

Ending Childhood Statelessness:

A Study on Slovenia

Working Paper 08/15



EUROPEAN NETWORK ON STATELESSNESS

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Introduction

Slovenia, an EU Member State since 2004, became independent from the former Socialist Federal Republic of Yugoslavia in 1991. Most cases of statelessness that can be identified in Slovenia derive from the period of the dissolution of Yugoslavia and were caused by inconsistent nationality policies within the former Yugoslavia and then the nationality policies of the successor states. Indeed, state succession left cases of statelessness in its wake across the former Yugoslav region. In Slovenia, those known to have been affected can mostly be found among the so-called erased persons of Slovenia. The term “erased persons” refers to those who had citizenship of another republic of the former Yugoslavia, but had permanent residence in the former Socialist Republic of Slovenia. When, after Slovenia’s independence, for one reason or another an individual did not obtain Slovenian citizenship, the state arbitrarily and without any basis in the law erased them from the register of permanent residents. Erasure should not be confused with the issue of statelessness: the erasure was a deprivation of permanent residence status in Slovenia and the erased people in most cases had the nationality of another successor state of the former Yugoslavia. Nevertheless, a smaller group within this population was stateless due to the aforementioned nationality policies. The erasure significantly then deteriorated the situation of these stateless individuals as they also lost their tie to the country in which they have lived (some of them for decades), including losing the right to reside in the country and all of the rights that derive from a permanent resident status.

To date, Slovenia has not established a dedicated statelessness determination procedure and stateless persons are consequently only detected through status regularization procedures (i.e. for acquisition of citizenship) during which a person claims that he/she is stateless. The number of identified cases of statelessness in Slovenia is very low, but it appears that this does not depict the actual situation and there are likely to also be undetected cases.

The objective of this research, conducted within the European Network on Statelessness campaign “None of Europe’s Children should be Stateless”, is to study the extent, content and implementation of legislative safeguards for the prevention of childhood statelessness at the national level in Slovenia. The research comprises a detailed legal analysis, the identification and analysis of relevant jurisprudence and interviews with implementing authorities about their knowledge and experience of relevant safeguards, as well as with relevant organisations with regard to advocacy around this issue. There are also two case studies of stateless children in the country.

The report comprises four main thematic sections. It opens with an overview of the issue of statelessness in the national context – including the national legal framework and existing research, data and knowledge on (childhood) statelessness. This is followed by an overview of acquisition of nationality by otherwise stateless children, born on the territory and abroad. The third section looks at prevention of statelessness among children in a number of other contexts: foundlings, adoption, surrogacy, loss of nationality and facilitated naturalisation. The last part of the report explores the link between birth registration and statelessness.

1. Statelessness in the national context

International obligations

The key international convention that Slovenia acceded to in the field of statelessness is the 1954 UN Convention relating to the Status of Stateless Persons. Other relevant international instruments Slovenia acceded to are the Convention on the Rights of the Child, the International Covenant on Civil and Political Rights, the International Convention on the Elimination of All Forms of Racial Discrimination, the Convention on the Elimination of All Forms of Discrimination against Women and the Convention on the Rights of Persons with Disabilities. When ratifying these instruments, Slovenia has not entered any reservations of relevance to the issue of children's right to a nationality. In accordance with Article 8 of the Constitution of the Republic of Slovenia treaties that have been ratified and published are applied directly.

However, Slovenia has not ratified or acceded to the 1961 UN Convention on the Reduction of Statelessness, the European Convention on Nationality or the 2006 Council of Europe Convention on the Avoidance of Statelessness in the context of State Succession. The position of the Ministry of Interior of the Republic of Slovenia is that accession to the 1961 Convention is not needed as its main principles are already included in the national legislation on citizenship.¹ As this report shows, it is indeed the case that many of the rules relating to the prevention of childhood statelessness can already be found in the Slovenian legislation, however, a few gaps remain in respect of the safeguards contained in these international conventions and there are some other areas in which the law and practice could be improved.

National legislative framework

The rules on acquisition and loss of nationality are contained in the Citizenship of the Republic of Slovenia Act (hereinafter; Citizenship Act).² This law is the only legislative act concerning nationality and it sets out the rules on acquisition of nationality by children. The law was adopted on 25.6.1991, which is the date of Slovenia's independence from the former Socialist Federal Republic of Yugoslavia (hereinafter: SFRY). Since its adoption, the law was amended five times; the last amendment being on 7 December 2006.

On the basis of the law, several implementing regulations were adopted: the Decree on criteria for establishing the compliance with national interest for acquiring the citizenship of the Republic of Slovenia through article 13 of Act on the Citizenship of the Republic of Slovenia,³ the Decree on criteria and circumstances establishing conditions for acquiring the citizenship of the Republic of Slovenia through naturalisation,⁴ the Rules on the procedure and manner of

¹ Kogovšek Šalamon, Neža (2012), A Study and Comparison of National Legislation in Slovenia and International Standards Related to Statelessness, p. 50.

² Slovenia, Citizenship of the Republic of Slovenia Act (*Zakon o državljanstvu Republike Slovenije*), 25 June 1991 and subsequent modifications, available at: <http://www.pisrs.si/Pis.web/pregledPredpisa?id=ZAKO13>

³ Slovenia, Decree on criteria for establishing the compliance with national interest for acquiring the citizenship of the Republic of Slovenia through article 13 of Act on the Citizenship of the Republic of Slovenia (*Uredba o merilih za ugotavljanje nacionalnega interesa pri sprejemu v državljanstvo Republike Slovenije na podlagi 13. člena Zakona o državljanstvu Republike Slovenije*), 26 April 2007 and subsequent modifications, available at: <http://www.pisrs.si/Pis.web/pregledPredpisa?id=URED4519>

⁴ Slovenia, Decree on criteria and circumstances establishing conditions for acquiring the citizenship of the Republic of Slovenia through naturalization (*Uredba o merilih in okoliščinah ugotavljanja pogojev pridobitve državljanstva Republike Slovenije v postopku naturalizacije*), 31 May 2007 and subsequent modifications, available at: <http://www.pisrs.si/Pis.web/pregledPredpisa?id=URED4352>

the solemn act of oath taking⁵ and the Decree on the obstacles for release from citizenship of the Republic of Slovenia due to military service.⁶ None of these implementing regulations contain further detail on how the nationality rules concerning access to nationality for otherwise stateless children or avoidance of statelessness of children are to be interpreted and applied in practice. According to the Ministry of Interior, no circulars or internal instructions exist on the topic.⁷

In accordance with Article 27 of the Citizenship Act, most matters concerning acquisition and loss of citizenship are in the first instance ruled on by administrative units, which are territorial bodies of the state administration. The right to appeal against a first instance decision is provided by the General Administrative Procedure Act,⁸ which in Article 231 states that the ministry with the competent jurisdiction over the subject-matter (in this case the Ministry of Interior) rules on appeals against decisions of administrative units. In administrative matters, the Slovenian legal system further enables judicial review of administrative acts – after the decision of the Ministry of Interior (*Ministrstvo za notranje zadeve*) a party to procedure may initiate an administrative dispute before the Administrative Court of the Republic of Slovenia (*Upravno sodišče Republike Slovenije*).

The Citizenship Act does not contain a definition of a ‘stateless person’. A definition is, however, contained in the Aliens Act.⁹ In accordance with Article 2 of the Aliens Act, a stateless person shall be an alien who is not deemed to be a national of any country in accordance with the legal acts of individual countries.¹⁰ The 1954 UN Convention relating to the Status of Stateless Persons defines a “stateless person” as a person who is not considered a national by any State under the operation of its law. Under the convention, “considered as [...] under the operation of its law” does not only mean legislation, but also ministerial decrees, regulations, orders, judicial case law, and where appropriate, customary practice.¹¹ According to the UNHCR Guidelines on Statelessness, the term “legal acts” seems to be narrower than “its law”, as the former does not necessarily cover sources of law such as customary practice,¹² which could affect the possibilities of a person to prove that he/she is a stateless person. This may have knock-on effects for access to nationality or otherwise stateless children, as will come to light in the case studies presented later in this report.

Existing research, data and knowledge on (childhood) statelessness

So far, the issue of statelessness has not received comprehensive attention in Slovenia and it is a concept that is not well understood. Only four studies on the topic of statelessness have been carried out in the past decade: an analysis by the Hungarian Helsinki Committee Monitor of the protection mechanisms for non-refugee stateless persons (2007);

⁵ Slovenia, Rules on the procedure and manner of the solemn act of oath taking (*Pravilnik o postopku in načinu slovesnega dejanja podaje prisege*), 26 April 2007 and subsequent modifications, available at: <http://www.pisrs.si/Pis.web/pregledPredpisa?id=PRAV8006>

⁶ Slovenia, Decree on the obstacles for release from citizenship of the Republic of Slovenia due to military service (*Odredba o ovirah za odpust iz državljanstva Republike Slovenije zaradi vojaške dolžnosti*), 1 August 1991, available at: <http://www.pisrs.si/Pis.web/pregledPredpisa?id=ODRE843>

⁷ Interview with representatives of the Ministry of Interior (*Ministrstvo za notranje zadeve*), conducted on 11.3.2015.

⁸ Slovenia, General Administrative Procedure Act (*Zakon o splošnem upravnem postopku*), 16 September 1999 and subsequent modifications, available at: <http://www.pisrs.si/Pis.web/pregledPredpisa?id=ZAKO1603>

⁹ Slovenia, Aliens Act (*Zakon o tujcih*, ZTuj-2), 15 June 2011 with subsequent modifications, available at: <http://www.pisrs.si/Pis.web/pregledPredpisa?id=ZAKO5761>

¹⁰ The exact wording of the definition in the Slovenian language is as follows: »Oseba brez državljanstva je tujec, ki ga nobena država v skladu s svojimi pravnimi akti nima za svojega državljana.«

¹¹ 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, 20 February 2012, available at: <http://www.refworld.org/cgi-bin/texis/vtx/rwmain?docid=4f4371b82>

¹² Kogovšek Šalamon, Neža (2012), A Study and Comparison of National Legislation in Slovenia and International Standards Related to Statelessness.

the study on the costs of statelessness, supported by the U.S. Department of State (2011)¹³; the national legal study on statelessness, carried out by Neža Kogovšek Šalamon and supported by the United Nations High Commissioner for Refugees' Regional Representation in Budapest (2012)¹⁴; and the Mapping of Stateless Persons in Slovenia, carried out by the Peace Institute (commissioned in 2012). None of these studies have focused on childhood statelessness in particular.

However, the above mentioned studies reveal that the key shortcoming remains in the lack of data on the actual number of stateless persons and their needs.¹⁵ These previous studies also confirm that a notable lack of knowledge about the problem of statelessness exists. **There is a persistent assumption of citizenship – the authorities deem that a person in fact has a citizenship or could acquire citizenship and therefore do not consider him/her stateless. This is particularly burdensome for former Yugoslav nationals, who are in a situation where it is almost impossible to prove that they are stateless.**¹⁶

As this is the case for statelessness in general, childhood statelessness is no less overlooked by Slovenian authorities. An interview with representatives of the Ministry of Interior (*Ministrstvo za notranje zadeve*)¹⁷ and the Administrative Unit Ljubljana (*Upravna enota Ljubljana*)¹⁸ showed that the authorities do not perceive childhood statelessness as a pressing matter since they, as the competent authorities, do not deal with many cases of children at risk of statelessness. In their opinion, Slovenian legislation covers all aspects of acquisition of citizenship for children who might otherwise be left without a citizenship.

In 2014, the Faculty of Arts of the University of Ljubljana (*Filozofska fakulteta, Univerza v Ljubljani*) organized a symposium, entitled "Stateless children, erased children".¹⁹ The main focus of the symposium was the consequences of erasure for children, who were born to erased persons after the erasure.²⁰ The discussion at the symposium and the testimonials of three erased children determined that the children of the erased have suffered similar consequences as the erased themselves – particularly in terms of the lack of access to health care and social benefits and in some cases, education, severe social stigma and peer violence. **The problem of erasure has often been misunderstood as a statelessness problem. However, the two problems should not be confused: while statelessness is a situation of a person who has no nationality, the erasure was a deprivation of permanent residence status in Slovenia. Those who were rendered stateless because of nationality policies and were later also erased (i.e. deprived of their permanent residence status in Slovenia) were put in an even more difficult situation.** This means that the erasure aggravated the situation of those erased people who were already stateless, while the erasure as such did not cause statelessness.

¹³ <http://www.state.gov/j/prm/policyissues/prmfund/189501.htm>

¹⁴ <http://www.unhcr-centraleurope.org/pdf/resources/evaluation-and-research/study-on-statelessness-legislation-in-slovenia.html>

¹⁵ Bajt, Veronika, Kogovšek Šalamon, Neža (2014). Brezdržavljanost v Sloveniji (*Statelessness in Slovenia*). *Dve domovini / Two Homelands* 39, 7-18.

¹⁶ Ibid.

¹⁷ Interview with representatives of the Ministry of Interior (*Ministrstvo za notranje zadeve*), conducted on 11.3.2015.

¹⁸ Interview with representatives of the Administrative Unit Ljubljana (*Upravna enota Ljubljana*), conducted on 18.3.2015

¹⁹ Erased persons are persons who had citizenship of another republic of the former Yugoslavia, but had permanent residence in the former Socialist Republic of Slovenia; who after Slovenia's independence did not obtain citizenship and were as a consequence arbitrarily erased from the register of permanent residents.

²⁰ Amnesty International Slovenia, Erased week with the emphasis on the children (*Teden izbrisanih tudi s poudarkom na otrocih*), available at:

<http://www.amnesty.si/v-tednu-izbrisanih-tudi-predstava-25-671.html>.

Previous studies have shown that only a handful of institutions keep records of people's citizenship and could therefore provide official, yet not exhaustive, statistics of stateless persons.²¹ For the purposes of this research we approached the Statistical Office of the Republic of Slovenia (*Statistični Urad Republike Slovenije*) and the Internal Administrative Affairs, Migration and Naturalisation Directorate of the Ministry of the Interior (*Direktorat za upravne notranje zadeve, migracije in naturalizacijo Ministrstva za notranje zadeve*). The Statistical Office replied that they do not collect such data and referred us to the Ministry of Interior. The Ministry data is drawn from three official registries:

1. the Registry of Foreigners which keeps data on temporary and permanent residence permits,
2. the Asylum Registry that assembles data on persons requesting international protection and those with such status already granted,
3. the Registry of Citizenships, where the data on all applications for citizenship of the Republic of Slovenia is kept.

According to the Ministry of Interior's data, in March 2015 the number of statuses issued to stateless persons is as follows: on the basis of the Aliens Act permanent residence permit was issued to eleven persons; temporary residence permit was issued to two persons and international protection was granted to one person.²² It should be noted, that this data of the Ministry is drawn from procedures for status regularisation in which individuals claimed that they are stateless. Therefore **it is probable that more stateless persons than the small number who are visible in the Ministry's statistics actually live in Slovenia, yet have so far remained unrecognised and undetected as stateless, as Slovenia does not have a dedicated statelessness determination procedure.** In the period of 2009-2013 five persons acquired Slovenian citizenship through facilitated naturalisation for stateless persons as prescribed by the Citizenship Act. For 2014 it is known that one person acquired citizenship through facilitated naturalisation, however data for 2014 are not yet final.

Stakeholders

There are not many organizations that tackle statelessness in general and no one is targeting childhood statelessness specifically. As described above, the state authorities that tackle statelessness through status regularisation procedures are the local administrative units and the Ministry of Interior. The Human Rights Ombudsman (Varuh človekovih pravic) is another institution to which stateless individuals potentially could turn for advice and support – although they have not dealt with any such cases in practice to date.

Organisations that come across stateless persons are mostly NGOs working with asylum seekers, however it is possible that the awareness among the staff on the issue is not sufficient for the stateless persons to actually be identified as such. These organisations also indicated no practical experience with such cases. The Peace Institute is so far the only organisation that has focused on the issue of statelessness and has also identified several stateless persons through its

²¹ Bajt, Veronika, Kogovšek Šalamon, Neža (2014). Brezdržavljanost v Sloveniji (*Statelessness in Slovenia*). *Dve domovini / Two Homelands* 39, 7-18.

²² Interview with representatives of the Ministry of Interior (*Ministrstvo za notranje zadeve*), conducted on 11.3.2015.

work with the erased persons. The United Nations High Commissioner for Refugees' Regional Representation in Budapest (UNHCR) has supported the above mentioned research in Slovenia and organized a symposium on the topic on statelessness in December 2014. However, neither statelessness in general nor childhood statelessness are a focus of public debate.

2. Grant of nationality to otherwise stateless children

General rules on acquisition of nationality

The general principle of all children enjoying the right to a nationality is not laid down in Slovenia's law. Article 3 of the Citizenship Act stipulates that citizenship of the Republic of Slovenia is acquired:

1. *by origin,*
2. *by birth on the territory of the Republic of Slovenia,*
3. *through naturalisation, meaning admission to citizenship upon a filed petition,*
4. *in compliance with international agreement.*

The general rule on acquisition of nationality by children is *jus sanguinis*, through descent from a parent who is a Slovenian citizen. Article 4 of the Citizenship Act stipulates the conditions under which the child acquires Slovenian citizenship by origin:

1. *if the child's father and mother were citizens of the Republic of Slovenia at the time of the child's birth;*
2. *if one of the parents was a citizen of the Republic of Slovenia at the time of the child's birth and the child was born on the territory of the Republic of Slovenia;*
3. *if one of the parents was a citizen of the Republic of Slovenia at the time of the child's birth and the other was unknown or of unknown citizenship or without citizenship and the child was born in a foreign country.*

This provision does not explicitly state that citizenship has to be granted at birth as the child automatically acquires citizenship at birth (i.e. it does not have to be granted) if the relevant conditions are met.

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

As described above, the general rule for acquisition of nationality at birth is by descent. The law also contains another rule on access to nationality for children born on the territory – also automatic, by operation of the law. Article 9 of the Citizenship Act stipulates:

1. *A child born or found on the territory of the Republic of Slovenia of unknown parentage or whose parents are of unknown citizenship or have no citizenship at all shall acquire citizenship of Republic of Slovenia.*

2. *Upon request of the parents, citizenship of the Republic of Slovenia shall cease for a child that acquired it as described in paragraph 1 of this article if it is discovered prior to the child reaching the age of 18 that the parents are foreign citizens. Citizenship shall cease on the day the decision about it was handed over to such a person.*

The first paragraph of this provision that, in part, also applies to foundlings, has a clear aim to prevent the statelessness of a child that is born on the territory. However, **there is an unaddressed situation and a gap in terms of relevant international legal standards:**²³ **the question of citizenship of a child who is born in Slovenia, whose parents are known and are not nationals of the Republic of Slovenia, but have citizenship of another state which they are unable to transfer.** It is not the case that all states would ensure citizenship to all children of their citizens, regardless of the place of their birth, yet Slovenian law does not prevent statelessness of such a child born on the territory. As neither of the child's parents are Slovenian nationals, the child would not meet the conditions of Article 4 of the Citizenship Act. As the parents are also not of unknown citizenship or without citizenship, the child would also not meet the conditions of Article 9 of the Citizenship Act. The Slovenian Citizenship Act should be amended to ensure that a child with foreign parents unable to pass on their nationality would obtain citizenship of Slovenia to avoid his or her statelessness.

Valentina's story

Valentina is a young Roma woman who was born in Slovenia, as was her child. They are both stateless. Valentina was born when the country was still a part of the Socialist Federal Republic of Yugoslavia. Her father was born in Kosovo and her mother in Serbia. They moved to Slovenia, where they registered their permanent residency. She does not know why exactly she was left stateless, but probably because she was born in Slovenia and Serbian authorities were either not notified of her birth or had not registered her as a Serbian national upon notification. In 1992, after Slovenia became independent, her family was forced to leave the country. Valentina was only a child then and she does not know what happened exactly, but she knows that in that year she and her family members were illegally erased from the permanent residence register and that it was not her parents' choice to leave. They went to Germany where they stayed for 13 years. At that time, she did not know that she has no citizenship as her life appeared normal – her family lived in an apartment, they had social security and the children attended school. Due to long term residency in Germany, the family could have acquired German citizenship but her father decided to bring the family back to Slovenia. There, Valentina learned that she was one of the erased people of Slovenia – she did not fully understand the meaning of erasure but knew she had no rights in Slovenia. It was also in that time that her father decided to sell her into marriage. To prevent that from happening, her mother fled with Valentina and her siblings back to Germany. Her father came after them and gave a false statement before the German authorities that the family has permanent residence in Slovenia, which caused their expulsion back to Slovenia. Without any other options, Valentina and her family members applied for asylum but their application was rejected.

While in the asylum centre she had seen on some papers that she is of unknown citizenship but did not understand the meaning of that. She started asking about her citizenship but was just told that she should have the same citizenship as her parents. Many years later she acquired a permanent residence permit on the basis of being erased. She has

²³ Article 1 of the 1961 Convention on the Reduction of Statelessness; article 6 of the European Convention on nationality. See also Annex 1.

invested all her efforts to regulate her status in Slovenia. Now that she has a permanent residence permit she feels that the fact that she is stateless is a great burden: 'I feel trapped and I cannot go where I want to go – to visit my sisters. I lack freedom.' In 2012 she gave birth to her son who is also without citizenship. His father is a Serbian national but according to the information they received from Serbian embassy, because Valentina is considered of unknown citizenship, the father cannot formally acknowledge paternity before Serbian authorities and therefore cannot pass his citizenship onto their son. The son has been unable to obtain Slovenian nationality.

Another issue is the provision of the second paragraph of Article 9 that does not include a safeguard requiring that before the withdrawal of Slovenian citizenship upon the parent's request, it is ensured that the child has, or has an assurance, of obtaining his/her parents' nationality in order to prevent the child from being stateless. Such a clause does exist within the Citizenship Act as a general condition for loss of citizenship, in article 18 (proof must be provided that the person has or will be granted another nationality), yet it is advisable for article 9 to be amended to explicitly incorporate protection against statelessness for the child in the circumstances outlined in this provision.

The law also provides two possibilities for children born on the territory to be granted nationality upon application. The first is in accordance with paragraph 5 of Article 12 of the Citizenship Act. This provision states that if such an act is in accordance with the national interest,²⁴ **the competent authority may within its discretion admit to the citizenship of the Republic of Slovenia a person over the age of 18 who was born on the territory of the Republic of Slovenia and has been living in the Republic of Slovenia since birth.**

The second possibility of acquiring citizenship upon application is under paragraph 5 of Article 14 of the Citizenship Act:

Citizenship of the Republic of Slovenia may be granted to the child having no parents or whose parents have lost their parental rights or their functional capacity and who has lived in Slovenia since his/her birth, on the grounds of a petition by his/her guardian who is a citizen of the Republic of Slovenia and who lives with the child, provided that the consent has been obtained from the communal authority competent for social welfare if the acquisition of citizenship is to the benefit of the child.

The provision does not mention a condition for the child to be born on the territory of Slovenia; however, the condition of living on the territory of Slovenia since birth implies that.

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

Information on the right to nationality for otherwise stateless children born in the country is made available to the general public in the same manner as all Slovenia's legislation in general. The legislation on the subject of citizenship is published online, including on the web site of the Ministry of Interior. Information on personal statuses and procedures for obtaining personal documents are available on the web portal e-Administration (*e-Uprava*) where

²⁴ National interest is a legal standard, which is not defined by the law; the law confers discretionary power to the authorities to determine the existence of national interest in each individual case.

people can also submit questions on these topics. People may also turn for information directly to the Ministry of Interior and the administrative units - personally, by telephone or through a written inquiry. When relevant legislation is amended, the administrative units are informed and a short PR notification is prepared and published online, which is also available to the general public.²⁵

As in most cases concerning acquisition of Slovenian citizenship, the authorities competent for recognising or granting nationality for otherwise stateless children born in the country are the administrative units (Article 27 of the Citizenship Act): territorial bodies of the state administration. The right to appeal against a first instance decision is prescribed by the General Administrative Procedure Act,²⁶ which stipulates that the ministry with the competent jurisdiction over the subject-matter (in this case, the Ministry of Interior) rules on appeals against decisions of administrative units. The Ministry of Interior is also the authority to which the civil registry officer (at the administrative unit) who would be handling a particular case of an otherwise stateless child born on the territory could turn for technical assistance, in case he/she would not understand the legal provisions on the subject-matter.²⁷ Before turning to the Ministry for assistance, the civil registry officer would first consult his/her colleagues and the management at the administrative unit and also with other administrative units that might have dealt with similar cases before. Specific guidelines for otherwise stateless children have not yet been developed. In the past, registry courses have been organized for civil registry staff, but not in at least the last five years.²⁸ The civil registry staff do not consider this as causing a deficit of information because documents from the past registry courses are still available.²⁹ Every once in a while, the Ministry of interior organizes regional consultations in the field of citizenship; however, due to the lack of cases, the topic of otherwise stateless children born on the territory has not been discussed at these consultations, nor was it contained in the documents from any of the previous registry courses.³⁰

Although there are no particular guidelines, in theory under Article 9 of the Citizenship Act (*A child born or found on the territory of the Republic of Slovenia of unknown parentage or whose parents are of unknown citizenship or have no citizenship at all shall acquire citizenship of Republic of Slovenia*), the authorities would determine that the parents are of unknown citizenship or have no citizenship similarly as in procedures under Article 12 of the Citizenship Act, which provides for facilitated naturalisation for stateless persons residing on the territory.³¹ The authorities would therefore determine all circumstances that connect the individual to a certain country with a view to ascertaining what/whether citizenship is held. In principle, there are three types of connection to another state: the country of birth, the country of long term residence, the county of the parents' nationality / birth. In some cases, the parties to such procedures would present the evidence themselves (a written confirmation of the fact that these countries do not have them registered as citizens). In other cases this proof would still need to be obtained. That can be done by the party to the procedure or by the administrative authority through the Ministry of Foreign Affairs (*Ministrstvo za zunanje zadeve*). As the process of obtaining such certificates can be very lengthy, both paths are often used simultaneously. As this is personal data, the foreign country often demands the consent of the individual.

²⁵ *Ibid.*

²⁶ Slovenia, General Administrative Procedure Act (*Zakon o splošnem upravnem postopku*), 16 September 1999 and subsequent modifications, available at: <http://www.pisrs.si/Pis.web/pregledPredpisa?id=ZAKO1603>

²⁷ Interview with representatives of the Ministry of Interior (*Ministrstvo za notranje zadeve*), conducted on 11.3.2015.

²⁸ Interview with representatives of the Administrative Unit Ljubljana (*Upravna enota Ljubljana*), conducted on 18.3.2015

²⁹ *Ibid.*

³⁰ Interview with representatives of the Ministry of Interior (*Ministrstvo za notranje zadeve*), conducted on 11.3.2015.

³¹ *Ibid.*

According to the Ministry, if there was a case of a child who is born in Slovenia, whose parents are known and are not nationals of the Republic of Slovenia, but have the citizenship of another state which requires a child to be born on its territory to be granted citizenship (where under Slovenian law there is no safeguard to prevent statelessness of such a child), the authorities would use the provisions of the UN Convention on the Rights of the Child to enable the child would acquire Slovenian citizenship under Article 9 of the Citizenship Act.³² In general, when there are exceptional cases which are not covered by the legislation (in any area, not only concerning statelessness), the authorities strive to directly apply the provisions of the Convention, in line with the best interest of the child.³³

Statistical data on how many otherwise stateless children were born in the country in recent years are not available. According to the Ministry of interior, there were no cases of acquisition of citizenship under Article 9 of the Citizenship Act. Yet, there are indications that the cause lies not in the actual absence of such cases in practice but rather in the failure to identify cases of otherwise stateless children born in the territory, as demonstrated in the case study below.

Adrian's story

Adrian was born in Ljubljana in 2007 and now attends primary school there. However, he spent most of his life in Germany. His parents are Roma from Kosovo and had the nationality of the Socialist Federal Republic of Yugoslavia. His father lived in Slovenia in the 80's where he had permanent residence permit. In 1992 he was illegally erased from permanent residents' register by the Slovenian authorities. After being deported, Adrian's father fled to Germany where he applied for refugee status. There he met and married Adrian's mother who was also registered as an asylum seeker. Their asylum applications were later rejected but since neither of them acquired any citizenship after the breakup of Yugoslavia, they enjoyed so-called "tolerated stay" in Germany. Adrian has 4 older siblings who were all born in Germany in this period. The family was under pressure to regulate their status and leave Germany and therefore in 2005 they went to Slovenia. In an attempt to re-regularize the father's status (and the status of his family members) they applied for asylum.

During their two-year stay in Slovenia as asylum seekers, Adrian was born. Although his entire family was stateless, Adrian did not acquire Slovenian citizenship at birth (as stipulated by Slovenian law) and to this day remains stateless. Later their asylum application was rejected and the family fled back to Germany. After years of struggle, Adrian's father finally got back Slovenian permanent residence permit as an erased person of Slovenia. Soon after that, Adrian also acquired a permanent residence permit as a person born in Slovenia to an erased person. But it took four more years for the other family members to acquire temporary residence permit under family reunification policy and it was only in 2014 that Adrian and his family moved back to Slovenia. In February 2015, the other family members also acquired a permanent residence permit. The family is now more at peace as permanent residence permit provides them with more security and stability. However, Adrian and his family members still do not have a nationality. At the moment

³² *Ibid.*

³³ In accordance with Article 8 of the Constitution of the Republic of Slovenia ratified and published treaties are applied directly.

they have Slovenian alien's passport but the ability to travel with this document is limited. In their view, the absence of a regular passport is the biggest shortcoming of their situation.

The reason underlying the failure to identify cases of statelessness is that the assumption of citizenship, or of the possibility to acquire citizenship, is a common practice in various official proceedings concerning foreigners.³⁴ That makes it impossible for a person to be recognised as stateless and also contradicts the definition of statelessness. The definition of a stateless person does not include any such "predictability clause" about whether or not a person could try to gain citizenship in the future, but merely concerns the present state of affairs – in which a person is therefore stateless when no state considers him/her as its national under the operation of its law.³⁵ Fieldwork conducted for this research confirmed this perception of the authorities – the authorities deem that the person currently does not have a nationality but could acquire one if he/she filed an application (e.g. in the country of his/her birth or the country of birth of his/her parents). In such cases the authorities instruct the client to approach the authorities of the country in which they could acquire citizenship. This practice is particularly burdensome for former Yugoslav citizens, who make up the vast majority of Slovenia's entire foreign population – their citizenship is habitually considered to be in one way or another always "traceable" to one of the Yugoslav successor states. The officials in Slovenia simply assume that a person with supposed ties to any of the former Yugoslav republics could be able to "arrange" a citizenship of this state also in the present – "if only they would try hard enough".³⁶ **Considering these findings, the assumption of citizenship seems to be the explanation for the lack of practical application of safeguards against statelessness contained in the Slovenian citizenship law in general and it is not known how many cases of otherwise stateless children have been overlooked by the authorities.**

In terms of individual assistance for otherwise stateless children born in the territory, there are no state institutions or NGOs with specialist knowledge helping to provide information and/or legal assistance to otherwise stateless children. The state does operate a system of state-funded free legal aid, which is general and not specialised in statelessness. In principle, stateless persons can have access to the system under the general conditions as prescribed by the Free Legal Aid Act.³⁷ However, legal representation is only available for procedures before the courts (which the procedures for acquiring citizenship are not in the first or the second instance). Therefore free representation is only available at the stage of judicial review. The law prescribes the criteria under which the applicant's financial position is determined. The applicant must also prove that he/she will probably succeed with his/her case before the court and that the matter is important for his/her personal or socio-economic position or that the outcome is essential for the applicant or his/her family. Under the Free Legal Aid Act, in administrative procedures (which the procedures for acquiring citizenship in the first or second instance are) applicants may only apply for so-called "first free legal advice". This form of free legal aid involves the provision of basic information on the applicant's legal position, brief advice about legal remedies, procedural rules and costs of the procedure, etc. Eligibility for free legal aid is again determined on the basis of the financial position of the applicant; however probability of success and the importance of the case for the personal or socio-economic position of the applicant are not checked. According to the Administrative Court (*Upravno*

³⁴ Bajt, Veronika, Kogovšek Šalamon, Neža (2012). Mapping of Stateless Persons in Slovenia, Final Report, p. 30.

³⁵ *Ibid.*

³⁶ *Ibid.* P. 28.

³⁷ Slovenia, Free Legal Aid Act (*Zakon o brezplačni pravni pomoči*), 31 May 2001 and subsequent modifications, available at: <http://www.pisrs.si/Pis.web/pregledPredpisa?sop=2001-01-2642>

sodišče), which is competent for judicial review in cases of acquiring Slovenian citizenship, the court has not handled cases of otherwise stateless children born in the territory.

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

As previously explained, *jus sanguinis* is the main mode of acquisition of Slovenian nationality. Under the Marriage and Family Relations Act³⁸ there is no differentiation between children born in marriage and children born outside the marriage, therefore the Citizenship act does not stipulate any difference. Granting citizenship to a child born abroad to one parent who had Slovenian citizenship at the time of birth is regulated in paragraph 3 of Article 4 of the Citizenship Act: *“A child acquires Slovenian citizenship by origin if one of the parents was citizen of the Republic of Slovenia at the time of the child’s birth and the other was unknown or of unknown citizenship or without citizenship and the child was born in a foreign country.”*

Article 4 stipulates conditions under which a person born abroad obtains Slovenian citizenship by operation of the law. The child automatically acquires citizenship at birth (i.e. it does not have to be granted) if the relevant conditions are met. As stated, the law requires that if the other parent is not a Slovenian citizen at the time of the birth of the child, he/she must be unknown or of unknown citizenship or without citizenship for the child to automatically acquire Slovenian citizenship at birth.

Here there seems to again be an unaddressed situation and a gap in terms of relevant international legal standards:³⁹ this provision does not cover a case where a child may be left stateless despite having one Slovenian parent and one parent of foreign nationality, but who is unable to pass on his or her nationality. At first sight, it appears that in this case there is no safeguard against statelessness. However, the law also provides rules on acquisition of Slovenian citizenship for children born to a Slovenian parent abroad upon registration. Article 5 of the Citizenship Act stipulates registration for children before turning 18:⁴⁰

1. *A child born abroad whose one parent had Slovenian citizenship at the time of birth and the other was a foreign citizen, shall acquire citizenship of the Republic of Slovenia by origin, if the child is registered as a Slovenian citizen before his/her 18th birthday; or if the child returns to Slovenia with the parent of Slovenian citizenship before the age of 18 and obtains actual permanent residence in the Republic of Slovenia.*
2. *Registration under the previous paragraph is unnecessary if the child would otherwise remain without citizenship.*

³⁸ Slovenia, Marriage and Family Relations Act (*Zakon o zakonski zvezi in družinskih razmerjih*), 28 March 1989 and subsequent modifications, available at: <http://www.pisrs.si/Pis.web/pregledPredpisa?id=ZAKO2238>

³⁹ Article 4 of the 1961 Convention on the Reduction of Statelessness; article 6 of the European Convention on nationality.

⁴⁰ In addition to this route, article 6 of the Citizenship Act stipulates registration for persons above the age of 18 and under the age of 36, as follows: *A person above the age of eighteen years born abroad who personally declares for the registration into citizenship of the Republic of Slovenia prior to reaching 36 years of age shall acquire citizenship of the Republic of Slovenia under the following conditions:*

1. *That since his/her birth and until the personal declaration for the registration one of his/her parents was a citizen of the Republic of Slovenia, or was until his/her death if the parent died prior to the personal declaration for registration;*
2. *That after reaching the age of eighteen Slovenian citizenship did not cease by dismissal, renunciation or deprivation.*

3. *The child can be registered as a Slovenian citizen by the parent who is citizen of the Republic of Slovenia. If a child is under guardianship, due to having no parents or if the parents have lost their parental rights or their functional capability, his/her guardian, who must be a citizen of the Republic of Slovenia, can register the child as citizen of the Republic of Slovenia, provided he/she has obtained the consent of the communal authority, competent for social welfare.*

According to paragraph 2 of this provision, a child who “would otherwise remain without citizenship” should actually acquire Slovenian nationality by birth, if born abroad to at least one Slovenian parent, even without a registration procedure being completed. This suggests that such acquisition should be automatic under the law, although the provision itself is housed in a separate article from the main *jus sanguinis* rules. **As such, Slovenian law complies with international safeguards for the avoidance of statelessness among children of nationals, born abroad.**

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

As in most cases concerning acquisition of Slovenian citizenship, the administrative authorities, competent for recognising or granting nationality for otherwise stateless children born abroad to a Slovenian national are the administrative units. Applicants have the right to appeal against a first instance decision with the ministry competent for internal affairs.

There is no statistical data on the birth of otherwise stateless children who were born abroad to a national in recent years and how many were able to acquire/confirm nationality. There is also no data on how many were unsuccessful and for what reason. The Ministry only gathers data on the implementation of Article 4 of the Citizenship Act as such and data pertaining solely to paragraph 3 of Article 4 of the Citizenship Act is therefore not available.⁴¹

If a child is born to a Slovenian national abroad (paragraph 3 of Article 4, or paragraph 2 of article 5 of the Citizenship Act) the acquisition of Slovenian citizenship is automatic and is not subject to an application procedure as the child is considered a national from birth. However, as the child was born abroad Slovenia needs to be notified of the birth.⁴² The parents may inform Slovenian authorities of the birth of the child by submitting a birth certificate issued by the competent foreign authority, which can be done through the Slovenian diplomatic mission or consular post abroad or directly at the administrative unit in Slovenia. The certificate may contain information on both or only one parent. The Slovenian civil registry officer in any case checks all the available information. According to the Ministry, if only one of the parents is a Slovenian national, the child will be considered a Slovenian national if the Slovenian parent registers the child as a Slovenian national (situations falling under Article 5 of the Citizenship Act). This perception of the officials could prevent application of paragraph 3 of Article 4 or paragraph 2 of article 5 of the Citizenship Act **in practice: in any case in which the other parent is not a Slovenian national, the Slovenian parent is expected to perform the registration of the child – even in cases where the other parent is of unknown citizenship or without citizenship, or the child is stateless.** The fact that these two safeguards are housed in two different legal provisions may also add to ambiguity or incomplete implementation. Registration, where this is carried out, is performed through an official

⁴¹ Interview with representatives of the Ministry of Interior (*Ministrstvo za notranje zadeve*), conducted on 11.3.2015.

⁴² *Ibid.*

statement of the parent at the Slovenian diplomatic mission or consular post abroad or directly at the administrative unit in Slovenia. According to the Ministry of Interior, in practice, if the child does not acquire a foreign citizenship after the other parent, registration by the Slovenian parent is performed very quickly.

There is no case law on the application of paragraph 2 of Article 5 in practice. In terms of availability of information and individual assistance concerning the right to nationality for otherwise stateless children born to a national abroad, the situation is identical to the one described above for otherwise stateless children born in the territory. The Administrative Court (*Upravno sodišče*), which is competent for judicial review in cases of acquiring Slovenian citizenship, has not handled cases of otherwise stateless children born to nationals abroad.

3. Preventing statelessness among children in other contexts

Foundlings

Article 9 of the Citizenship Act, which has already been discussed above, also applies to foundlings:

1. *A child born or found on the territory of the Republic of Slovenia of unknown parentage or whose parents are of unknown citizenship or have no citizenship at all shall acquire citizenship of Republic of Slovenia.*
2. *Upon request of the parents, citizenship of the Republic of Slovenia shall cease for a child that acquired it as described in paragraph 1 of this article if it is discovered prior to the child reaching the age of 18 that the parents are foreign citizens. Citizenship shall cease on the day the decision about it was handed over to such a person.*

The first paragraph of this provision clearly aims to prevent statelessness of a child that is found on the territory and whose parents are unknown. The provision does not foresee an application procedure, meaning that **the conferral of nationality to foundlings is automatic. The law also does not stipulate an age limit until when a child can be considered a foundling and there is no legal indication that only newborns could be treated as foundlings.** According to the representatives of the Ministry of Interior, a case of any child under the age of 18 could be examined under the stated provision.

Paragraph 1 of Article 9 applies for both children born and children found in the territory of Slovenia. In case of a foundling, the administrative authorities or the Ministry of interior would not be able to confirm all the data relevant for acquisition of citizenship by the child.⁴³ An important role is to be played by the territorially competent social work centre which would provide key information to the administrative unit – when and where is the child presumed to have been born, what was happening to the child before he/she was found (particularly if the child is already a couple of years old when he/she is found). However, no such case has been handled by the administrative authorities and information is only hypothetical. Again, no guidelines on the implementation of this rule have been developed. If such

⁴³ Interview with representatives of the Ministry of Interior (*Ministrstvo za notranje zadeve*), conducted on 11.3.2015.

a case occurred, the administrative unit staff would again be able to turn to the Ministry of Interior who would provide guidance if required.

As in the case of otherwise stateless children born in the territory, a potential problem also exists with respect to foundlings: **article 9 does not include a safeguard requiring that before the withdrawal of Slovenian citizenship upon the parent's request, it is ensured that the child has, or has assurance, of obtaining his/her parents' nationality in order to prevent the child from becoming stateless.** The general condition for loss of citizenship stated in article 18 of the Citizenship Act, requiring proof that the person has or will be granted another nationality, should apply also in such cases. Nevertheless, to avoid ambiguity, Article 9 of the Slovenian Citizenship Act should be amended to ensure that such child is protected from statelessness, by requiring that before the child's Slovenian citizenship ceases a proof is submitted that the child acquired or will acquire another citizenship.

As there were no such cases, it is difficult to assess, how a case of a parent's false or incomplete identity would be handled (i.e. if a parent is 'known' and the birth has been witnessed by a doctor but the parent provided a false identity and the real identity was never established) and whether the child would be treated as a foundling. However, the Ministry of Interior reports of cases, where the identity was an issue and the case was resolved in the child's favour, who kept the citizenship. One such example was when the mother, who was a foreign national went into a hospital and gave birth with her sister's identity documents, since the sister was a Slovenian national and the medical expenses would be covered by the health insurance. Therefore, the sister (the child's aunt) ended up being registered as the child's mother. Later the mother spoke up and a maternity determination procedure was carried out. Maternity was established, however the child kept Slovenian citizenship. According to the Ministry there were also cases in which paternity was retrospectively contested and although the child could not acquire Slovenian citizenship based on his/her biological father, the child kept Slovenian citizenship nonetheless.

Adoption

Article 23 of the Citizenship Act **foresees the possibility of loss of nationality of a child that is adopted but not loss of nationality due to annulment of adoption. However, loss of nationality does not occur automatically:**

“In the case of complete adoption, citizenship of the Republic of Slovenia of an adoptee under the age of eighteen who has Slovenian citizenship, may cease with dismissal, if so required by the adoptive parent who is either an alien or an adopter who has applied for dismissal from citizenship of the Republic of Slovenia, if all the conditions from the previous article (Article 22) are fulfilled.”

Although the law does not state so explicitly in Article 22, one of the general conditions for cessation of citizenship by dismissal, stipulated in Article 18 of the Citizenship Act is proof that the person has foreign citizenship or that he/she will be granted foreign citizenship. This was confirmed by the Ministry of Interior as, in practice, cessation of citizenship never takes place unless the applicant (the adoptive parent) submits together with the application either proof that the child already has a citizenship of another state or a guarantee that the child will acquire another citizenship. Additionally, Article 24 of the Citizenship Act states that a child over the age of fourteen must give his/her personal

consent for the cessation of citizenship of the Republic of Slovenia – without the consent cessation is not possible. As noted below, the Ministry does not have separate data on the loss of nationality of children who were adopted, so the extent of the use of these provision in practice is not known.

Surrogacy

Under Slovenian legislation, surrogacy is not allowed. Therefore **no legal provisions on determination of the ‘father’ and the ‘mother’ for the purposes of the application of the nationality rules exist**. However, Slovenian nationals have become parents through surrogacy abroad.

In one such case, the District Court in Ljubljana (*Okrožno sodišče v Ljubljani*) issued a decision based on which the foreign judicial decision of the Higher Court of the State of California was recognized. The foreign judicial decision stated that both of the plaintiffs (same-sex partners) are recognized as natural and equal parents of the child who is the subject of the court procedure in question. The court explained that the Slovenian court merely decided upon recognition of a foreign judicial decision which was already final and executed. The plaintiffs are same-sex partners who solemnised marriage in the State of California and who were then recognized as natural and equal parents of a baby girl, who was born through surrogacy and therefore the court did not decide upon surrogacy or adoption by same-sex partners (which was not possible either under Slovenian law). The main question was, whether the effects of the recognition were contrary to the public order of the Republic of Slovenia. Relevant Slovenian legislation does not enable adoption by same-sex partners and the Marriage and Family Relations Act does not allow either surrogacy nor adoption by more than one person unless the adopters are spouses (same sex marriage at the time was not possible in Slovenia). However, the court deemed that such obstacles are not a part of international public law (taking into consideration that Slovenia is part of the European Community and the Council of Europe). The court decided that from the European perspective, the fact that the adopters are registered same-sex partners and not spouses cannot prevent recognition of the foreign judicial decision. As the foreign judicial decision was recognized, so was the parental link between the adoptive parents and the child, which allowed registration of birth and the rights deriving from that fact – including acquisition of Slovenian nationality.

Loss of nationality

As mentioned under the sub-heading “Adoption”, Article 22 of the Citizenship Act stipulates the conditions under which Slovenian citizenship of a child under the age of 18 may cease:

- 1. Citizenship of the Republic of Slovenia of a child up to the completed age of eighteen years shall cease at the request of both parents whose citizenship has been terminated by dismissal or of just one of the parents who has obtained dismissal from citizenship when the other is not a citizen of the Republic of Slovenia.*
- 2. Citizenship of the Republic of Slovenia shall cease by dismissal for a child whose parents are separated on request of the parent with whom the child resides or was allocated for care and education and who has also*

requested dismissal from citizenship of the Republic of Slovenia, or if the parent with whom the child resides is an alien. In both cases the consent of the other parent is required.

3. *If the other parent does not agree to the dismissal of the child from citizenship of the Republic of Slovenia, the child may obtain dismissal if the State agency competent for social welfare gives its consent to the child's dismissal if it will benefit the child.*
4. *Such consent should be attached to the petition for dismissal of a child from citizenship of the Republic of Slovenia.*
5. *It is unnecessary to obtain the consent under paragraphs 2 and 3 if the whereabouts of the second parent are unknown or if the second parent's functional capacity and parental rights have been taken away.*

Although it is not stated explicitly in Article 22, one of the general conditions for cessation of citizenship by dismissal, stipulated in Article 18 of the Citizenship, Act is proof that the person has foreign citizenship or that he/she will be granted foreign citizenship. This was confirmed by the Ministry of Interior as, in practice, cessation of citizenship never takes place unless the applicant (the parent) submits together, with the application, either proof that the child already has a citizenship of another state or a guarantee that the child will acquire another citizenship. Additionally, Article 24 of the Citizenship Act states that a child over the age of fourteen must give his/her personal consent for the cessation of citizenship of the Republic of Slovenia – without the consent cessation is not possible.

According to Ministry of Interior data, under Article 22 in connection to Article 18 of the Citizenship Act, seven children lost Slovenian nationality in 2009,⁴⁴ none in 2010, five in 2011,⁴⁵ five in 2012,⁴⁶ and four in 2013.⁴⁷ According to the Administrative Court (*Upravno sodišče*) the court never handled cases concerning loss of nationality by children.

Facilitated naturalization

The Citizenship Act provides facilitated naturalisation for stateless persons residing on the territory and persons who were born on the territory and still reside in the country at the age of majority. A stateless person who has been living in Slovenia for 5 successive years may submit an application for the acquisition of citizenship of the Republic of Slovenia on the basis of the eighth paragraph of Article 12 of the Citizenship of the Republic of Slovenia Act. The two points in which conditions for naturalisation are facilitated are the shorter period of residence prior to submission of application (for regular naturalisation: 10 years, and continuously for the 5 years prior to submission of the application) and that he/she does not need to have a release from current citizenship or prove that he/she will obtain a release if he/she acquires citizenship of the Republic of Slovenia (since he/she is stateless).⁴⁸ The person applying under this provision does not need to have a formal stateless status as Slovenian legislation does not foresee a statelessness

⁴⁴ 5 had/acquired Austrian citizenship, 2 had/acquired Norwegian citizenship.

⁴⁵ All 5 had/acquired Austrian citizenship.

⁴⁶ 4 had/acquired Austrian citizenship, 1 had/acquired Norwegian citizenship.

⁴⁷ 2 had/acquired Austrian citizenship, 2 had/acquired German citizenship.

⁴⁸ The other conditions for naturalisation under the eighth paragraph of Article 12 of the Citizenship, which are identical to the conditions for regular naturalisation are as follows: the person must be at least 18 years of age; the person has a guaranteed permanent source of income in at least the amount that enables material and social security; the person has a command of the Slovenian language for the purposes of everyday communication; the person has not been sentenced to an unconditional prison sentence longer than three months, nor conditionally sentenced to a prison sentence with probation of longer than one year; the person's residence permit in the Republic of Slovenia has not been annulled; the person's naturalisation poses no threat to the public order, security or defence of the State; the person has settled all tax obligations; the person submits a declaration that, by obtaining citizenship of the Republic of Slovenia, he/she agrees with the legal system of the Republic of Slovenia.

determination procedure or a stateless status. As described in regard to otherwise stateless children born on the territory, the authorities would determine statelessness by checking all circumstances that connect the individual to a certain country.

As also mentioned earlier, paragraph 5 of Article 12 of the Citizenship Act states that if such an act is in accordance with the national interest, the competent authority may, within its discretion, admit to the citizenship of the Republic of Slovenia the adult person (over the age of 18) who was born on the territory of the Republic of Slovenia and has been actually in the Republic of Slovenia since birth. The conditions differ from the ones prescribed by regular naturalisation on the following points:

- the person does not have to have a release from current citizenship or prove that he/she will obtain a release if he/she acquires citizenship of the Republic of Slovenia;
- the person does not need to prove that he/she has guaranteed permanent source of income;
- and the person does not need to prove that he/she has a command of the Slovenian language for the purposes of everyday communication (as he/she has lived in Slovenia since birth, it is assumed that he/she attended at least primary school in Slovenia and therefore has the required command of the Slovenian language).

The person applying under this provision needs to reside in Slovenia longer than persons applying under regular naturalisation, however, the person does not need to prove that she/he has a lawful alien status at the time of application for citizenship.

4. Birth registration and statelessness

Access to birth registration

According to Article 2 of the Register of Deaths, Births and Marriages Act, the civil register is a computerised database in which register events are recorded: births, marriage, deaths and other facts prescribed by the law.⁴⁹ The register is the database of personal statuses of the Slovenian nationals (also when living abroad) and the database of births, marriages and deaths of foreign nationals that occurred on the territory of Slovenia. **All children born in Slovenia have access to the birth registration procedure. If the parents of the child do not hold an ID document, an identification procedure in accordance with General Administration Procedure Act is performed prior to the birth registration of the child.**⁵⁰

According to Article 8 of the Register of Deaths, Births and Marriages Act, the time limit for the declaration of a birth is 15 days. If the child is born in a healthcare facility, the said institution is responsible to make the declaration of birth with the civil registry officer. If the child is born outside a healthcare facility, the declaration has to be made by the child's father or a person, with whom the mother lives or the mother herself, when she is capable. If none of the stated persons are able to make the declaration, any other person who was present at the birth or has found out about the

⁴⁹ Slovenia, Register of Deaths, Births and Marriages Act (*Zakon o matičnem registru*), 4 April 2003 and subsequent modifications.

⁵⁰ Interview with representatives of the Administrative Unit Ljubljana (*Upravna enota Ljubljana*), conducted on 18.3.2015.

birth may make the declaration. Failure to make the declaration within the time limit is punishable by a fine. The amount depends on whether the responsible person is a natural or a legal person: natural persons may pay a fine between 100 and 200 EUR and legal persons (e.g. a hospital) may pay a fine between 1.000 and 4.500 EUR, the liable person within a legal person can be punished by a fine between 200 and 400 EUR.

There is no data that would show any issues concerning the birth registration rate. The Ministry of Interior reports that it is not aware of any cases where the birth of a child would not be registered. While there may have been problems among the Slovenian Roma population in the past, this is no longer the case – organisations and authorities working with the Roma community reported that they have not come across cases of Roma families having difficulties with birth registration.⁵¹ Even when children are born at home, the registration happens very quickly. The deadline of 15 days for declaration of birth is always respected. In cases of births at home, the law now demands the submission of a doctor's certificate that the person gave birth, which eliminates any doubts about the child's birth (i.e. that the child was brought from somewhere else). The law does not stipulate what other documents are required in order to register the birth – only what information is to be recorded. If the child's birth is not registered, the child does not benefit from health insurance and social benefits, which additionally motivates persons to respect the birth registration rules.⁵²

If a child is born abroad to a Slovenian national, the declaration of birth can be made through a Slovenian diplomatic and consular mission abroad, which notifies the competent administrative unit. In some cases that is done directly by the parents. In both cases, the birth certificate of the competent foreign authority is the basis for registration. In some cases in which birth certificates cannot be obtained (i.e. because the foreign country does not register birth of a foreign national) any other document which proves birth can be submitted. On its basis a decision is issued and the birth is registered.

Link between birth registration and nationality

Birth registration is the basis for entering an individual into the civil registration and the link with all other databases – therefore birth registration is essential for acquiring Slovenian citizenship.⁵³ If the child is born in Slovenia and at least one of the parents is a Slovenian national, the child will automatically acquire Slovenian citizenship. The civil registry officer will therefore always check the personal data of the parents and if the child is a Slovenian citizen by birth, the birth certificate will also contain the nationality of the child. For Slovenian nationals the birth certificate also represents proof of nationality. For foreign nationals, the information on nationality is not contained on the birth certificate. The civil registry officer will verify and include in the birth register the data of the parents' nationality. However, in accordance with Private International Law and Procedure Act,⁵⁴ a Slovenian civil registry officer is not authorised to determine the child's nationality. According to the Ministry of Interior, there is no data to support any assumption that there were cases in which any barriers for birth registration would create a risk of statelessness.

⁵¹ According to the Ministry of Interior, in the past such cases were usually detected when the parents tried to acquire the child's birth certificate; registration was performed subsequently, on the basis of evidence acquired later on the birth of the child.

⁵² Interview with representatives of the Ministry of Interior (*Ministrstvo za notranje zadeve*), conducted on 11.3.2015.

⁵³ Interview with representatives of the Ministry of Interior (*Ministrstvo za notranje zadeve*), conducted on 11.3.2015.

⁵⁴ Private International Law and Procedure Act (Zakon o mednarodnem zasebnem pravu in postopku), 30 June 1999 and subsequent modifications, available at: <http://www.pisrs.si/Pis.web/pregledPredpisa?id=ZAKO1258>.

Conclusions and Recommendations

The rules on acquisition and loss of nationality are contained in the Citizenship of the Republic of Slovenia Act. The general rule on acquisition of nationality by children is by birth, *jus sanguinis*, to a parent who is a Slovenian citizen. Slovenia does not have a dedicated statelessness determination procedure and stateless persons are only detected through status regularization procedures.

The key international convention that Slovenia ratified in the field of statelessness is the 1954 UN Convention relating to the Status of Stateless Persons. Slovenia did not ratify the 1961 UN Convention on the Reduction of Statelessness, European Convention on Nationality nor the 2006 Council of Europe Convention on the Avoidance of Statelessness in the context of State Succession. The position of Slovenian authorities is that accession to the 1961 Convention is not needed as its main principles are already included in the national legislation on citizenship.

However, compared to relevant international legal standards, there are some gaps where the national legislation does not fully protect children from statelessness. The most important of these is that children born in Slovenia, whose parents are not nationals of the Republic of Slovenia, but have citizenship of another state which they cannot confer to the child are not protected by the principle Slovenian safeguard against statelessness contained in the law (article 9). In a number of other places, the structure of the law is such that rules that will help to prevent childhood statelessness are somewhat obscured and this may hamper their practical application – such as with regard to otherwise stateless children born abroad to Slovenian nationals where the relevant provisions are spread across two separate articles. Moreover, cases of statelessness are not properly identified due to the assumption of (foreign) citizenship, or of the possibility to acquire (foreign) citizenship, which makes it impossible for a person to be recognised as stateless. This contradicts the definition of statelessness and obstructs the full and correct implementation of safeguards against childhood statelessness that exist in Slovenian law.

At the same time, a number of potential good practices were also identified in this report. For instance, the willingness of the authorities to fall back on the direct application of the UN Convention on the Rights of the Child and the principle of the best interest of the child in order to ensure the right to nationality, such as by allowing the child to keep Slovenian nationality although it was subsequently determined that the child's parents were not Slovenian citizens and therefore could not have conferred Slovenian nationality. Similarly, the practice of requiring proof of acquisition or assurance of acquiring a foreign nationality in all cases where Slovenian nationality may be lost and the availability of facilitated naturalisation both for stateless persons and for children who were born on the territory and remained resident there until majority.

Nonetheless, Slovenia should ratify the 1961 UN Convention on the Reduction of Statelessness and address the few remaining gaps and ambiguities in its national legislation. Furthermore, the state should raise awareness among public officials on the issue of statelessness and tackle the aforementioned assumption of (foreign) citizenship, which prevents appropriate recognition of stateless persons. In this respect, Slovenia should consider the possibility of implementing a dedicated statelessness determination procedure, which would help both to raise the profile of and expertise relating to the issue, as well as to improve the implementation of relevant standards.

Annex 1: Key international provisions granting nationality to otherwise stateless children born in the territory

1961 Convention on the Reduction of Statelessness

Article 1

1. A Contracting State shall grant its nationality to a person born in its territory who would otherwise be stateless. Such nationality shall be granted:
 - a. at birth, by operation of law, or
 - b. upon an application being lodged with the appropriate authority, by or on behalf of the person concerned, in the manner prescribed by the national law. Subject to the provisions of paragraph 2 of this Article, no such application may be rejected.A Contracting State which provides for the grant of its nationality in accordance with sub-paragraph (b) of this paragraph may also provide for the grant of its nationality by operation of law at such age and subject to such conditions as may be prescribed by the national law.
2. A Contracting State may make the grant of its nationality in accordance with sub-paragraph (b) of paragraph 1 of this Article subject to one or more of the following conditions:
 - a. that the application is lodged during a period, fixed by the Contracting State, beginning not later than at the age of eighteen years and ending not earlier than at the age of twenty-one years, so, however, that the person concerned shall be allowed at least one year during which he may himself make the application without having to obtain legal authorization to do so;
 - b. that the person concerned has habitually resided in the territory of the Contracting State for such period as may be fixed by that State, not exceeding five years immediately preceding the lodging of the application nor ten years in all;
 - c. that the person concerned has neither been convicted of an offence against national security nor has been sentenced to imprisonment for a term of five years or more on a criminal charge;
 - d. that the person concerned has always been stateless.

[...]

1997 European Convention on Nationality

Article 6 – Acquisition of nationality

[...]

2. Each State Party shall provide in its internal law for its nationality to be acquired by children born on its territory who do not acquire at birth another nationality. Such nationality shall be granted:
 - a. at birth *ex lege*; or
 - b. subsequently, to children who remained stateless, upon an application being lodged with the appropriate authority, by or on behalf of the child concerned, in the manner prescribed by the internal law of the State Party. Such an application may be made subject to the lawful and habitual residence on its territory for a period not exceeding five years immediately preceding the lodging of the application.

Annex 2: List of stakeholders interviewed and/or input received as part of this research⁵⁵

- Ministry of Interior of the Republic of Slovenia
- Administrative Unit Ljubljana
- Human Rights Ombudsman of the Republic of Slovenia

⁵⁵ Full details on file with the author.

No child chooses to be stateless. It is a fundamental truth that every child belongs – to this world, to a place and to a community – and this should be recognised through the enjoyment of a nationality. Yet statelessness continues to arise because European states are failing to ensure that all children born within Europe’s borders or to European citizen parents acquire a nationality. The European Network on Statelessness (ENS) advocates as one of its central tenets that none of Europe’s children should have to live without a nationality.

This working paper is one of a series that has been drafted in support of the ENS campaign, launched in November 2014, ‘**None of Europe’s children should be stateless**’. It examines the presence or absence, content and implementation of legislative safeguards for the prevention of childhood statelessness at the national level. Working papers have also been prepared by ENS members in Albania, Estonia, Italy, Latvia, Macedonia, Poland and Romania – each as part of a coordinated approach and employing a common research methodology.

The studies each provide: a detailed legal analysis, including of relevant lower-level circulars/policy guidelines; the identification and analysis of relevant jurisprudence; and data from interviews with implementing authorities, lawyers and other service providers about their knowledge and experience of relevant safeguards, as well as with relevant organisations with regard to advocacy around this issue. Each paper also includes a number of case studies to highlight particular issues identified.