

Written submission for the thematic report on racial and ethnic based discrimination through nationality and citizenship exclusion of the United Nations Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance

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Introduction

The Office for Democratic Institutions and Human Rights (ODIHR) of the Organization for Security and Co-operation in Europe (OSCE) is a principal human rights institution of the OSCE tasked to assist OSCE participating States, civil society organizations and national human rights institutions in protecting and promoting human rights and fundamental freedoms for all, “without distinction as to race, sex, language or religion,”¹ including the right to nationality, access to citizenship, civil registration and identity documents. In doing so, ODIHR is mandated to pay particular attention to the situation of Roma and Sinti communities.

According to the latest estimates of the UNHCR, the OSCE participating States host more than 722,000 people with no citizenship or at risk of statelessness² which seriously impacts their access to state services and undermines enjoyment of full range of human rights and fundamental freedoms. At the same time, this issue disproportionately affects Roma and Sinti communities across the OSCE area, leading to their further marginalization and preventing full inclusion into society.

Mandate

Participating States of the OSCE have recognized that everyone has the right to a nationality and that no one should be deprived of their nationality arbitrarily, and they have underlined that all aspects of nationality will be governed by the process of law. They will, as appropriate, take measures, consistent with their constitutional framework, not to increase statelessness.³ The OSCE participating States have further reaffirmed their recognition that everyone has the right to a nationality and that no one should be deprived of their nationality arbitrarily, and have committed themselves to continue the efforts to ensure that everyone can exercise this right and to further the international protection of stateless persons.⁴

¹ Conference on Security and Co-Operation in Europe, “Final Act”, Helsinki, 1975, <<http://www.osce.org/helsinki-final-act?download=true>>.

² Handbook on Statelessness in the OSCE Area International Standards and Good Practices, OSCE/UNHCR, 2017, p.9, <<http://www.osce.org/handbook/statelessness-in-the-OSCE-area?download=true>>.

³ Conference for Security and Co-operation in Europe, “Decisions: VI. The Human Dimension”, Helsinki, 1992, <<http://www.osce.org/mc/39530?download=true>>.

⁴ Organization for Security and Co-operation in Europe, “Charter for European Security: III. Our Common Response”, Istanbul, 1999, <<http://www.osce.org/mc/39569?download=true>>.

The right to a nationality is recognized in the Universal Declaration of Human Rights. Equally, the right of the child to identity and nationality from birth is contained in Principle 3 of the 1959 Declaration of the Rights of the Child, which formed the basis for the Convention on the Rights of the Child.

In many OSCE participating States citizenship is acquired by birth which is legally recognized and certified through the process of birth registration as part of civil registration framework. While the registration of births and acquisition of citizenship are distinct processes, birth registration serves as important proof of facts that form the basis for the conferral of citizenship.

While any civil registration system aims to include all inhabitants of a given territory, this goal is not always achieved. In some cases the right to register can be limited to lawful residents of the state. There are also instances where some citizens fail to register certain events as they miss legally established deadlines. In other cases, the failure to register can be the result of circumstances beyond the individual's control. As a consequence, persons may find it difficult to prove their legal identity or to exercise certain rights and in particular this can stand as a barrier to proving citizenship. This is a particular problem among members of Roma and Sinti populations, who, in many OSCE participating States, fail to fulfil the legal and administrative requirement to register and are hence unable to prove their legal identity.

With the aim to promote freedom of movement and other human dimension commitments, ODIHR promotes understanding that secure and efficient systems for civil registration and civil identification, as well as residency registration, indirectly but decisively determine to what extent people enjoy certain basic rights including their right to citizenship.

As an overarching principle, the OSCE participating States have agreed that the OSCE should raise awareness and develop measures to counter prejudice, intolerance and discrimination, while respecting human rights and fundamental freedoms, including the freedom of thought, conscience, religion or belief, without distinction as to, *inter alia*, race, colour, sex, language, religion or belief, political or other opinion, national or social origin, property, birth or other status.⁵ In this light, ODIHR is specifically tasked to promote the human rights of Roma and Sinti, and their integration into society. The 2003 Action Plan on Improving the Situation of Roma and Sinti within the OSCE Area (2003 Action Plan) provides a comprehensive set of commitments and proposed measures, “to eradicate discrimination against them and to bring about equality of opportunities, consistent with OSCE commitments.”⁶

Furthermore, OSCE participating States committed through the 2003 Action Plan to be “proactive in ensuring that Roma and Sinti people [...] have all necessary documents, including birth certificates, identity documents and health insurances certificates” and to “work in partnership with Roma and Sinti civil society organizations [...] in resolving problems related to the lack of basic documents”. The 2003 Action Plan places a particular emphasis on the circumstances of Roma and Sinti in crisis and post-crisis situations by tasking the OSCE/ODIHR Contact Point for Roma and Sinti Issues to respond effectively “by, *inter alia*, co-operating with relevant governments, inter-governmental bodies and

⁵ OSCE Ministerial Council, Decision No. 10/05, “Tolerance and Non-Discrimination: Promoting Mutual Respect and Understanding”, Ljubljana, 2005, <<http://www.osce.org/mc/17462?download=true>>.

⁶ OSCE Ministerial Council, Decision No. 3/03, “Action Plan on Improving the Situation of Roma and Sinti within the OSCE Area”, Maastricht, 2003, <<http://www.osce.org/odihr/17554?download=true>>.

international organizations, in particular the UNHCR, to ensure protection of Roma communities at risk”, while paying special attention to the situation of Roma and Sinti women and children in that regard.

Lack of access to civil registration and identity document for Roma and Sinti

The right to nationality is one of the fundamental human rights and essentially considered as “right to have rights” which remains, however, inaccessible to many members of Roma and Sinti communities, who face problems with access to documents in many parts of the OSCE region. The OSCE commitments regarding Roma and Sinti reiterate the importance of access to personal documents for tackling the social exclusion and deep-rooted discrimination of Roma and Sinti, which is echoed in the policy documents aimed at the integration of Roma and Sinti across the OSCE area. There is, however, still a strong demand for targeted actions to ensure access to civil registration and personal identification documents for all Roma and Sinti that is key to their integration.

ODIHR has been continuously raising awareness of the vulnerability of Roma and Sinti and their difficulties in accessing birth certificates and identification documents that poses risk of statelessness, in particular in South-Eastern Europe and Ukraine. According to the *Implementation of the Action Plan on Improving the Situation of Roma and Sinti Within the OSCE Area, Status Report 2013*, lack of civil registration and identity documents among Roma and Sinti negatively impacts their access to employment, education, healthcare, housing conditions, and political and public life in the OSCE region.⁷

Moreover, in its report on *Activism, Participation and Security among Roma and Sinti Youth*, ODIHR highlighted that Roma and Sinti youth in Central and South Eastern Europe often do not possess personal documents, including birth certificates, identification (ID) cards and passports, which prevents them from enjoying and exercising their rights and responsibilities as citizens.⁸ This report indicates that in certain countries of the region there is a considerable discrepancy in the possession of birth certificates and ID cards when comparing Roma to non-Roma population. At the same time comparison of Roma men to Roma women points at the disadvantaged position of Roma women in that regard in specific countries.

The issue of lack of documents particularly affects Roma communities in the post-crisis area of South-Eastern Europe, where conflicts have led many people to lose their personal documentation.⁹ Furthermore, ODIHR’s *Situation Assessment Report on Roma in Ukraine and the Impact of the Current Crisis* suggests that lack of personal documents remains one of the key barriers towards improvement of situation of Roma in Ukraine.¹⁰

⁷ OSCE/ODIHR, *Implementation of the Action Plan on Improving the Situation of Roma and Sinti within the OSCE Area: Status Report 2013*, 2013, <<http://www.osce.org/odihr/107406?download=true>>.

⁸ Ermira Kamberi, “The Position of Roma Youth in Central and South-Eastern Europe: Results from the Regional Roma Survey 2011,” in *Activism, Participation and Security among Roma and Sinti Youth – Conference Report*, ODIHR, 2014, <<http://www.osce.org/odihr/187861?download=true>>.

⁹ *Op. cit.* note 7.

¹⁰ OSCE/ODIHR, *Situation Assessment Report on Roma in Ukraine and the Impact of the Current Crisis*, August 2014, pp. 19-21, <<http://www.osce.org/odihr/124494>>.

The lack of civil registration documents especially impacts Roma and Sinti children preventing their access to education and preventive healthcare system, and thus posing threat to their health and hindering further integration process of the community.¹¹

Among major factors contributing to the lack of personal documents among Roma and Sinti resulting in risk of statelessness are complicated and burdensome bureaucratic procedures, lack of financial means to pay for the process of obtaining personal documentation, residence in unregistered settlements and difficulties in registering permanent place of residence, displacement, lack of access to free legal aid, lack of information about the procedures and discrimination.¹²

The inability of Roma and Sinti to obtain a legal identity leads to their greater marginalization and deprivation of rights, further perpetuating discrimination which passes from generation to generation. Therefore, the elimination of legal invisibility of Roma and Sinti should be a priority for the OSCE participating States to ensure the full enjoyment of rights and facilitate their inclusion.

Recommendations on ensuring access to civil registration and personal documentation for Roma and Sinti

Drawing on the conclusions above and its expertise on the matter, ODIHR has made the following recommendations to the respective participating States:

- Ensure full implementation of the OSCE commitments and other relevant international documents related to the problem of the lack of personal documents and statelessness and fighting discrimination against Roma and Sinti;
- Create appropriate co-ordination mechanisms to tackle the issue of lack of personal documents and statelessness among Roma and Sinti;¹³
- Conduct mapping of the Roma and Sinti communities to identify persons lacking personal documents and their needs, paying attention to the situation of Roma and Sinti women and youth;¹⁴
- Make necessary legislative and procedural changes to address the identified issues with access to civil registration and identification documents among Roma and Sinti, including reduction of fees and abolition of fines for failure to obtain a birth certificate and/or identity document;¹⁵
- Ensure access to free legal aid for Roma and Sinti seeking assistance in the process of obtaining documents;¹⁶

¹¹ Ajnur Sulejman, *Registration and Possession of Personal Identification Documents as Preconditions for Better Education of Roma People, through Case Studies in the Settlements of Topaana and Sredorek in Skopje and Kumanovo*, ODIHR, 2012.

¹² See OSCE/ODIHR, *Summary Report of the Expert Seminar on Access to Identification and Civil Registration Documents by Roma in Ukraine*, Kyiv, 2015, p. 6, <<http://www.osce.org/odihr/211996?download=true>>.

¹³ *Ibid.* p. 9; see also: OSCE/ODIHR, “Odesa Declaration”, Roundtable on Access to Identity and Civil Registration Documents for Roma in Ukraine, Odesa, Ukraine, 30-31 May 2017, <<http://www.osce.org/odihr/347251?download=true>>.

¹⁴ OSCE, “Zagreb Declaration”, Conference on the Provision of Civil Status Documentation and Registration in South Eastern Europe, Zagreb, Croatia, 26–27 October 2011, part I, <<http://www.osce.org/hcnm/85249>>; see also *Op.cit.* notes 12-13.

¹⁵ *Ibid.*; see also *Op.cit.* note 10, p. 25 and note 13.

¹⁶ UN High Commissioner for Refugees (UNHCR), *Co-chair Conclusions of the Regional Conference on Access to Civil Registration and Documentation in South-Eastern Europe: Progress and Remaining Challenges*

- Enhance co-operation with Roma and Sinti civil society organizations and other relevant actors on the matter;¹⁷
- Conduct outreach and raise awareness among Roma and Sinti about the necessity of obtaining personal documents, providing information about the procedures and available assistance.¹⁸

since the 2011 Zagreb Declaration, Podgorica, 25 October 2013,
<<http://www.refworld.org/docid/5285ee494.html>>; see also *Op.cit.* note 13.

¹⁷ *Op.cit.* note 12, p. 9.

¹⁸ *Op.cit.* note 12, note 10, p. 25 and note 13.