out, the four main modes of acquiring a citizenship in Bosnia and Serbia are conferral of nationality to the initial pool of citizens, the conferral of nationality to former SFRY nationals, naturalisation and acquisition of nationality at birth. The current nationality laws of Bosnia and Serbia have defined their initial pool of citizens as all nationals of their respective predecessor states, the Republic of Bosnia and Herzegovina and Republic of Serbia as part of the State Union of Serbia and Montenegro accordingly.[234] In turn, these predecessor states outlined their main citizenry as all SFRY nationals that held the socialist

[234] Article 51 of the Serbian Nationality Law (n 201) ; and Article 37 of the Bosnian Nationality Law (n 180)

republican citizenship of Bosnia and Serbia, respectively.[235] In essence, such conferral of nationality meant that every person residing on the territory of Bosnia or Serbia would acquire their citizenship, however many Roma faced difficulties as they did not have the appropriate republican citizenship. Many Roma had the federal citizenship of SFRY but lacked a republican citizenship of the state that they were residing in.[236] This meant that they were not able to acquire the nationality of the Republic of BiH and the Republic of Serbia and thus could not qualify for the current nationality of Bosnia and Serbia. Even though these transitional provisions have allowed mass statelessness to be avoided, they have failed to take into account the persons that lacked a republican citizenship. The Roma might not have been overrepresented in the group that experienced problems with their citizenship immediately following the succession of the states, since people from other ethnic groups also had problems. However, the problem is evident with the fact that people from other ethnicities were able to resolve their status soon after the dissolution, but many Roma have not been able to resolve their status even after a decade of the last changes relevant to Bosnia or Serbia's nationality.[237] Since the Roma have been overrepresented in this group, they are in a particularly disadvantaged position to be considered as nationals under these provisions.

Both the Bosnia and Serbia provide a facilitated access to a nationality for former SFRY citizens, though the 'transitional provisions'.[238] The main problematic requirement, however, for qualifying for nationality under these provisions is having a permanent residence for a number of years.[239] Many Roma that have lived in Bosnia and Serbia habitually for more than a decade, have not been able to qualify for citizenship under these provisions since the lack of appropriate legal housing and a registered address are widespread issues among members of this community, which are a prerequisite for establishing a permanent residence.[240] This means that even though the provisions regulating the nationality of former SFRY nationals seem neutral, the effects they have on the Roma are both negative and disproportionate. The Roma as a group are placed at a particular disadvantage by the requirement for permanent residence, as they cannot meet it and therefore acquire a nationality through the facilitated procedure for former SFRY nationals.

The requirement for permanent residence is also problematic with regards to the naturalisation procedures. There are Roma that are not able to prove their citizenship in Bosnia and

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[235] Igor Stiks (n 170) p. 488f
[236] Julia Sardelic (n 8), p.10
[237] UNHCR Report on Statelessness in SSE (n 1),p. 17
[238] Serbian Nationality Law (n 201) Art.52 and 23(2) ;Bosnian Nationality Law (n 180) Art. 38
[239] In Bosnia former SFRY nationals need to have two or three years of permanent residence, depending on the time that residence was established, in order to acquire a nationality. In Serbia the requirement is a minimum of nine years.
[240] Praxis, "No Residence, No Rights" (2012) p. 8

Serbia, even though they are in essence entitled to a nationality either because they are former SFRY citizens, they have been born to national parents or have been born stateless in these countries.[241] Nevertheless, as was pointed out earlier, one practical opportunity for resolving their citizenship status would be to apply for nationality though naturalisation since they have been habitually residing in their respective countries. However, since many Roma lack a legalized residence status they will not be able to apply for naturalisation, even though they factually fulfil 'the minimum years of residence' requirements for naturalisation.[242] The Serbian nationality law also provides a facilitated naturalisation procedure for refugees from the former SFRY states as well as for persons that have been born and have resided in Serbia for two years,[243] which could serve as possible solutions for many Roma. Even though these facilitated procedures require only a temporary residence rather than a permanent one, both the temporary and the permanent residence are based on a person's registered legal address. This is the key reason why many Roma will not be able to obtain a nationality though naturalisation. The regulations for naturalisation do not take into account the fact that many Roma lack a registered address and therefore a legalized residence status, resulting in a inability of the Roma to acquire a nationality through naturalisation.[244]

Furthermore, due to the prevalence of the lack of birth registration among the Roma, the most problematic issue with the Bosnian and Serbian nationality regimes is the close connection between birth registration and nationality. In Bosnia, the law automatically considers all persons that satisfy the factual requirements for acquiring a nationality at birth as nationals from the moment of their birth.[245] However, many Roma cannot prove that according to the law they are nationals because they do not have a certificate of citizenship, which is issued on the basis of a birth certificate, i.e. the information contained in the birth registration. [246] There are also no alternative methods of proving ones citizenship and acquiring a certificate, and competent authorities do not have the discretion to issue a certificate of citizenship without a birth certificate. This means that the implicit requirement to have a birth registration, places the Bosnian law in a position where it does not take into account the prevalence of the lack of birth registration among the Roma. Therefore, as a group, the Roma are in a disadvantaged position of being able to prove their Bosnian nationality, significantly increasing the risk of statelessness. What exacerbates the problem even further is the

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241 UNHCR Report on Statelessness in SSE (n 1),p. 17

242 The required residence in Bosnia is 8 years while in Serbia its 3. (Bosnian Nationality Law (n 180), Art. 9 (2); and Serbian Nationality Law (n 201) Art. 14(3))

243 Serbian Nationality Law (n 201). Art. 23 and Art. 16, respectively

244 Praxis 2010 (n 152), p. 21

245 Among other options, being born on to national parents or on the territory of Bosnia but would otherwise be stateless. See Chapter IV.2.1

246 UNHCR Report on Statelessness in SSE (n 1),p. 17

fact that, not only are the Roma overrepresented in the group that lacks birth registration, but also they do not enjoy an equal and effective access to the birth registration procedures. However, this issue will be discussed in the following subsection.

The Serbian law on nationality has a different approach to birth registration. In order for a person to acquire the nationality of Serbia, not only does he or she has to satisfy the factual requirements, but also have a birth registration. In other words, a child is considered as a Serbian national, *ex lege,* at the moment when the fact of his or hers Serbian citizenship is written down in the appropriate registry books.[247] This means that persons that are not registered, but are entitled to a Serbian nationality though the *jus sanginis* or *jus soli* principles, are not considered as Serbian nationals because the fact of their citizenship has not been recorded in the birth registry.[248] Since many Roma lack and are unable to obtain an effective birth registration, their entitlement to a Serbian nationality is not legally recognized, and therefore do not have a citizenship.[249] The fact that a person in Serbia is considered as a national at the moment of his or her birth registration rather than the moment of birth, has negative and disproportionate effects on the Roma. This requirement fails to take into account the different situation of the Roma, i.e. the widespread lack of birth registration. This means that the requirement of having a birth registration in order to acquire a nationality places the Roma in a disadvantaged position with regards to the acquisition of nationality.

In conclusion, the Roma are placed at a disadvantage with regards to all of the four main modes and procedures for acquiring a nationality in Bosnia and Serbia, namely acquisition by virtue of birth to national parents or on the territory who would otherwise be stateless, by naturalisation, on the basis of being a former SFRY national, and having the nationality of the appropriate predecessor state. The reason for the inability of many Roma to acquire a nationality in Bosnia and Serbia through the facilitated procedures for SFRY nationals or by naturalisation is the requirement of a legal residence. Since these laws fail to take into account that the lack of registered residence is prevalent among the Roma, they treat the Roma equally with others even though they are in a different position. The effects of these neutral provisions are both disproportionate and negative as the Roma are overrepresented in the group that is not able to qualify for nationality under these procedures, and may be left stateless. The same applies with regards to the provisions that establish the initial pool of citizens. Even though they are seemingly neutral, they have an adverse effect on

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[247] Serbian Nationality Law (n 201) Art.6; See Chapter VI.3.1

[248] It is important to bear in mind what was already said in the previous chapter. The statement that birth registration is an express requirement for obtaining a nationality is based on a personal interpretation. In reality, the legal interpretation of this definition might not be such and the 'requirement' for a birth registration might be irrelevant. However, the reading of this

[249] Praxis 2010,(n 152) p.10

the Roma because they fail to take into account the fact that many Roma did not acquire the citizenship of the appropriate predecessor state. As a result, many Roma have not been able to qualify for nationality under these regulations. It can be safely stated that the provisions delineating the initial pool of citizens, naturalisation and the facilitated acquisition of nationality for SFRY nationals, in both Bosnia and Serbia, are indirectly discriminatory towards the Roma, since they fail to accommodate a key element of the Roma as a protected group, namely the lack of a registered residence, placing them in a position where they are unable to acquire a nationality.

The regulations governing the acquisition of nationality at birth also fail to accommodate the position of the Roma to varying degrees in Bosnia and in Serbia. The main difference between the two is the gravity of the negative effect. In Bosnia, birth registration serves as a proof of the citizenship acquired by birth. Due to their disadvantaged position of being registered at birth and the widespread lack birth registration among them, the Roma, as a group, are at a particular disadvantage of being able to prove their nationality. This means that the indirect condition of being registered at birth in order to prove and retain the Bosnian citizenship has a disproportionate and negative effect on the Roma, as many of them are unable to meet this condition and are the risk of being left without a nationality. In Serbia, birth registration is a direct requirement for acquiring a nationality by descent and by birth on the territory if statelessness arises. As in the case of Bosnia, in Serbia many Roma lack birth registration and are at a disadvantage of acquiring it. The requirement of being registered at birth in order to acquire a nationality in Serbia has significantly disproportionate and negative effects on the Roma, since many of them are unregistered and therefore cannot acquire a nationality. It can be concluded that both the Bosnian and the Serbian nationality laws regulating the conferral of nationality by descent or by birth on the territory for persons who would otherwise be stateless, are discriminatory towards the Roma due to the requirement of having a birth registration. The essential difference between the two is that the effects of this requirement are significantly more negative in Serbia since unregistered persons are not considered as citizens, while in Bosnia they lack a proof of their citizenship.

1.1.1 Birth registration Requirements

Civil society organisations and NGO's have reported that there are around 10 000[250] unregistered Roma in Bosnia and as many as 20 000 in Serbia. [251] Deficient birth registrations have been significantly more present among members of the Roma community than any of the other

[250] Human rights watch indicates that there as many as 100 000 Roma in Bosnia and that 10 percent of those are unregistered. HRW Report (n 3), p. 4.
[251]Ombudsman Report (n 163), p.7

ethnic groups.[252] One of the main reasons why many Romani individuals are left unregistered is the lack of sufficient identification documents of their parents.[253] In both Bosnia and Serbia, in order for the birth registration of a newborn to be conducted both parents must provide their personal identity cards, certificates of citizenship and marriage certificates.[254] Many Roma in Bosnia and Serbia, are "legally invisible" and do not have all of these documents. For instance, some Roma are completely unregistered and do not have a birth certificate which means that they are not able to acquire a certificate of their citizenship.[255] Others, however, have a birth certificate (and can therefore acquire a citizenship certificate) but are unable to obtain a personal identity card. The personal identity cards are particularly problematic for the Roma, because they are issued on the basis of having a legally registered address. Since many Roma live in informal settlements, they do not have a registered address and cannot obtain an ID card. [256] Such failure to obtain a valid personal identification card means that they will not be able to register their child.

The required marriage certificate in order to register a child is also problematic as many Roma have not registered their marriages due to the costs or lack of appropriate documentation.[257] There is a possibility to register a child in cases where the parents are not married or do not have a legal proof of their marriage. However, in such cases both parents must also provide their birth certificates. Even though registration is possible without the father's details, a lack of the mother's documents is detrimental as the registration will not be completed. The strict requirements for such documents place the Roma in a disadvantaged position, since one of the main elements of the predicament of the Roma is the lack of personal documents, due to various reasons such as the cost of the procedures for obtaining them, lack of other necessary documents or insufficient knowledge about the procedures. This perpetuates the lack of registration among Roma, placing the children of unregistered parents under an, almost definite, risk of being left unregistered.

The short registration deadlines, coupled with the unclear subsequent registration procedures are also strong factors that place the Roma in a disadvantaged position with regards to birth registration. Every birth in a hospital must be reported with the appropriate local registration authorities within 15 days in Serbia and Republic of Srpska, and 30 days in the Federation of BiH.[258] Hospitals have often refused to report the birth of a Romani child or provide an attestation of birth

[252] Ibid.; and HRW Report (n 3), p.4
[253] Praxis 2010 (n 152), p.10; ERRC 2004 (n 7), p.64
[254] Birth registration requirements were discussed in chapter IV, sections 2.1.1. and 3.1.1.
[255] Praxis 2010 (n 152), p.10; UNHCR Report on Statelessness in SSE (n 1), p.24
[256] ERRC 2004 (n7), p. 68
[257] UNHCR Report on Statelessness in SSE (n 1), p.31
[258] See chapter IV sections 2.1.1 and 3.1.1

because the mother has lacked health insurance or sufficient finances to cover the medical costs.[259] The lack of health insurance and the high medical costs also compel many Roma women to give births outside of a medical facility.[260] In cases of homebirth the parents or any other authorised person that witnessed the birth have the responsibility to report the birth of the child to the local birth registration authorities. As a result many Roma miss the deadlines and do not report the birth of their child later on, due to the fear of the costs involved. The fees for reporting a child after the aforementioned deadlines are up to 75 Euros in Bosnia and 450 Euros Serbia.[261] To the average reader these might not seem as high fees considering that something as crucial as birth registration is in question. However, the average monthly salary in both countries is around 400 euro's[262] and considering that the Roma live in significantly substandard conditions and that their income is substantially lower than the national average, these costs are a serious obstacle for reporting a birth after the deadline.[263]

The lack of personal documents as a key element of the Romani situation also relates to the subsequent birth registration regulations. Both the Bosnian and Serbian laws recognize the possibility of late birth registration, and point out some of the additional documents needed.[264] However, this procedure is largely undefined and has shown to be unequally applied across the countries.[265] The higher evidentiary standards for late registration, such as hospital discharge papers or witness testimonies, birth certificates of both parents and proofs of paternity, make this procedure unattainable for many Roma furthering their position of legal invisibility and decreasing their chances of resolving their situation.[266]

In conclusion, the widespread failure of the Roma to meet the aforementioned registration requirements leaves them at a significant disadvantage of being registered at birth. Many Roma lack

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259 OSCE Mission to Bosnia and Herzegovina, "Report on the Roma Civil Registration Information Campaign"(2005) p.2 (OSCE Report 2005)

260 Ibid. p.9

261 In Serbia this is regulated by Art. 87 of the Serbian Law on Civil Registries of 2009; in Bosnia there is a penalty only in Republic of Srpska regulated by Art. 59 of the Republic of Srpska Law on Civil Registries of 2009. See Chapter IV, sections 2.1.1. and 3.1.1.

262 The average net salary in Serbia in October 2013 was 382 Euros (Statistical Office of the Republic of Serbia, "Latest Indicators- Average Salary October 2013" (2013), <http://webrzs.stat.gov.rs/WebSite/Public/PageView.aspx?pKey=2> last accessed 10 November 2013).; The average net salary in Bosnia and Herzegovina in September 2013 was 422 Euros (Agency For Statistics of Bosnia and Herzegovina, "Homepage- Average net wages in BiH" (2013) <http://www.bhas.ba/index.php> last accessed 10 November 2013)

263 UNHCR Report on Statelessness in SSE (n 1), p.31

264 See Chapter IV Sections 2.1.1 and 3.1.1

265 UNHCR Report on Statelessness in SSE (n 1), p.32

266 Ibid.; Ombudsman Report (n 163), p. 16; and Praxis, "Persons at Risk of Statelessness in Serbia-Case Studies" (2011), p.10

a registered legal residence which hampers their ability to acquire a personal identification card. Without such a card Romani parents are unable to register their children, exposing them to a situation of legal uncertainty and invisibility. Roma that do not have a birth registration cannot register their children at birth because they are not able to acquire essential document such as birth, marriage and citizenship certificates. The high administration costs and tight deadlines are also strong obstacles in being registered at birth as a Romani child.

The Roma in Bosnia and Serbia are not only overrepresented in the group of persons that lack birth registration, they are also significantly more likely to be left without a registration, as they are in a disadvantaged position for meeting the birth registration requirements. The fact that many Roma lack birth registration and face discrimination in obtaining it, shows the true extent of the problem. In acquiring a nationality the Roma face a two-tiered discrimination. Firstly, they are in a disadvantaged position of being registered at birth since the birth registration regulations are discriminatory towards them, and secondly they are in a disadvantaged position of acquiring a nationality since they lack a birth registration. Being in such a position of 'double' discrimination significantly hampers the possibility for resolving one's status and discontinuing the cycle of legal uncertainty many Roma are experiencing.

1.2 In breach of international obligations on non-discrimination?

The parameters of analysis that were used in assessing whether Bosnia and Serbia's laws are discriminatory towards the Roma are the international standards on non-discrimination. This means that in answering whether the nationality laws are discriminatory towards the Roma, in the previous section, the question if these laws are in breach of international law was, to a certain extent, already answered. By incorporating requirements for the conferral of nationality which the Roma are at a particular disadvantage of meeting due to their socio-economic position and are being placed at least at the risk of statelessness, the Bosnian and Serbian nationality laws are indirectly discriminatory towards the Roma according to the international norms of equality. However, in order to formulate this discrimination as a breach of Bosnia and Serbia's international obligations we have to point out the specific international treaties that are being violated.

Bosnia and Serbia have a duty to respect the right to a nationality of the Roma without discrimination according to several international norms, namely Article 5 (d)(iii) of CERD, Articles 2(1), 24(3) and 26 of the ICCPR and Articles 2(1) and 7(1) of the CRC. These provisions stipulate that state parties must respect and ensure the right to a nationality without distinction to, among other things, ethnic origin. Bosnia is also bound by Article 5 of the ECN, while Serbia has only soft

law obligations towards it.[267] Implied in these international norms is the prohibition of both direct and direct discrimination, meaning that the laws cannot explicitly treat the Roma differently, but also the effects of those laws must not be disproportionate and negative on the Roma. The requirements for conferring a nationality by birth, naturalisation or any other mode must not create unreasonable impediments for this group's access to a nationality, referring back to the prohibition of the denial of citizenship.

The two key requirements for acquiring a nationality in Bosnia and Serbia that were found to cause discrimination against the Roma are legalized residence and birth registration. Legalized or permanent residence is a non-protected ground and therefore Bosnia and Serbia have legitimately established it as a requirement for acquiring a nationality by naturalisation or through the facilitated procedures for former SFRY nationals.[268] However, as we have seen many Roma are not able to meet this requirement as they do not have registered addresses and live in informal settlements. As a result, many Roma cannot qualify for nationality though these procedures. This means that the condition for having a permanent or legalized residence creates an unreasonable impediment for the Roma, as a group defined by a protected ground, to access their right to acquire a nationality through naturalisation and the facilitated procedures for SFRY nationals in Bosnia and Serbia. Such unreasonable impediments result in their denial of citizenship which constitutes an arbitrary deprivation of nationality. As we already saw in Chapter II, such deprivation is strongly prohibited in international law.

The second problematic requirement is birth registration. In Serbia birth registration is an explicit requirement for acquiring a nationality by birth. In Bosnia, on the other hand, it is a crucial proof that a person has acquired a nationality at birth. Since the lack of birth registration is a widespread issue among the Roma, this requirement particularly affects them as a group. The Bosnian and Serbian laws fail to take into account the position of the Roma and place them in a position where in Serbia they are not able to acquire a nationality while in Bosnia they are not able to provide proof of their nationality and are at the risk of losing it. It follows that the requirement for birth registration creates unreasonable and arbitrary obstacles for the Roma in Bosnia and Serbia in

[267] As noted in Chapter II, Section 1.1.1.(a), Serbia has acknowledged the importance of the Convention by incorporating many of the Convention's principles into its 2004 nationality law. This, as well as the fact that it is a party to many other conventions that recognize the right to a nationality, shows that Serbia is not opposed to the general ideas and principles contained in the Convention, such as non-discrimination with regards to the right to a nationality. Therefore, since the ECN is part of international law, includes norms that are already recognized in other treaties and Serbia has not shown strong opposition to the its principles, it can be considered that the ECN imposes at least partial or soft law obligations on Serbia to ensure equality in the respect of the right to a nationality.

[268] See Chapter II, Section 1.1.1. (b)

accessing their right to a nationality by birth to national parents or on territory for those who would otherwise be stateless.

The Bosnian and Serbian nationality laws, by requiring individuals to be registered at birth or have a legal residence create arbitrary obstacles and impediments for the Roma to access their right to a nationality, which amounts to discrimination. In other words, because these two requirements are discriminatory towards the Roma they disable them from acquiring a nationality and deny them the citizenship they are entitled to on the basis of fact. This amounts to a discriminatory deprivation of nationality which in turn falls under the arbitrary deprivation of nationality. Therefore, it can be concluded that Bosnia and Serbia are in breach of their international obligations to respect the right to a nationality to all persons without distinction to ethnic origin, and in violation of Article 5 (d)(iii) of CERD and Articles 2(1) and 7(1) of the CRC and Articles 2(1), 24(3) and 26 of the ICCPR. Bosnia is also in violation of Article 5 of the ECN and while Serbia is also in breach of the same provision it is not, strictly speaking, bound by it as it is not a party to this Convention.

2. Are the nationality laws and procedures of Bosnia and Serbia causing statelessness among the Roma?

The fact that the nationality laws and procedures of Bosnia and Serbia are discriminatory towards the Roma places them in a particularly vulnerable position where they might be left stateless or at the risk of becoming stateless. To begin with, the fact that many Roma have not been able to qualify for a nationality under the facilitated procedures for nationals of the predecessor states or former SFRY nationals has left many of them without a nationality.[269] They have not been able to do so since both of these types of acquisition require either a SFRY republican citizenship or the citizenship of the predecessor state and a registered permanent address, which many Roma lack. However, even though this research focuses on the present situation in Bosnia in Serbia, it is important to note that many Roma were also left stateless due to these requirements in the early 1990's during the breakup of the SFRY. Some of them have been able to resolve their status or were not in such a detrimental position as they had at least some form of (informal or expired) identification documents, but many have not been able to register or establish the nationality of their children, leaving their newborns unprotected and very often stateless.[270] More than two decades have passed since the dissolution of SFRY and these children that were left stateless or unregistered

[269] Julia Sardelic (n 8), p.11

[270] Boriss Cilevics (rapporteur), "Access to nationality and the effective implementation of the European Convention on Nationality", *Committee on Legal Affairs and Human Rights- Parliamentary Assembly of the Council of Europe* (2013), p. 12

at the time are now transferring their predicament to the next generation, further extending the scope of the problem and the position of vulnerability common amongst the Roma.[271] The emergence of second- and third-generation lack of registration is presently one of the most significant, and at the same time alarming, causes of statelessness in both Bosnia and in Serbia.

In Bosnia, the Roma that are unregistered are not stateless, as such. There are unregistered Roma that are stateless, but most of the Roma that lack birth registration are at risk of becoming stateless. There is often uncertainty whether some Roma that are not registered are considered as non-nationals both by the competent authorities and the law. For instance, unregistered Roma children that qualify for a nationality under the basic modes of acquisition (*jus sangunis and jus soli*) are technically considered as nationals from birth by law. However, in order to truly establish whether they have a Bosnian nationality, one must examine the position of the competent authorities.[272] Since the automatic mode of acquiring a nationality is in question and nationality is indicated as an act of civil registration, according to the UNHCR Guidelines[273] the competent authorities in Bosnia are the municipal civil registration authorities, as well as the competent entity and state ministries. If the authorities on all three levels refuse to issue a certificate of citizenship, a birth certificate which classifies the person concerned as a Bosnian national or acknowledge that the person concerned is a national, it can be safely concluded that that person is treated by the competent authorities as a non-national and is therefore stateless, if he or she does not have another nationality which is the case with most Roma. It is important to note that it is difficult to make general statements on the position the Bosnian competent authorities have towards group of unregistered Roma as a whole, and indicate what portion of unregistered Roma are considered as non-nationals. The reasons for this are the specific differences and peculiarities of each individual case, in terms of one's identity, place of birth, and possession of documents. For instance, while some Roma lack any personal documents, others only have hospital discharge papers, incomplete birth registry entries or the documents of only one of their parents.

Many Roma cannot subsequently conduct their birth registration as their parents do not have marriage certificates, registered address, and thus a personal ID card, or certificates of their citizenship.[274] This inconsistency with regards to the possession of the various documents creates the possibility of infinitely many different cases, disallowing the competent authorities, as well as

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[271] Praxis 2010 (n 152), p.24

[272] Chapter IV section 2.1. discusses the importance of the position of the competent authorities when determining whether a person is a national or not.

[273] UNHCR Guidelines No. 1 (n), para.29

[274] Praxis, "Legally Invisible Persons in Serbia-Still Without a Solution" (2011), p. 13; ERRC 2004 (n 7), p.66; and UNHCR Report on Statelessness in SSE (n 1), p.32

researchers, to classify the unregistered Roma in Bosnia as a group as nationals or not. Therefore, unregistered Roma in Bosnia cannot be classified as stateless, but rather as being at a significant risk of statelessness. However, unregistered, or "legally invisible", Roma can become stateless if the competent authorities refuse to accept the fact that they satisfy the factual requirements and treat them as non-nationals. It is important to also stress that due of the widespread discrimination against and lack of documents among the Roma, they are also at disadvantage of being considered as a national by the competent authorities, since they will have difficulties proving their place of birth, the citizenship of their parents or their entitlement of a nationality. The indirect condition of having a birth registration in order to be establish one's nationality, or more precisely the close connection between birth registration and nationality, in Bosnia creates a widespread risk of statelessness among many Roma, as they are in a disproportionately disadvantageous position to be registered at birth.

In Serbia the situation is perhaps less complex, but has more adverse effects. Article 6 of the current nationality law states that in order for a person who is entitled to a nationality by descent or birth on the territory and would otherwise be stateless, to have his or her fact of nationality registered in the birth registry.[275] This means that persons that are not registered in the birth registry books ("legally invisible"), and do not have another nationality, are stateless from their birth. Furthermore, persons at are registered and whose entitlement or fact of citizenship ("persons with undetermined citizenship") has not been indicated in the birth registry are also not considered as nationals of Serbia.[276] As was pointed out earlier, the lack of birth registration in Serbia among individuals of Romani origin is widespread. In addition, the Roma also lack effective access to birth registration since law on civil registration is discriminatory towards them.[277] Consequently, the birth registration requirement is not only creating statelessness among the Roma[278], but has also increased the likelihood of Romani individuals to be left stateless, as they are more likely to be left unregistered than others. It is also important to note that the birth registration requirement makes the main safeguard against statelessness contained in the Serbian nationality law ineffective. The nationality law states that children that are born on the territory of Serbia and would otherwise be stateless are considered as Serbian nationals. However, in order for such a child to be considered as a national he or she must be registered at birth, since Serbian nationality is conferred at the moment of registration rather than birth. This means that Roma children, who are stateless at birth and are born in Serbia, remain stateless until the moment of their registration. Again, the lack of birth

[275] This provision is Contained in Article 6 of the Serbian Law on Nationality. Please see Chapter IV section 3.1.
[276] Praxis 2010 (n 152), p.14
[277] See Section 1.1.1. of this chapter.
[278] Praxis 2010 (n 152), p.8

registration among the Roma renders them unable to qualify for nationality, even under the provision dedicated to the prevention of statelessness among newborns.

As it was already pointed out in Chapter IV, Section 3.1, it is important to remember that this conclusion is based on the personal interpretation of Article 6 of the Serbian Law on Nationality. This means that the claim that unregistered children are stateless in Serbia is a result of understanding birth registration as a requirement for acquiring a Serbian nationality. This might not reflect the actual implementation of this law in practice, however due to the lack of literature it is the only way one can interpret it by reading the law. If birth registration is not a requirement but is a proof of nationality the situation in Serbia would be identical as the one in Bosnia. In order to assess whether unregistered children would be stateless, one would have to assess the whether the competent authorities treat them as nationals. As in Bosnia, unregistered Roma children in Serbia would be at the significant risk of statelessness since they are at a disadvantage of being registered at birth. Nevertheless, since at present it is not possible to assess the practical implementation of the law, the main conclusion is that unregistered Roma children in Serbia are being left stateless.

Furthermore, even though the naturalisation regimes of Bosnia and Serbia are discriminatory towards the Roma, it is difficult to conclude that they are creating statelessness, as such. Many of the Roma that are stateless or at the risk of statelessness in both countries are entitled to a nationality either though the facilitated procedures for former SFRY nationals or on the basis of birth to national parents or on the territory.[279] This means that these individuals, technically, are not supposed to acquire a nationality through naturalisation as they are not foreigners. However, naturalisation can serve as a practical solution to the lack of nationality among the Roma. Since many of the Roma in question have resided in Bosnia or Serbia, in some cases, even longer than the required residence period, they satisfy one of the main factual requirements for naturalisation. However, because their residence has not been registered, many Roma are ineligible for naturalisation.[280] Therefore, instead of stating that the naturalisation requirements are causing statelessness, it would be more accurate to conclude that the naturalisation requirements of Bosnia and Serbia do not allow stateless Roma individuals to resolve their status through naturalisation.

Finally, it can be safely concluded that the nationality laws of Bosnia and Serbia are causing statelessness among the Roma. The effects of the discrimination against the Roma present in the nationality laws in Bosnia and Serbia, with regards to the requirement of birth registration, differ. In Serbia, the birth registration prerequisite for acquiring a nationality, though the *jus sanguinis* and *jus soli* principles, has left many Romani children without a nationality, due to the widespread lack of

[279] Ibid.
[280] Praxis 2010 (n 152), p. 21; UNHCR Report on Statelessness in SSE (n 1), p.17

registration among the Roma. In Bosnia on the other hand, birth registration is not a requirement but a proof of nationality, and as a result many Roma have been left at a significant risk of statelessness, since they lack birth registration and therefore a proof of their citizenship. In both countries however, the provisions regulating the continuity of the previous nationalities and the facilitated procedures for SFRY nationals have created statelessness. Roma without the appropriate SFRY republican citizenship or the nationality of the appropriate predecessor state were not able to qualify for naturalisation and were left stateless. However, an important consequence of their statelessness is that they have not been able to register their children and have transferred their lack of nationality across generations. The last aspect that was discussed in this section was naturalisation. Even though the naturalisation requirements do not cause a lack of nationality as such, they significantly contribute to the continuation of statelessness among the Roma, since the Roma cannot effectively access those procedures.

5.2.1 In Breach of International Obligations on the Prevention on Statelessness?

Some of the principles crucial in the prevention of statelessness, namely the prohibition of discrimination, the respect of the right to nationality and the prohibition of arbitrary deprivation of nationality, were already discussed in the previous section. Since we concluded that the Bosnian and Serbian laws violate these principles in breach of international law and create statelessness we can already conclude that Bosnia and Serbia violate their obligations to prevent statelessness. However, in order to address their compliance with international law on the prevention of statelessness more comprehensively it is important to also analyze three more sets of obligations. These are: the obligation to grant citizenship to children born on the territory and would otherwise be stateless, provide a facilitated naturalisation procedure for stateless individuals and ensure that every child is registered at birth.[281]

Bosnia and Serbia have an obligation to grant nationality to children born on their territory who would otherwise be stateless, which arises from Article 1 of the 1961 Convention, Article 6(2) of the ECN and Article 24 of the ICCPR.[282] Even though in Chapter II we discussed the extent to which these articles allow such conferral of nationality to be conditioned upon an application deadline and minimum period of residence, the Bosnian and Serbian laws contain no such restrictions. According to their nationality laws both countries grant nationality to children that are born stateless on their territory.[283] Nevertheless, the situation is more complex than that.

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[281] See Chapter II, Sections 1.1.1.(a), 1.1.1.(b) and 2.2.2.(b)
[282] See Chapter II, Sections 1.1.1.(a)
[283] Art.7 of the Bosnian Nationality Law (n 180) and Art.13 of the Serbian Nationality Law (n 201)

According to the law, children born stateless in Bosnia should be considered as Bosnian nationals at birth. However, taking into consideration that many Romani children in Bosnia are stateless or at risk of statelessness and many newborns are likely to experience significant problems with their nationality status, the question of implementation comes to mind. The text of the Bosnian law is in compliance with Article 1 of the 1961 Convention, however new cases of statelessness among children indicate that this law might not be adequately implemented.[284] It is difficult to draw strong conclusions on the implementation of the "otherwise be stateless" provision, since this research is a desk study analyzing only the limited literature available on this issue. The most effective way to provide a fair assessment of Bosnia's compliance with its obligation to prevent statelessness at birth would be to see whether the municipal birth registration officers, i.e. competent authorities, are aware of this provision and are implementing it correctly. Such an inquiry into the work of civil registration authorities in Bosnia requires on-site research, since there is very limited information on the issue. Nevertheless, for the purposes of this research, it can be noted that Bosnia has failed to fully comply with its obligation to grant nationality to children born on its territory who would otherwise be stateless arising from Article 1 of the 1961 Convention and Article 24(3) of the ICCPR, as well as Article 6(2) of ECN. Such a conclusion can be drawn not only because there are new cases of statelessness arising but also due to the fact that there are many Roma children born in Bosnia who are at a significant risk of statelessness.[285]

Serbia has also incorporated its international obligation to grant nationality to children that are born stateless on its territory in its nationality law. However, as was pointed out earlier, the conferral of nationality at birth in Serbia is conditioned upon having a birth registration. In other words, in order for a child born stateless in Serbia to acquire a nationality he or she must be registered at birth. The situation becomes particularly problematic with regards to the unregistered children who cannot qualify under any provision for nationality simply because they lack a birth registration, and are therefore left stateless. Due to the birth registration requirement children that are born stateless in Serbia and have not been registered at birth do not even qualify under the Article 13 provision which should technically ensure nationality to all children born in Serbia who would otherwise be stateless.[286] Such ineffectiveness of this provision is contrary to the obligation contained in Article 1 of the 1961 Convention and Article 24 of the ICCPR. Even though the text of Article 13 is in line with the 1961 Convention, the requirement of birth registration significantly impedes the prevention of statelessness and disables a population that is at the highest risk of

[284] UNHCR, "Nameless Children: A Documentary on Statelessness" (2012) <http://www.youtube.com/watch?v=1J_6CJh8UNo> last accessed 10 November 2013
[285] Ibid.
[286] Praxis 2010 (n 152), p.9

statelessness, i.e. unregistered Roma children, to benefit from this provision. The provision that grants nationality to children born in Serbia who would otherwise be stateless is only applicable to children that have been registered, leaving unregistered children out. Therefore, Article 13 cannot be considered as a reflection of the obligation enshrined in the 1961 Convention and the ICCPR to grant nationality to children born on the territory who would otherwise be stateless and is in breach of international law.

The second aspect with regards to the prevention of statelessness among the Roma in Bosnia and Serbia is naturalisation. Naturalisation can serve as an effective solution for many Roma who are being denied a nationality even though they are long-term residents or have been born in Bosnia or Serbia. The 1954 Convention and the ECN make reference to the possibility of facilitated naturalisation of stateless persons. Article 32 of the 1954 Convention urges states, but leaves it within their discretion, to decide whether to provide a facilitated naturalisation procedure for stateless persons.[287] Therefore, even though Bosnia and Serbia do not provide a facilitated procedure for the stateless, they are not in breach of their international obligations under this article. Furthermore, article 6(4) of the ECN prescribes that states should provide a facilitated naturalisation procedure for stateless individuals that are legally and habitually residing on its territory. This means that Bosnia as a party to the ECN is in breach of its obligation under this article, since it does not provide such a procedure. Even though, Serbia is not bound by the ECN it is nevertheless important to point out that it would also be in breach of this article since it does not facilitate the naturalisation of stateless persons. However, the key population of concern here are the stateless Roma. Since the lack of a legal residence is a widespread problem among them, many stateless Roma are not able to qualify for the procedure described in the ECN. This means that in terms of the facilitated naturalisation for stateless persons as part of the prevention of statelessness among Roma in Bosnia and Serbia, the ECN does not impose obligations upon the two countries.

The strongest obligations with regards to naturalisation of stateless persons, relevant to the situation of the Roma in Bosnia and Serbia stem from the CERD, or more precisely General Recommendation 30 of the CERD Committee.[288] According to this Committee Bosnia and Serbia must ensure that the Roma that are stateless or at risk of statelessness are not "discriminated against with regards to access to citizenship or naturalisation".[289] The Committee recommendation also indicates that states should take particular care with regards to the barriers habitual residents might face in acquiring a nationality though naturalisation. Section 1.1. of this chapter showed that in both

[287] For a further discussion on this issue please see Chapter 2, Section 1.1.1.(b)
[288] CERD Recommendation 30 (n 66),
[289] Ibid. para.13

Bosnia and Serbia, the naturalisation procedures are discriminatory towards the Roma, in particular those who are stateless or at risk of statelessness, due to requirement for a legal residence. The fact that the Roma who are stateless or at risk of statelessness, but have established a habitual residence in Bosnia or Serbia, are not treated equally with regards to their right to access nationality though naturalisation, amounts to a violation of Bosnia and Serbia's obligations to respect the right to a nationality as recognized in the CERD.

The last aspect in the prevention of statelessness relevant for this research is birth registration. Even though this chapter already extensively dealt with birth registration, it is important to briefly comment on the international obligations with regards to birth registration in the context of the prevention of statelessness. As it was already pointed out in Chapter 4[290], birth registration is closely connected to the acquisition of nationality in both countries. In Bosnia birth registration is an essential proof of one's nationality, while in Serbia it is an explicit requirement in order to acquire a nationality. The lack of birth registration is at present the most potent cause for statelessness or the risk of statelessness among the Roma in Bosnia and Serbia.[291] Therefore, in order to comprehensively prevent the emergence of statelessness among Romani children, both countries need to ensure the right of every child to be registered at birth. However, since the birth registration laws of both countries are insufficiently flexible to accommodate the needs and situation of the Roma, many Romani children are being left unregistered and therefore stateless or at the risk of statelessness. Such obstacles towards the registration of one's birth constitute a violation of the international obligation ensure the right of every child to be registered at birth, contained in Article 7(1) of the CRC and Article 24(2) of the ICCPR. However, since the lack of birth registration in Bosnia and Serbia can lead to a lack of nationality among the Roma, the inadequate birth registration requirements also leads to a violation of the countries' obligation to respect the right to a nationality and to prevent statelessness.

The Bosnian and Serbian nationality laws are in breach of their obligations to prevent statelessness among Roma on several accounts. By failing to effectively provide citizenship to all children on its territory who would otherwise be stateless both countries violate their obligations under Article 24 of the ICCPR and Article 1 of the 1961 Convention. On this issue, Bosnia is also in violation of Article 6(2) of the ECN. Even though both countries fail to provide facilitated naturalisation for the Roma that are stateless, they are not in breach of Article 32 of the 1954 Convention. However, by failing to provide equal access to naturalisation to stateless Romani individuals Bosnia and Serbia are in violation of Article 5 of the CERD. Bosnia is additionally in

[290] Sections 2.1.1. and 3.1.1.
[291] UNHCR Report on Statelessness in SSE (n 1), p.24

violation of Article 6(4) of the ECN since it fails to provide facilitated naturalisation for stateless Roma that are legally residing on its territory. However, it does not violate the right to naturalisation of those stateless Roma that are not legally but only habitually residing in Bosnia. These two countries are also in violation of Articles 7(1) of the CRC and 24(2) of the ICCPR by failing to protect the right of Romani children to be registered at birth.

3. Conclusion

This chapter presented the main analysis of this research. It firstly examined whether the nationality laws of Bosnia and Serbia are discriminatory towards the Roma and are in breach of international law. Secondly, it assessed whether the laws of both countries are creating statelessness in violation of the countries' international obligations. The Bosnian and Serbian laws were found to discriminate against the Roma with regards to their right to a nationality and create statelessness among them. As a result, both countries are in violation of many of their international obligations to prevent statelessness and avoid discrimination.

In examining the discrimination present in the nationality laws four modes of acquiring a nationality were considered. It was concluded that the provisions dealing with the initial pool of citizens, the facilitated acquisition of nationality for SFRY nationals and naturalisation are discriminatory towards the Roma since they fail to account for one crucial element of Romani life, namely the lack of a regularized legal residence. The provisions regulating the conferral of nationality at birth on the basis of descent or birth on the territory of the state were also found to be discriminatory due to the direct or implied requirement for birth registration in Serbia and Bosnia, respectively. These provisions fail to take into account the widespread lack of and lack of access to birth registration among the Roma. Such discrimination was found to constitute an arbitrary deprivation of their nationality, or more precisely denial of citizenship. Due to the discriminatory impediments these laws place on the Roma with regards to the equal enjoyment of their right to a nationality, Bosnia and Serbia were found to be in violation of Articles 2(1), 24(3) and 26 of the ICCPR, Articles 2(1) and 7(1) of the CRC and Article 5 (d)(iii) of CERD. Bosnia is also in violation of its obligation under Article 5 of the ECN, while Serbia is disregarding its soft law duty under the same provision since it is not a party to the ECN.

The four modes of acquiring a nationality in Bosnia and Serbia that were found to be discriminatory are also creating statelessness. In Serbia the explicit requirement for birth registration renders all unregistered Roma children as stateless, despite the fact that many of them should qualify for nationality at birth either because they are born to national parents or are born on the territory of

Serbia and would otherwise be stateless. In Bosnia however, birth registration is not a requirement for but a proof of nationality. This means that, contrary to the situation in Serbia, unregistered Romani children are not stateless, because the law considers all children born in Bosnia who would otherwise be stateless as nationals at birth. However, since there is no indication on the implementation of this provision and unregistered Roma are at a particular disadvantage of providing a proof of their entitlement to acquire a citizenship, they are placed at a significant risk of statelessness. The provisions regarding the delineation of the initial pool of citizens and the facilitated procedure for SFRY nationals have also left many Roma without a nationality. Even though, many Roma should have been able to acquire a nationality under these provisions because they were nationals of the predecessor states, the legal residence requirement has disabled many in acquiring a nationality under these provisions. Lastly, many Roma have also not been able to qualify for acquisition of Bosnian or Serbian nationality though naturalisation, because their habitual residence has not been legally recognized. Even though this does not create cases of statelessness in itself, it closes an important opportunity for the stateless Roma to acquire a nationality and resolve their status of statelessness.

Bosnia and Serbia are also in violation of their obligations to prevent statelessness. Since Bosnia and Serbia's birth registration regulations are discriminatory towards the Roma and leave many Roma unregistered they fail to ensure the right of every child to be registered at birth and therefore prevent the emergence of statelessness among children. Therefore, Bosnia and Serbia are in violation of Articles 7(1) of the CRC and 24(2) of the ICCPR. Both countries do not have an explicit duty to facilitate the naturalisation of stateless persons, however since they fail to grant equal access to naturalisation for the stateless Roma, they are in violation of Article 5(d)(iii). Lastly, they also fail to fulfil their obligations to prevent statelessness because they do not grant nationality to every child born stateless on their territory. Even though both countries contain such clauses, the birth registration requirement in Serbia renders this provision moot, while in Bosnia the emergence of new cases of statelessness among Romani children shows an ineffective application of the law. Therefore, both countries are in violation of their obligation under Article 1 of the 1961 Convention and Article 24(3) of the ICCPR, by failing to grant nationality to all children born stateless on their territory.

Chapter 6 – Conclusion

1. Main Findings

This research set out to answer two key questions. Whether the nationality laws and procedures of Bosnia and Serbia are discriminatory towards the Roma in breach of international law on non-discrimination and whether they are causing statelessness among the Roma violating international principles on the prevention of statelessness. In order to be able to analyze these issues, it first had to establish the special condition that the Roma live in, and point out the most relevant nationality procedures.

The four main elements that define the Roma as a 'different' and protected group with regards to the acquisition of nationality are poverty, lack of housing, lack of personal documents and discrimination.[292] Even though these elements are not exclusive to the Roma population, they are widespread and more likely to occur among them. Extreme poverty has disabled many Roma to pay the administrative fees for acquiring a nationality or birth registration, physically travel to registration desks or give birth in a hospital, increasing their chances of being left unregistered. The lack of housing has resulted in the widespread lack of personal identification cards and registered addresses, which are requirements for registering a child at birth or obtaining the necessary documents for various nationality and birth registration procedures. The widespread absence of personal documents among the Roma has the most detrimental effect of all the elements, since the lack personal ID cards, birth, marriage and citizenship certificates leads to numerous problems such as the inability to apply for subsequent registration of birth, register a child at birth, provide a proof of one's citizenship or entitlement to it and obtain a legal residence status in order to become eligible for naturalisation. The last element that was pointed out as affecting the Roma's right to a nationality is the systematic and societal discrimination against the Roma, which can lead to discrepancies and unequal application of the law, furthering their position of vulnerability and legal uncertainty.

Furthermore, the main modes of coffering a nationality in Bosnia and Serbia follow a similar pattern, with one crucial difference. Both laws have allowed for a continuity of nationality by identifying their initial pool of citizens as all nationals of their predecessor states, the Republic of Bosnia and Herzegovina and the State Union Republic of Serbia, which in turn were based on the respective SFRY republican citizenships. Nationals of the former SFRY that have established a residence in both Bosnia and Serbia have a facilitated access to nationality in both countries provided that they have established a permanent residence. The last similarity between the two is the naturalisation procedure. Even though the required years of residence and some of the other

[292] See Chapter III, Section 2

conditions are different, both laws have indicated that one of the main requirements for naturalisation is a regularized residence.[293] The essential difference between the two laws is the relationship they establish between the acquisition of nationality by birth and birth registration. In Bosnia, persons that are born to national parents or on the territory and would otherwise be stateless are considered as nationals from the moment of their birth and the birth registration serves as a proof of that persons nationality. In Serbia, a person that is born to national parents or on the territory and would otherwise be stateless is entitled to a nationality from birth, but is considered as a national by law only after the fact of his citizenship has been recorded in the birth registry, which is usually at the moment of the registration of birth. This means that while in Bosnia birth registration is only a proof of nationality, in Serbia, it is an express requirement in order to acquire a nationality.

1.1. Discrimination against the Roma, statelessness and breach of international law

This research has shown that the nationality laws and procedures of both Bosnia and Serbia are indirectly discriminatory towards the Roma because they fail to take into account the different and vulnerable position the Roma are in. The most problematic conditions for nationality contained in these laws are requirements of permanent residence and birth registration. The laws in Bosnia and Serbia that regulate the facilitated conferral of nationality to SFRY nationals and naturalisation have a negative and disproportionate effect on the Roma, because they fail to account for the widespread lack of a legal registered residence among the Roma, significantly hampering their access to nationality through these procedures. Furthermore, the conferral of the current nationality though a legal continuity of the of the citizenships of the predecessor states has also been discriminatory towards the Roma, as those provisions have failed to take into account that many Roma did not have the appropriate SFRY republican citizenship, as a result, weren't able to acquire the citizenship of the predecessor states, and thus have not qualified for the current nationality. The Bosnian and Serbian law also discriminate against the Roma with regards to the acquisition of nationality at birth. The relationship between birth registration and nationality on the basis of *jus sanguinis* or *jus soli* is different in Bosnia and Serbia. While in Serbia it is a requirement for acquiring a nationality, in Bosnia it is only a proof of the nationality acquired by birth. Nevertheless, since both laws fail to accommodate the element that many Roma are not registered at birth and lack access to the birth registration procedures, the birth registration requirement has disproportionate and negative effects

[293] In both Serbia and Bosnia the regular naturalization procedures require permanent residence. However, in Serbia there are several facilitated naturalization procedures that require residence only a temporary basis. For Further detail please see Chapter 4.

on the Roma. In Bosnia it leaves people at the risk of statelessness, while in Serbia it renders them stateless.

The nationality laws of both Bosnia and Serbia create statelessness and the risk of statelessness among the Roma. The discriminatory provisions do not allow the Roma to effectively access the procedures for acquiring a nationality and therefore leave many without a citizenship. The regulations governing the facilitated conferral of nationality to former SFRY or predecessor-state nationals and naturalization fail to take into account that many Roma lacked the required republican citizenship and do not have a formal residence status, leaving them stateless. It is important to note that the lack of facilitated naturalisation procedures for stateless persons, does not allow naturalisation to be utilized as a statelessness prevention mechanism and protracts the predicament of the stateless Roma. The most potent cause of statelessness or the risk of statelessness recognized in Bosnia and Serbia is the birth registration requirement. The nationality of Serbia is acquired at the moment of the registration of birth. This means that all unregistered persons and persons whose fact of nationality has not been recorded in the birth registry are stateless. Since the lack of birth registration is widespread among the Roma, the requirement for having a birth registration creates statelessness among the Roma. The situation in Bosnia is more complex since everyone that has been born to national parents or on the territory and would otherwise be stateless is considered as a Bosnian national at birth. However, birth registration is an essential proof that a person has acquired a nationality, and without such evidence of citizenship it can be very difficult to substantiate ones acquisition of nationality. Since many Roma in Bosnia are not registered, the close relationship between birth registration and nationality places them at the risk of being left stateless.

The nationality laws and procedures of Bosnia and Serbia are in breach of several international obligations. The strong evidence of indirect discrimination present in all four modes of acquisition of nationality relevant to the Roma show that Bosnia and Serbia have failed to respect the right to a nationality of the Roma in a non-discriminatory manner. This is not only in contravention of the general principle of non-discrimination but also in breach of specific obligations enshrined in international treaties such as CERD, ICCPR, CRC and the ECN (relevant only to Bosnia). By incorporating strict conditions for a legal residence and a direct and indirect requirement of birth registration in order to acquire a nationality, in Serbia and Bosnia respectively, Bosnia and Serbia have failed to comply with their obligation of equal treatment in terms of the right to a nationality of Romani individuals. Furthermore, Bosnia and Serbia have also failed to respect the principle of the prevention of statelessness. Romani children, in both countries, that are being born stateless are likely to remain stateless and also face significant impediments in being registered at birth. This is in direct contravention of Bosnia and Serbia's obligations to register children at

birth, grant nationality to children who are being born stateless on their territory and therefore prevent the emergence of statelessness among Romani children. The unequal access to naturalisation that the Roma face violates the duty Bosnia and Serbia have under the CERD, to ensure that stateless persons enjoy access to naturalisation in a non-discriminatory manner.

Finally, two things can be concluded. First, Bosnia and Serbia's nationality laws discriminate against the Roma with regards to their right to a nationality and are in violation of their international obligations on non-discrimination. Second, the nationality laws of these countries are causing statelessness and the significant risk of statelessness among the Roma in Serbia and Bosnia, respectively, in breach of their international obligations to prevent statelessness.

2. Final Remarks

The issues pertaining to the Roma in Bosnia and Serbia are numerous. They lack education, healthcare, housing, equal protection of rights and political representation, etc. The problem of statelessness, even though mostly present among the Roma, has never been seen as a pressing issue that demands immediate solutions but rather has often been part of broader campaigns aimed at the promotion of Roma rights. However, in recent years the prominence of the statelessness as a key problem that has strongly detrimental effects on the Roma has been gaining momentum. With the assistance and cooperation of international organisations such as the OSCE and UNHCR, local NGO's and civil society organising have been increasingly working and advocating on the issue of statelessness in Bosnia and Serbia. For instance, Vasa Prava BiH[294] from Bosnia and Praxis[295] from Serbia have done extensive research on these issues, have advocated for nationality reforms, provided legal assistance to stateless Roma and assist and promote the birth registration campaigns. However, the responses from the governments have been limited. Statelessness is not a high priority in the discussions on issues pertaining to the Roma and significant political or legislative campaigns to address this issue have been absent. However, this does not mean that there have not been positive developments. It means that besides the progress done by the civil societies and international organisations in these countries, through their work with directly assisting the Roma, establishing regional networks and registration campaigns, the state institutions and legislators are neglecting the issue and are failing to provide sufficient support for resolving the issue of statelessness among the Roma. The identification of the most problematic provisions in the nationality laws can assist future research and advocacy in establishing effective and viable solutions

[294] Official website: http://www.vasaprava.org/
[295] Official website: http://www.praxis.org.rs/

for the stateless Roma. The establishment of Bosnia and Serbia's violations of international law can not only aid in gathering political support for resolving statelessness on the national level, but also in incentivising the international community and international organisations to pressure Bosnia and Serbia to uphold their duties and obligations. Lastly, the process of finding solutions for the stateless Roma in Bosnia and Serbia will undoubtedly contribute to the resolution of the problem in the other Western Balkan countries, in which the stateless Roma endure the same predicament.

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