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English

## Advance unedited version

### Human Rights Committee

#### Views adopted by the Committee under article 5 (4) of the Optional Protocol, concerning communication No. 3602/2019\*\*\*

<i>Communication submitted by:</i>	Daniel Faslliu, Marjeldo Rexha, Hajrije Rexha (represented by the European Roma Rights Centre and the Tirana Legal Aid Society)
<i>Alleged victims:</i>	The authors
<i>State party:</i>	Albania
<i>Date of communication:</i>	2 May 2018 (initial submission)
<i>Document references:</i>	Decision taken pursuant to rule 92 of the Committee's rules of procedure, transmitted to the State party on 13 May 2019 (not issued in document form)
<i>Date of adoption of Views:</i>	29 October 2024
<i>Subject matter:</i>	Registration of birth
<i>Procedural issues:</i>	Competence <i>ratione temporis</i> ; level of substantiation of claims
<i>Substantive issues:</i>	Registration at birth; right to acquire nationality; discrimination based on ethnicity; recognition as a person before the law; right to family life; right to take part in the conduct of public affairs
<i>Articles of the Covenant:</i>	16, 17, 24 (1-3), 25 and 26
<i>Articles of the Optional Protocol:</i>	2 and 3

1. The authors of the communication are Daniel Faslliu, born in Lamia, Greece, in February 2014; Marjeldo Rexha, born in Athens, Greece, in August 2002, and Hajrije Rexha, born in Athens, Greece, in August 2002. The authors note that their nationality is Albanian but that they are at risk of statelessness. The authors claim that the State party authorities' failure to register their birth amounts to a violation of their rights under articles 16, 17, 24 (1-

\*Adopted by the Committee at its 142nd session (14 October – 7 November 2024).

\*\* The following members of the Committee participated in the examination of the communication:  
Tania Maria Abdo Rocholl, Wafaa Ashraf Moharram Bassim, Rodrigo A. Carazo, Mahjoub El Haiba,  
Laurence R. Helfer, Carlos Gomez Martinez, Bacre Waly Ndiaye, Marcia V.J. Kran, Hernan Quezada  
Cabrera, José Manuel Santos Pais, Tijana Surlan, Kobayuh Tchamdja Kpatcha, Koji Teraya, Hélène  
Tigroudja and Imeru Tamerat Yigezu.

3), 25 and 26 of the Covenant. The Optional Protocol entered into force for the State party on 4 January 2008. The authors are represented by counsel.

### **Facts as presented by the authors**

2.1 The authors note that they belong to the Roma community. At the time of their birth their Albanian parents were living in Greece without legal residence status. They note that article 7 of the Albanian law no. 8389 ‘On Citizenship’ states that “any individual born to one or two parents of Albanian nationality automatically acquires Albanian nationality”. They however claim that in practice the acquisition of citizenship under domestic legislation is only effective pursuant to the registration of a child’s birth. The registration of births in the State party is regulated by law no. 10129 ‘Law on Civil Status’ of 2009. Under the regulation parents bear the primary responsibility for the registration of the birth of their children. In case the parents fail to register a birth, it falls to the state institutions to carry it out. According to article 38 (1) of the Law on Civil Status, the registration of the birth of a child in the State party requires submitting a birth certificate issued by the relevant institution where the birth took place. The certificate must be sent to the Civil Status Office, i.e., the office where the mother of the child is registered, or the closest office to the mother’s residence. In case the mother gives birth outside a hospital, the birth can be proven through a medical report. In other cases, when the parents cannot prove a birth through such a document, or when the document is not in the required format, they must initiate court proceedings to establish the fact of the birth. The law does not provide any time limit for registration of birth, but it encourages early registration. The birth registration process can be complex and difficult to access, particularly for those who lack the required paperwork or are particularly vulnerable.

2.2 The authors note that for children born outside the State party territory to parents who are Albanian citizens, there were up until January 2017, two ways of registering the birth of a child. (a) It was possible to register the birth with the Albanian consular authorities in the country where the child was born by submitting a birth certificate from the hospital the child was born in containing information on the date of birth, place of birth, gender, and the mother’s name. (b) If the child was born outside the State party and had been registered in a civil status office in the foreign country, parents could also register the birth of the child directly in their civil status office in the State party, once they were on Albanian territory. In such a case the birth certificate must be in the form prescribed by law, i.e., a legalised certificate translated into Albanian and notarised. In December 2016, a new law amending the Law on Civil Status was adopted.<sup>1</sup> According to the amendments, as from 2017 all children’s births must be registered in Albania, Albanian consular services thus no longer have the power to register births.

2.3 The authors note that children who are born in Greece of parents who are non-nationals will generally have their birth registered in Greece based on a “maternity certificate” issued by the hospital. However, parents, such as those of the authors, who are staying in Greece without residence permits, are only provided with a document attesting the birth as a matter of fact. This document is incomplete as it does not indicate the name of the child and would refer to the child as “ako” (“nameless”). Parents without legal residence status would not be allowed to give their child a name on the certificate as they have no legal right to reside in Greece. Before 1 January 2017, some Albanian parents tried to register the birth of their children with the Albanian consular services in Greece, despite the incomplete Greek certificate. Albanian consular services would refuse to proceed to the registration based on the incomplete birth certificate and would request parents to submit the incomplete document to the Greek Ministries of Interior, Foreign Affairs and of Health to secure the necessary stamps to legalise the document. The Greek authorities would in turn refuse to legalise the “ako birth certificates” as they are incomplete. Although the authors are aware of instances where Greek authorities would exceptionally legalise such incomplete birth certificate, Albanian authorities would still refuse to register the birth because the document still does not indicate the name of the child. Parents who are in the same situation as that of the authors’, i.e. parents whose children were born in Greece while the parents were lacking legal residence status in that country, who would try to register their child with the civil status

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<sup>1</sup> Law no. 134 ‘On Some Additions and Amendments in Law no. 10 129, dated 11 May 2009’.

office in Albania, encounter the same hurdles, with the added difficulty that they are not in position even to try to have the Greek documents legalised by Greek authorities, after having left the country. The authors claim that Roma are disproportionately affected by the problem of having foreign births registered in the State party as: Roma may be more likely to move to Greece irregularly because of their exceptional poverty in Albania; Roma appear to be more regularly targeted for expulsion from Greece; Roma are generally poorer than non-Roma, and without health insurance they cannot pay for hospital expenses in Greece and face obstacles preventing them from securing the documentation they need<sup>2</sup>; and as Roma are generally poorer, once they return to Albania, it is extremely difficult for them to travel back to Greece to try to fulfil the formalities required to secure the legalisation of the birth documents issued in Greece.

2.4 The first author was born in February 2014 in Greece, where his Albanian parents were living without legal residence status. His birth was registered with the Greek Civil Office, but the authorities refused to indicate his name on the certificate as his parents did not have legal residence status in Greece. In addition, the registration certificate did not have the proper legislation stamp, nor did it have an apostille stamp. These facts prevented his parents from registering the birth at the Albanian registry offices. The first author moved back to Albania in 2014, but because his birth was not registered at the Albanian registry offices, he has not been able to attend kindergarten or school or be accepted by health institutions.

2.5 The second and third authors, who are twins, were born in 2002 in Athens, where their Albanian parents were living without legal residence status. Because they did not have money to pay the hospital fees of 1,000 EUR, the parents left the hospital before obtaining a medical certificate of birth. On an undetermined date, the second and third authors' parents went to the Greek civil status office in Athens and requested a birth certificate for their children. The births were then registered, and the office issued certificates without indicating the names of the authors, only registering them as "first twin" and "second twin" respectively. The parents were told that since they did not have legal residence status in Greece, they could not register the names of their children and could only be provided with these incomplete certificates, which did not allow them to register the birth of the authors in the State party, as the documents do not conform to the requirements under domestic law. At the time of the submission of the complaint, the second and third authors were 15 years of age and lived in Shkodra, Albania, but could not attend school or access social and health services as they had not been and could not be registered with the Albanian authorities.

2.6 The authors note that in the absence of a birth certificate conforming to the form required under domestic legislation, an alternative is to initiate civil court proceedings under article 45 of the Law on Civil Status through a motion for the completion of birth certificate data. The authors however claim that they cannot avail themselves of this process since they were born abroad and State party courts have consistently maintained, in cases such as theirs, that the domestic courts lack jurisdiction to complete or correct certificates issued by foreign authorities.<sup>3</sup>

2.7 The authors note that it is also possible to challenge the refusal of the consular authorities or the Civil Status Office to register the birth of a child born in Greece to undocumented Albanian parents through court proceedings. They note that the Tirana Legal Aid Society succeeded in one such case. However, the proceeding took over two and a half years and the authors note that they do not have the economic means to pay for such a

<sup>2</sup> The authors refer to CERD, concluding observations on Greece, CERD/C/GRC/CO/22-23, 2 October 2016 and CESCR, concluding observations on Greece, E/C.12/GRC/CO/2, 27 October 2015.

<sup>3</sup> The authors refer to Decision No. 41-2017-4172 (1522), dated 5 December 2017 by the Korca First Instance Court, the subject matter of which was the completion of data for a person born in Greece. The Court stated that the inaccuracy of a birth certificate and a declaration of birth issued in Greece did not constitute a case where a completion of birth certificate data could be granted by the Court. The Court of appeal confirmed the decision on appeal. The authors also refer to a judgment by the Shkodra District Court, dated 15 February 2018, decision no. 572, in which the Court rejected an application to confirm the birth of two children born in Belgium, as the Court found that the parents needed to submit Belgian birth certificates to the Albanian civil status office in order to register the birth of the children.

proceeding and allege that there is no legal aid available to them. They note that under law no. 10039 'On Legal Aid' a person must show that they are receiving social assistance in order to secure legal aid, making people without documentation ineligible. They further claim that the excessive length of the proceedings is not compatible with the right to "immediate" birth registration under article 24 of the Covenant. They also note that in 2018 the State party adopted law no. 111/2017 'Law on State Guaranteed Legal Aid'; however, the new legislation has not yet been implemented as various sublegal acts required for implementation have not been approved.

2.8 The authors did not submit a constitutional complaint to the Albanian Constitutional Court as they argue that for a constitutional complaint to be admissible it must under article 71/a (b) of law no. 8577 of the 'Law on the Organisation and Functioning of the Court' be submitted within four months after the finding of an infringement. In the case of the authors, this time limit has passed, and they argue that there is no exception provided to the time limit. They further argue that a constitutional complaint is not an effective remedy in their case as the Constitutional Court does not have any concrete competence to restore the rights of victims, but only invalidate judicial decisions, as such the Court could not provide them with an effective remedy, i.e., the Court does not have competence to order the Civil Status Registration Office to register their births.

2.9 The authors claim that for the reasons outlined above there are no effective remedies available to them in the State party, as no procedure exists under State party legislation that could provide them with an "immediate" birth registration, as required by article 24 (2), read in conjunction with article 2 (2-3) of the Covenant. They also submit that requiring them to undertake lengthy and speculative litigation would only further undermine their right to immediate birth registration. Additionally, they note that the violation of their rights results in part from the State party's failure to cooperate effectively with their counterparts in Greece.

### **Complaint**

3.1 The authors claim that by failing to register their births the State party has violated their rights under articles 16, 17, 24 (1-3), 25 and 26 of the Covenant.

3.2 The author claims a violation of their rights under article 24 (2) of the Covenant as the State party authorities have failed to proceed with the registration of their birth because they were unable to provide Greek birth certificates in the form required under State party legislation, i.e., a legalised certificate translated into Albanian and notarised. They claim that they cannot submit such a document as the certificates issued by the Greek authorities concerning their births are incomplete and do not include their names. This being due to their parents' undocumented status in Greece at the time of their births. The authors submit that the term "immediately" in article 24 (2) places a particular requirement on the authorities, which the State party is failing to fulfil in their case. The State party authorities are aware that the authors cannot provide a Greek birth certificate conforming to the requirements under State party legislation. Insisting on such a document in the case such as of the authors leads to arbitrary delays in registration, and puts the authors at risk of statelessness, while depriving them of fundamental basic rights such as the right to education and health. The requirement under domestic legislation for children of Albanian parents born abroad to provide a legalised birth certificate, and the lack of exceptions for those, such as the authors, who are not in position to obtain such a document, renders the registration inaccessible for an undetermined period, which is manifestly contrary to the requirement of immediacy under article 24 (2) of the Covenant. The authors note that at the time of the submission of their complaint, they were four and 15 years old, respectively and still unregistered, which is clearly incompatible with the provisions of the Covenant.

3.3 The authors claim that by failing to register their births, the State party has also violated their right to acquire a nationality under article 24 (3) of the Covenant. They note that under article 7 of the Law on Citizenship any individual born to one or two parents of Albanian nationality automatically acquires Albanian nationality. However, in practice, Albanian nationality is only recognized based on a child's birth registration. Because of the State party legislation, the authors claim that they are not able to register their birth and are therefore at risk of statelessness. They claim that they are legally invisible, and that this situation can last for an indefinite period of time.

3.4 The authors further claim a violation of their rights under article 24 (1) of the Covenant. They note that the failure to register their births immediately is a facially neutral measure, but that it has a disproportionate impact on Roma.<sup>4</sup> The authors note that the Tirana Legal Aid Society offers free legal services in relation to birth registration regardless of race or ethnicity; it is not an organization set up specifically to provide services to Roma. However, despite the small proportion of Roma in the State party, estimated at 0,29% to 3,5% of the population, Roma makes up more than half of the families who require assistance from the Tirana Legal Aid Society. The authors additionally note that children who are unable to register their birth with the State party authorities are deprived of a host of basic rights including: (a) the right to health, as children who are not registered cannot register for health insurance and as a result do not enjoy access to free or reduced-cost health services in the State party; (b) the right to education - as schools in the State party generally expect parents to produce registration documents, including a birth certificate at enrolment. While the Ministry of Education has issued an order requiring schools to enrol children who do not have a birth certificate, many parents are not aware of the order, and in some cases the schools do not comply with the order, and the children thus remain unable to attend school; (c) access to justice and the right to protection of family life. When children are unregistered, family courts will not recognize their existence under family law. This can have various impacts such as in case of divorce, domestic violence, the death of one or more parents, or similar situations where the national courts will simply not take any decision or make any orders as to the rights or future of these children; and (d) social protection as families of unregistered children are unable to secure access to child benefits, which has a particularly strong impact on Roma families who tend to be poorer because of historical exclusion.

3.5 The authors further note that according to the UNHCR report ‘Mapping the Population at Risk of Statelessness in Albania’<sup>5</sup> 1,031 persons were at risk of statelessness in the State party in 2018, mostly due to difficulties in having their nationality confirmed. The number is likely to be higher, as persons at risk of statelessness often remain invisible and are hard to identify. 97% of those recorded at risk of statelessness in Albania are children. The primary causes reported are: being born outside Albanian territory (53%), being born to parents who are not married (12%), being born at home (10%), and being born in hospital or maternity units that hold incorrect personal data about the mother (9%). Among those at risk of statelessness who were born outside Albania the majority were born in Greece. Despite the fact that Romani and Egyptian communities represent only between 0.4% and 3.3% of the total Albanian population, they make up half of the recorded cases of children at risk of statelessness and are thus disproportionately affected by this phenomenon.<sup>6</sup>

3.6 The authors also claim that their rights under articles 16, 17, 25 and 26 of the Covenant have been violated. They argue that owing to their status as legally invisible persons in the State party they are unable to enjoy the right to recognition as a person before the law, their right as citizens to take part in public life, and their right to be treated equally under the law. Regarding their claim under article 26 of the Covenant, they argue that said right as been violated for the same reasons as set out regarding their claims under article 24 (1).

#### **State party’s observations on the merits**

4. On 18 July 2021, the State party submitted its observations on the communication by providing information on newly enacted legislation in the State party. The State party notes that in December 2018 amendments to the Law on Civil Status entered into force. It notes that some of the amendments to the legislation include: (a) The registration of birth of children born outside the territory of the State party to Albanian parents shall be completed by the civil registration service of the country of birth. Where this is not possible, the State party diplomatic or consular representatives in the country of birth shall register the birth of the child. (b) All medical institutions, public or private, entitled to certify a birth are obliged to send documentation on every child delivered in their institutions to the civil registration

<sup>4</sup> The authors refer to CERD, concluding observations on Albania, CERD/C/ALB/CO/5-8, para 7, 14 September 2011 and to UNHCR report ‘Mapping the Population at Risk of Statelessness in Albania’, May 2018.

<sup>5</sup> UNHCR report ‘Mapping the Population at Risk of Statelessness in Albania’, p.8.

<sup>6</sup> Ibid.

offices. (c) Where data is incomplete, the civil registration office is obliged to record the births in temporary or provisional registry books, which will ensure children access to social care services, education and health while the data is being completed. The office is also to assist the parents in obtaining the necessary documentation for completing the data. (d) If the birth of a child is not registered within 60 days from the date of birth, the civil status office is to inform the relevant social service child protection unit, which is to take concrete measures for the assessment of the situation and the registration of the birth by the civil status office. The State party notes that with the amendments to its domestic legislation the civil status offices are under the obligation to ensure that assistance in registering births is provided to citizens who are in possession of incomplete birth certificates.

#### **Authors' comments on the State party's observations**

5. On 22 April 2022, the authors provided their comments on the State party's observations. The authors note that there have been significant progress in legislation concerning registration of births in the State party but they argue that there is still a need for improvement of technical equipment and legal knowledge at health centres in the State party, to ensure that a child's birth is registered within a short period of time. The authors note that new legislation has been enacted to facilitate access to registration of births for children born outside the territory of the State party. They however note that according to reports, in most case registration still requires court procedures, which causes delays in the registration of births. Difficulties arise particularly when a birth is not accompanied by what the authorities expect to be submitted, such as medical reports, identity documents of one or both parents, or when the parents fail to present themselves at the registration office within the specified deadline.

#### **Issues and proceedings before the Committee**

##### *Consideration of admissibility*

6.1 Before considering any claims contained in a communication, the Committee must decide, in accordance with rule 97 of its rules of procedure, whether the communication is admissible under the Optional Protocol.

6.2 The Committee has ascertained, as required under article 5 (2) (a) of the Optional Protocol, that the same matter is not being examined under another procedure of international investigation or settlement.

6.3 The Committee notes that the birth of the second and third author took place in 2002, i.e., before the entry into force of the Optional Protocol for the State party. The Committee recalls its jurisprudence to the effect that alleged violations of the Covenant which occurred before the entry into force of the Optional Protocol for a given State party may be examined by the Committee if those violations continue after that date or continue to have effects which in themselves constitute a violation of the Covenant, or if the State party affirms such a violation.<sup>7</sup> In the present case the Committee observes the authors' claims that the violations of their rights have had continued effect after the entry into force of the Optional Protocol, with them being at risk of statelessness due to the failure by the State party to register their births, thereby also depriving them of access to basic rights such as education and health. The Committee further notes that the State party has not objected to the admissibility of the present communication. The Committee therefore concludes that it is not precluded *ratione temporis*, under article 3 of the Optional Protocol, from examining the present complaint.

6.4 The Committee notes the authors' submission that no effective remedy was available to them in the State party regarding the claims raised in the communication. The Committee notes that the State party has not identified any domestic remedy that would have been available to the authors nor objected to the admissibility of the present communication. The Committee therefore concludes that it is not precluded by article 5 (2) (b) of the Optional Protocol, from examining the present complaint.

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<sup>7</sup> See for example, *Kouidis v. Greece* (CCPR/C/86/D/1070/2002), para. 6.3 and *Quliyev v Azerbaijan* (CCPR/C/112/D/1972/2010), para. 8.3.

6.5 The Committee notes the authors' claims that their rights under articles 17 and 25 of the Covenant have been violated as owing to their status as legally invisible persons in the State party their right to family life, and to take part in public life have been violated. The Committee however notes that the authors have not submitted any specific information or argumentation on how they have personally been adversely affected as concerns their claims in this regard. The Committee thus finds the authors' claims under articles 17 and 25 of the Covenant to be insufficiently substantiated and therefore inadmissible under article 2 of the Optional Protocol.

6.6 The Committee however considers that the authors have sufficiently substantiated the remainder of their claims. Accordingly, the Committee declares the communication admissible as concerns the authors' claims under articles 16, 24 (1-3) and 26 of the Covenant and proceeds to its examination on the merits.

#### *Consideration of the merits*

7.1 The Committee has considered the communication in the light of all the information submitted to it by the parties, in accordance with article 5 (1) of the Optional Protocol.

7.2 The Committee notes the authors' claims that by failing to register their births the State party has violated their rights under articles 16, 24 (1-3) and 26 of the Covenant.

7.3 The Committee recalls that, under article 24, every child has a right to special measures of protection because of their status as a minor.<sup>8</sup> It also recalls that the principle that the child's best interests shall be a primary consideration in all decisions affecting the child forms an integral part of every child's right to measures of protection, as required under article 24 (1).<sup>9</sup> The Committee further recalls that under article 24 (2), every child has the right to be registered immediately after birth and to have a name. In this connection, the Committee observes that birth registration is the continuous, permanent and universal recording within the civil registry of the occurrence and characteristics of birth, in accordance with the national legal requirements, which establishes the existence of a person under law, and lays the foundation for safeguarding civil, political, economic, social and cultural rights. As such, it is a fundamental means of protecting the human rights of the individual.<sup>10</sup>

7.4 The Committee further recalls that special attention should also be paid, in the context of the protection to be granted to children, to the right of every child to acquire a nationality, as provided for in article 24 (3) of the Covenant, the purpose of which is to prevent a child from being afforded less protection by society.<sup>11</sup> States parties are thus required to adopt every appropriate measure, both internally and in cooperation with other States, to ensure that every child has a nationality when they are born. In this connection, no discrimination with regard to the acquisition of nationality should be admissible under internal law as between legitimate children and children born out of wedlock or of stateless parents or based on the nationality status of one or both of the parents.<sup>12</sup> The Committee also recalls its jurisprudence that because of the difficulties that often arise when determining whether an individual has acquired a nationality, the burden of proof must be shared between the individual and the State party authorities to obtain evidence and to establish the facts as to whether an individual would otherwise be stateless.<sup>13</sup> The Committee further observes that while birth registration does not in itself confer citizenship on a child, it is essential to ensure the right of every child to acquire a nationality, as it constitutes an important form of proof of the link between an individual and the State. It documents where a child was born and who

<sup>8</sup> General comment No. 17 (1989) on the Rights of the Child, para. 4; and *Mónaco de Gallicchio v. Argentina* (CCPR/C/53/D/400/1990), para. 10.5.

<sup>9</sup> *Bakhtiyari and Bakhtiyari v. Australia* (CCPR/C/79/D/1069/2002), para. 9.7.

<sup>10</sup> OHCHR, A/HRC/27/22, 'Birth registration and the right of everyone to recognition everywhere as a person before the law', para. 4.

<sup>11</sup> General comment no. 17, para 8.

<sup>12</sup> *Ibid.*

<sup>13</sup> *Zhao v. the Netherlands* (CCPR/C/130/D/2918/2016), para. 8.3.

the child's parents are, thus providing important evidence of whether a child can acquire citizenship on the basis of place of birth or of descent.<sup>14</sup>

7.5 In the present case the Committee notes the authors' claims that their rights under article 24 (2-3) of the Covenant have been violated by the State party authorities' failure to register their birth. It notes their argument that their parents were unable to register their births with State party authorities as they were unable to submit Greek birth certificates in the form required under State party legislation, due to the parents' undocumented status in Greece at the time of their birth. The Committee further notes the authors' argument that the State party authorities were aware of the fact that their parents were unable to submit birth certificates conforming to the requirements under State party legislation, but yet insisted on the submission of said documents. This without providing any exceptions for persons in particular situations of vulnerability such as the authors, thereby arbitrarily delaying the registration of their births, putting them at risk of statelessness and depriving them of fundamental basic rights, such as the right to education and health. The Committee notes the State party's information that domestic legislation on the registration of births was amended in December 2018, when amendments to the Law on Civil Status entered into force. It notes the State party's information that the legislative amendments were aimed at facilitating the registration of births in the State party, including for persons born outside the territory of the State party and who may lack the formal birth certificates required under the previous legislation. The Committee also notes the State party's information that under the amended legislation the civil status offices are under the obligation to ensure that assistance in registering births is provided to citizens who are in possession of incomplete birth certificates.

7.6 The Committee thus notes and welcomes the improvements to the State party legislation regarding registration of births. It however notes that no information has been provided as to the situation of the authors, or whether with the legislative amendments to the Law on Civil Status their births have been registered with the civil registry. Regardless of whether the authors have subsequently been able to have their births registered, the Committee however recalls that at the time of the submission of the complaint the authors were four and 15 years old respectively, with their birth still unregistered by the civil registry in the State party, thereby not allowing the authors to access basic rights such as health insurance, school enrolment and child social benefits, and putting them at risk of statelessness.

7.7 The Committee recalls that it is implicit in article 4 (2) of the Optional Protocol that the State party has the duty to investigate in good faith all allegations of violations of the Covenant made against it and its representatives and to provide the Committee with the information available to it. In cases where the allegations are corroborated by credible evidence submitted by the author and where further clarification depends on information that is solely in the hands of the State party, the Committee may consider an author's allegations as substantiated in the absence of satisfactory evidence or explanations to the contrary by the State party.<sup>15</sup> In the present case, the Committee notes that the State party has not refuted any of the authors' claims as presented under article 24 (2-3) of the Covenant. In the absence of a response from the State party in that regard, the Committee gives due weight to the authors' claims and finds that the State party did not exercise due diligence in discharging its positive obligation to assist the authors in registering their birth with the civil registry and thus establishing their nationality, in violation of the authors' rights under articles 24 (2-3) of the Covenant.

7.8 The Committee further notes the authors' claim that the failure to register their births amounted to discrimination based on ethnicity in violation of their rights under articles 24 (1) and 26 of the Covenant. The Committee recalls that the Covenant requires that children should be protected against discrimination on any grounds such as race, colour, sex, language, religion, national or social origin, property or birth. In this connection, the Committee notes that, whereas non-discrimination in the enjoyment of the rights provided for in the Covenant also stems, in the case of children, from article 2 and their equality before the law from article 26, the non-discrimination clause contained in article 24 relates specifically to the measures

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<sup>14</sup> A/HRC/27/22, para. 24.

<sup>15</sup> See for example, *Purna v. Nepal* (CCPR/C/119/D/2245/2013), para. 12.2 and *V.M. v. Sri Lanka* (CCPR/C/137/D/2406/2014), para. 8.3.



of protection referred to in that provision.<sup>16</sup> The Committee further recalls that general comment no. 18 defines discrimination as “any distinction, exclusion, restriction or preference which is based on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status, and which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise by all persons, on an equal footing, of all rights and freedoms.”<sup>17</sup> The Committee also recalls that the prohibition of discrimination applies to both the public and the private sphere and that a violation of the right to non-discrimination may result from a rule or measure that is apparently neutral or lacking any intention to discriminate but has a discriminatory effect.<sup>18</sup> However, not every distinction, exclusion or restriction based on the grounds listed in the Covenant amounts to discrimination, as long as it is based on reasonable and objective criteria, in pursuit of an aim that is legitimate under the Covenant.<sup>19</sup>

7.9 In the present case the Committee notes that authors’ claim that the State party legislation on registration of births was a facially neutral measure, but that it had a disproportionate impact on Roma, as they argued that Roma, such as in the situation of their parents, are more likely to move to Greece irregularly because of their exceptional poverty in Albania owing to historical exclusion, that Roma appear to be more regularly targeted for expulsion from Greece, and as due to poverty Roma face obstacles preventing them from securing the documentation needed for the registration of a birth. The Committee notes in this connection that according to the information provided by the authors referring to a UNHCR report from 2018, children from Romani and Egyptian communities were disproportionately being recorded as at risk of statelessness in the State party as despite representing between only 0.4% and 3.3% of the total Albanian population, they make up half of the recorded cases of children at risk of statelessness in the country. The Committee notes that the State party has not submitted any information refuting the authors’ assertion as to this claim, nor has it presented any argumentation to the effect that the State party legislation was based on reasonable and objective criteria and in pursuit of an aim that is legitimate under the Covenant. In the absence of an explanation from the State party in that regard, the Committee gives due weight to the authors’ claims and finds that the facts described amounts to a violation of the authors’ rights under articles 24 (1) and 26 of the Covenant.

7.10 The Committee further notes the authors’ claim that owing to their status as legally invisible persons in the State party they are unable to enjoy the right to recognition as a person before the law, in violation of their rights under article 16 of the Covenant. The Committee notes that the right to recognition before the law implies the capacity to be the holder of rights and obligations<sup>20</sup> and thus is fundamental to all rights insofar as recognition of legal personality is a necessary prerequisite to all other rights of the individual. The Committee recalls its general comment No. 17, in which it noted that the provisions of article 24 (2) should be interpreted as being closely linked to the provision concerning the right to special measures of protection and that it is designed to promote recognition of the child’s legal personality.<sup>21</sup> The purpose of the obligation to register children after birth is further to reduce, for instance, the danger of abduction, sale of or traffic in children, or of other types of treatment that are incompatible with the enjoyment of the rights provided for in the Covenant<sup>22</sup>. The fulfilment of the right to be registered at birth and recognized as a person before the law is thus closely linked to and a prerequisite of the enjoyment and the realization of many other rights, with socioeconomic rights, such as the right to health and the right to education at particular risk where birth registration is not systematically carried out, and the

<sup>16</sup> General Comment no. 17, para 5.

<sup>17</sup> General comment No. 18 (1989) on non-discrimination, para. 7.

<sup>18</sup> *Althammer et al. v. Austria* (CCPR/C/78/D/998/2001), para. 10.2.

<sup>19</sup> *O’Neill and Quinn v. Ireland* (CCPR/C/87/D/1314/2004), para. 8.3; *Yaker v. France* (CCPR/C/123/D/2747/2016), para. 8.14; *Hebbadj v. France* (CCPR/C/123/D/2807/2016), para. 7.14; and *Genero v. Italy* (CCPR/C/128/D/2979/2017), para. 7.3.

<sup>20</sup> Inter-American Court of Human Rights, *Yean and Bosico Girls v. Dominican Republic*, Preliminary Objections, Merits, Reparations and Costs, judgment of 8 September 2005, paras. 176-178.

<sup>21</sup> General comment No. 17, para. 7.

<sup>22</sup> *Ibid.*

protection of children thus jeopardized.<sup>23</sup> The failure to register a birth has profound consequences for children's enjoyment of their rights with regard to protection, nationality, access to social and health services, and education.<sup>24</sup>

7.11 In the present case, the Committee notes the authors' claims that owing to their status as legally invisible persons they found themselves in a legal limbo and were thus unable to attend school or access social and health services (para. 3.4). The Committee notes that the State party's observations regarding the 2018 amendments to the Law on Civil Status (para. 4) do not provide any persuasive argumentation refuting the authors' claims in this regard. The Committee considers that by failing to register the birth of the authors and thus recognizing their legal personality, the State party also violated their rights under article 16 of the Covenant.

8. The Committee, acting under article 5 (4) of the Optional Protocol, is of the view that the facts before it disclose a violation by the State party of the authors' rights under articles 16, 24 (1-3) and 26 of the Covenant.

9. Pursuant to article 2 (3) (a) of the Covenant, the State party is under an obligation to provide the authors with an effective remedy. This requires it to make full reparation to individuals whose Covenant rights have been violated. Accordingly, the State party is obligated to ensure that the authors' birth is immediately registered in the civil status registry, should this have not already been done, taking into account the Committee's findings in the present Views and to provide them with adequate compensation. The State party is also under an obligation to take all steps necessary to prevent similar violations from occurring in the future, including by ensuring that its legislation on the registration of births, as well as its implementation, comply with the State party's obligations under articles 16, 24 (1-3) and 26 of the Covenant.

10. Bearing in mind that, by becoming a party to the Optional Protocol, the State party has recognized the competence of the Committee to determine whether there has been a violation of the Covenant and that, pursuant to article 2 of the Covenant, the State party has undertaken to ensure to all individuals within its territory or subject to its jurisdiction the rights recognized in the Covenant and to provide an effective and enforceable remedy when it has been determined that a violation has occurred, the Committee wishes to receive from the State party, within 180 days, information about the measures taken to give effect to the Committee's Views. The State party is also requested to publish the present Views and to have them widely disseminated in the official language of the State party.

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<sup>23</sup> A/HRC/27/22, para. 3. See also Committee on the Rights of the Child, General comment No. 7 (2005) on Implementing child rights in early childhood, para. 25.

<sup>24</sup> A/HRC/27/22, para. 18.