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Stateless but not rightless: Improving the protection of stateless persons in Europe

Keynote Speech by Nils Muižnieks Council of Europe Commissioner for Human Rights

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Ladies and Gentlemen, dear participants,

I am very glad to address this conference today as statelessness continues to be high on my list of priorities since I took office as Commissioner for Human Rights in April 2012.

This major human rights issue has already been in focus in a number of country visits I carried out, including those to Estonia, Greece, Italy, Montenegro, Slovenia, "the former Yugoslav Republic of Macedonia" and most recently, last week, in Romania. I have decided to put the emphasis in particular on stateless children as I believe that ensuring that all children acquire a nationality at birth - a right protected under the UN Convention on the Rights of the Child - is the most effective way of putting an end to the perpetuation of statelessness and its transmission from generation to generation. The children most affected by statelessness are also those belonging to already vulnerable groups, such as children belonging to ethnic minorities, children of internally displaced persons, children of immigrants, asylum-seekers and refugees, unaccompanied migrant children, but also orphans, and children of illiterate parents.

States have sometimes put the blame on parents for the statelessness of their children. However, they should rather take action to address statelessness and give priority consideration to the best interests of the child, as required under international human rights instruments. It is obviously in the best interests of a child to have a nationality since statelessness prevents children from enjoying many of the rights to which they are entitled and from becoming an integral part of the country in which they live. Even though some rights, such as the right to education or access to health care, should not be contingent on having a nationality, experience shows that the absence of a nationality can constitute an important obstacle even with respect to these rights.

Resolving statelessness problems, or situations in which persons are at risk of statelessness, is often described as a complex process. It is true that it usually requires substantial changes in the legislation and practices of a country. However, positive developments in some member states have shown that where there is political will to overcome the problem, concrete solutions can be found and implemented. In Serbia for instance, the adoption of a new court procedure for the determination of the date and place of birth gives reasons to hope that the problem of lack of identity documents affecting so many Roma people can be resolved. The transmission by the Serbian authorities of civil registers to the authorities of Kosovo is also a promising development since the lack of identity documents still affecting IDP's in the region can only be resolved through active cooperation between the different authorities. In this context, I was pleased to learn during my recent visit to Montenegro that the authorities have organized more than 20 trips to Kosovo for displaced persons living in Montenegro in order to help them obtain birth certificates and other documents in their municipalities of origin. When travelling to Romania last week, I was informed of the work undertaken by the Ministry of the Interior to reach out, through mobile units, to Roma communities in which people lack birth certificates and identity documents. Other progress includes the setting-up of statelessness

determination procedures in some member states, more lately in the UK in 2013. Such mechanisms should contribute to improving the protection of stateless migrants.

If stateless can be addressed, why is it that we still have about 680 000 persons without a nationality in Europe? Why do children continue to be born and to grow without a nationality? What lies at the roots of the resistance from states to address the problem?

In some parts of Europe, such as the Baltic States, the perpetuation of statelessness is the result of fears inherited from recent history and the assumption that members of the Russian-speaking minority constitute a threat to the security and linguistic identity of the states concerned. Especially for children, however, who can easily be made to feel an integral part of society if the right steps are taken, these fears and assumptions should not be allowed to prevail.

In the case of Roma, many of whom continue to be at risk of statelessness due to a lack of identity documents, racism and hostility among the majority population are among the root causes of the problem. The lack of a nationality, and subsequent lack of rights, affects many of them, not only in South-East Europe, but also in Western European countries such as Italy or the Netherlands.

Other ethnic minorities are affected by statelessness as a result of inadequate or incomplete responses of the authorities to statelessness resulting from historical events, such as forced displacements of entire minority groups under the Soviet regime. Persons belonging to such groups have been confronted with substantial difficulties in obtaining the nationality of the states in which they were living following the collapse of the Soviet Union. The situation was even more complex for groups which were allowed to return to their ancestral lands after the end of the Soviet Union, for instance Crimean Tatars or Meskhetian Turks. I was informed during a recent visit to Georgia that few of the Meskhetian Turks who repatriated in Georgia have so far been granted Georgian citizenship. Moreover, some of the persons who settled down outside the official repatriation scheme are apparently also stateless. If nothing is done to regularize their situation swiftly and to ensure that their children will be granted Georgian nationality, I am afraid that another group of stateless persons might appear in this region.

Other ethnic minority groups spread across the Russian Federation also continue to be affected by statelessness, notably in Southern Russia, but also in eastern regions of the country. These persons have not managed to obtain Russian citizenship in the early 2000's, due to a mix of legal and administrative obstacles, discrimination by the local authorities and the police and, in general, lack of awareness and/or willingness to act.

Thus, statelessness, or the risk of statelessness, affecting ethnic minorities is often, at best, the result of neglect and passivity and at worst, a manifestation of discrimination and rejection.

Migrants are also among those affected by statelessness. The lack of statelessness determination procedures in many member states forces them into a legal limbo and absence of rights, as rightly emphasized by the European Network on Statelessness in its 2013 campaign on the protection of stateless persons. In this regard, I am particularly worried about the likely emergence of cases of statelessness among children of Syrian refugees who fled their war-ravaged country. During a visit to refugee camps in Turkey in December 2013, I learnt that around 7 000 children had already been born in these camps. While their births have reportedly been registered by the Turkish authorities, it remains unclear whether these children will be eligible for Syrian or other nationalities, based on these birth certificates. Syrian refugees who find themselves in countries where they are unable or unwilling to apply for asylum, might well avoid registering newborns. I am therefore afraid that a number of these and other refugee children might end up without a nationality because they were born on the way to a safe country of refuge.

The price to pay for the perpetuation of statelessness is high not only for the persons affected, but also for the countries in which stateless persons live. Statelessness prevents participation in socioeconomic, but also in public affairs, and results in the alienation of entire groups from society, which is passed on from generation to generation.

If we speak about children in particular, stateless children are highly vulnerable to various forms of serious human rights abuses. These include illegal adoption, child labour, sexual exploitation, early

marriages, military recruitment, and in general, human trafficking. Additionally, the lack of birth certificates can deprive minors of the specific protection available under juvenile justice systems and often results in unnecessary detention.

One of the main factors feeding the perpetuation of statelessness is the lack of visibility of the problem of statelessness, and the lack of awareness of its underlying causes. Therefore, it is crucial to raise awareness of the authorities at all levels about it, so that they are able to detect and resolve the problems, but also to prevent statelessness when there is a risk that it may occur.

The accession to existing international instruments protecting against statelessness plays an important role, not least in raising awareness of the problem of statelessness. Therefore, I will continue to call on member states of the Council of Europe to sign and ratify the 1954 UN Convention on the Protection of Stateless Persons – particularly this year as we are celebrating its 60th anniversary -- and the 1961 UN Convention on the Reduction of Statelessness. They should also accede to the two Council of Europe conventions, the 1997 Convention on Nationality and the 2006 Convention on Avoidance of Statelessness in Relation to State Succession, the latter of whom has so far been ratified only by six member states.

I will also continue to highlight as appropriate the findings of the Council of Europe monitoring bodies that are paying particular attention to the situation of stateless persons in Europe, namely the European Commission against Racism and Intolerance (ECRI), the Advisory Committee on the Framework Convention for the Protection of National Minorities and the Group of Experts on Action against Trafficking in Human Beings (GRETA). Moreover, I welcome the work undertaken by the Parliamentary Assembly to raise awareness of member states on the need to give higher priority to issues pertaining to nationality and the prevention of statelessness, in particular in the recent report of Mr Cilevičs to be discussed tomorrow.

It is also crucial to encourage national authorities, and others, to systematically collect data and undertake research on statelessness-related issues, in order to gain better knowledge and understanding of this problem. The work carried out recently by members of the European Network on Statelessness is invaluable. But responsibility for this crucial task cannot be shouldered by civil society groups alone; States should also do their part of this mapping and regular monitoring exercise, in close cooperation with UNHCR.

In order to address the underlying barriers that prevent stateless persons from having rights, or from accessing a nationality, a number of concrete steps can be taken.

With a view to improving the protection of stateless migrants, member states should as a priority set up statelessness determination procedures.

Regarding the situation of those, mainly Roma and members of other minorities, who are at risk of statelessness due to a lack of documentation, it is crucial to continue efforts to improve birth registration and facilitate subsequent registration or re-registration in civil registers. Outreach campaigns should be implemented to identify at an early stage persons at risk of statelessness and provide them with accessible and effective remedies. Proceedings involving children should be dealt with as a matter of priority.

Moreover, I believe that states should step up efforts to put an end to the perpetuation of statelessness, in line with existing international standards. They should in particular ensure that children born on their territory and who would otherwise be stateless are granted the nationality of the state concerned. This is possibly one of the most effective tools to curb the number of stateless persons in Europe.

Lastly, it is crucial that member states step up cooperation to reduce statelessness as, in regions such as South-East Europe, part of the remaining problems are shared problems because they are the result of the population displacements of the 1990's. They can only be solved through accrued exchanges of information and cooperation.

I would like to conclude by praising the work carried out so far by the European Network on Statelessness and reiterating my support to this work. I will continue to raise awareness about human

rights violations resulting from statelessness and highlight existing concerns as long as required, in close cooperation with other key actors in this area, such as the UNHCR and ENS of course.

I wish you a fruitful discussion!