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Minorities, Citizenship and Statelessness in Europe

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Abstract
Since 1989, questions of citizenship and statelessness in Europe are once again dynamic. On the one hand, exclusionary forces have become reinvigorated, including as a result of ethno-nationalism. In addition, new forms of status have been created, severely limiting participation and inclusion rights. Minorities have been particularly subject to exclusion, with Roma and Russians affected in particular. On the other hand, regional and international lawmaking has endeavoured to counteract these forces. This article attempts to summarize these developments, with a particular focus on EU and Council of Europe law.

Keywords
Citizenship; Statelessness; Nationalism; Minorities; Roma; European Court of Human Rights; Council of Europe; European Union

1. Introduction

The dimensions of statelessness and the racially discriminatory exclusion of minorities in Europe as they existed before 1989 have changed significantly. The collapse of the three major federations in the Communist world – Czechoslovakia, Yugoslavia and the former Soviet Union – dramatically reopened the issue of statelessness of minorities, as successor states undertook to limit participation in the new polities to ethnic kin. As a result, thousands of people who formerly enjoyed a relationship in these states were marginalised and disenfranchised.

The ethnicisation and political restructuring in these formerly Communist states occurred during a period when regional law – both human rights law evolving under the Council of Europe system and the remarkable project of the European Union – was developing to bring about a change in the meaning of citizenship in Europe, particularly with regard to the exercise of rights. Yet, in spite of these positive changes at supra-national level, new forms of exclusion of minorities have taken shape and hardened.

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In practice, many people with genuine effective links to one or more European States are precluded from full and effective citizenship. Many may even lack citizenship of any country. Exclusion takes many forms but is frequently on grounds of ethnicity or perceived race. Roma – a stigmatized, pariah minority – are particularly affected.[1] Other minorities similarly experience exclusion in certain countries. Exclusion from the polity can and frequently does give rise to expulsion or threat of expulsion from a country.[2] This paper will attempt to provide an overview of this complex terrain.

2. Before 1989

As detailed extensively by Hannah Arendt, the displacement and atomization initiated by statelessness pursued as state policy cannot be separated from other aspects of the catastrophic middle part of the 20th century in Europe.[3] In particular the German-led effort to kill all the Jews of Europe was founded on a prior effort to disenfranchise through legal means Jews from the German polity. In the immediate post-War period, policies aiming to reintegrate the large numbers of persons denationalized in the run-up to World War II and remaining displaced following it, concentrated primarily on their resettlement in places outside Europe.

As the Cold War developed, the countries of the Eastern block implementing state socialism for the most part eradicated formal statelessness on their territories. Strong limitations on mobility, strictly regulated migration, and rules fixing persons to given localities, assisted in the managerial aspects of rigorously pursued communist-era integration projects. In Western Europe however, several factors continued to provide structural reasons for the denial of citizenship to minorities.

First of all, the citizenship laws of a number of countries continued to limit citizenship outside the naturalization procedure primarily to ethnic kin. Most famous in this regard was the Federal Republic of Germany, which finally amended its law on citizenship to include limited *ius soli* rights of access to citizenship in 1999. Countries such as Greece and Spain similarly denied citizenship on a racially exclusionary basis – primarily to Roma – until the 1970s and 1980s.

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1) Roma arrived from India to Europe in a series of migrations approximately 1000 years ago. Although accurate data is not available, plausible estimates indicate that there are currently well over ten million Roma in Europe. Roma have seen repeated episodes of persecution in Europe. Today they face stigmatisation, widespread stereotyping, and often intense hostility throughout Europe. For a comprehensive overview of the human rights situation of Roma in Europe, see Commissioner for Human Rights (2012) *Human Rights of Roma and Travellers in Europe*, Strasbourg: Council of Europe.

2) For a number of reasons which are evident or explicit in this paper, a distinction between first and later migrants and so-called autochthonous minorities is explicitly not taken as the starting point for explorations of law in this area.

3) H. Arendt (1958) *The Origins of Totalitarianism,* Cleveland, OH: World Publishing.

Cases from Germany indicated raw racial considerations in the allocation, denial and withdrawal of citizenship. For example, the Göttingen-based human rights organization Gesellschaft für bedrohte Völker (GfbV) reported the case of Ms. Frieda Kraus, a Sinti woman who was born in the Sudetenland, in today's Czech Republic, in the early 1940s. At the end of World War II, she and her family were expelled from Sudetenland by Czechoslovak authorities along with millions of other Germans. According to the GfbV, Ms. Kraus received German citizenship after World War II. In the 1980s, however, she was ordered by German authorities to give up her German papers and was issued instead with a document certifying her as stateless. Her possession of a German passport was, according to the GfbV, not considered sufficient evidence of her German citizenship.[4]

German jurisprudence developed a conceptual basis in deep tension with general international law principles, most notably the absolute ban on all forms of racial discrimination.[5] Exemplary in this regard is the case of a German Sinto named Andreas Kaufmann Jr. who was born in Simmerberg in the Landau-Bodensee district of Bavaria. In the early 1970s, Mr. Kaufmann was declared stateless by Bavarian officials because in 1819 his ancestors had allegedly illegally moved to Bavaria from the Kingdom of Württemberg, both entities are today part of the Federal Republic of Germany. Despite the fact that he and his ancestors had lived in southern Germany for more than two hundred years, the city of Munich ruled that Mr. Kaufmann's citizenship claims could not be recognized "since he had inadequate proof required for citizenship." Mr. Kaufmann was finally awarded German citizenship in 1979 by the Bavarian Constitutional Court, after multiple appeals.[6]

A second factor which set some of the countries of Western Europe apart from their Central and Eastern European neighbours arose in the context of de-colonization. This gave rise to practices in some countries which called into question the quality of citizenship allocated, particularly where non-whites were concerned. In one famous case, the United Kingdom imposed an immigration ban on UK citizens of Asian origin as they sought to flee east African countries, particularly Uganda, Kenya and Tanzania, which had undertaken repressive "Africanisation" policies post-independence. Treatment of East African Asian UK citi-

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4) See Claude Cahn, 'Who is a German?' (2000) 20 *SAIS Review*, 117–124.

5) The International Convention on the Elimination of All Forms of Racial Discrimination (ICERD) in particular requires states, "to pursue by all appropriate means and without delay a policy of eliminating racial discrimination in all its forms". ICERD Article 2(1)(a) commits states "to engage in no act or practice of racial discrimination against persons, groups of persons or institutions and to ensure that all public authorities and public institutions, national and local, shall act in conformity with this obligation". Article 2(1)(c) requires that states "amend, rescind or nullify any laws and regulations which have the effect of creating or perpetuating racial discrimination wherever it exists".

6) For information on the Kaufmann and other cases of Sinto statelessness in Germany, see S. Milton (1998) 'Persecuting the Survivors: The Continuity of "Anti-Gypsyism" in Postward Germany and Austria, in S. Tebbutt (Ed.), *Sinti and Roma: Gypsies in German-Speaking Society and Literature*, Oxford: Berghahn Books, pp. 35–48.

zens was fundamentally different from treatment of whites fleeing former colonies, who were generally welcomed to the United Kingdom and assisted in resettling there. The case was ultimately adjudicated by the European Commission on Human Rights, which held that the UK's racially discriminatory treatment of the East African Asians was so severe that it amounted to degrading treatment in the sense of Article 3 of the European Convention on Human Rights.[7] While in this case the ground of discriminatory treatment was race (and not nationality), it was a multi-tiered approach to nationality that gave rise to this exclusionary treatment. Said differently, the East African Asians case threw sharp light on a gap between the formal status of citizenship in the United Kingdom at that time, and "real, effective" citizenship.[8] It was particularly striking that the distinction drawn in that case was over what is arguably the most aboriginal right associated with citizenship: the right to enter one's own country.

3. The End of Bipolarity 1: Collapse of States

The end of bipolarity in the wake of the events of 1989 triggered a number of changes to the borders (geographical and person-political) of the nation state. The dissolution and division of Czechoslovakia, Yugoslavia and the Soviet Union into new nation states drawn along the internal borders of the previous constitutive federal elements was accompanied by lawmaking which frequently did not follow these borders in the project of establishing the initial body of citizens in the new entity. Often, discrimination based on race or ethnicity has been a key factor in limiting access to the new polity.

A number of countries adopted restrictive citizenship laws, designed to exclude certain ethnic groups, as the Communist federations collapsed. Croatia adopted a citizenship law aimed at excluding Serbs, Roma and others from access to belonging in the new state, and has reinforced this law through practices including the wholesale expulsion of hundreds of thousands of Serbs in the middle of 1990s, as well as forced expulsions of Roma from Croatia.[9] The Czech Republic designed its citizenship law with a number of provisions aimed at forcing Roma in the Czech Republic to go to Slovakia.[10] Key elements of the law were amended in 1999, but certain categories of persons, notably those not in the country for periods between 1993 and 1999, still do not have access to Czech citizenship, other than by naturalisation.

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7) European Commission of Human Rights, *East African Asians v. United Kingdom*, report adopted on 14 December 1973 pursuant to Article 31 of the Convention.

8) For a recent rigorous treatment of citizenship from within a human rights perspective, see D. Weissbrodt (2008) *The Human Rights of Non-Citizens,* Oxford University Press, New York, USA.

9) Field research by the author, Republic of Macedonia, July 1996.

10) The Article 8 Project of The Tolerance Foundation, (1996) *From Exclusion to Expulsion: The Czech Republic's "New Foreigners", Part I: Judicial Expulsion*, Prague.

Macedonia implemented a restrictive citizenship law after independence, giving rise to a number of categories of excluded groups, most notably ethnic Albanians and Roma. Widely touted amendments in 2004 failed to remedy the underlying problem that Macedonian officials do not recognise the legitimate ties of a number of categories of persons to Macedonia.[11]

Slovenia adopted restrictive citizenship provisions in practice excluding "undesirables from the south" (Bosnians, ethnic Albanians from Kosovo, Macedonians, Roma and Serbs). Slovene authorities also destroyed the records of approximately 25 000 ex-Yugoslavs living in Slovenia at the time of independence, thereby denying them their acquired rights associated with residency. Although the Slovene Constitutional Court ruled the act illegal in 1999, a subsequent public referendum reinforced government intransigence in providing justice to the "erased". In spite of the 2010 European Court of Human Rights' judgment in the case of Kuric and Others v. Slovenia, the matter has yet to be formally resolved.[12]

The collapse of the Soviet Union resulted in a number of new states with significant Russian minorities. These were frequently regarded as "colonists" from the Soviet era, and were therefore unwelcome. Authorities in the new states frequently endeavoured to use language tests or other requirements to preclude minorities, particularly ethnic Russians, from having access to citizenship in the new state. Exemplary in this regard are Estonia and Latvia, where many thousands of ethnic Russians have been blocked from having access to citizenship. In 2004, the Council of Europe's Commissioner for Human Rights noted, with respect to Estonia:

> The legislative process following the independence in 1991 was largely guided by the principle of restoration, which meant, inter alia, that automatic acquisition of Estonian citizenship required a connection to the pre-Soviet era Estonia. Consequently, hundreds of thousands of persons who had settled in Estonia during that era did not acquire citizenship automatically, and had to go through a naturalisation process.[13]

A 2007 follow-up report by the Commissioner reported that although progress had been made since 2004, well over 100 000 persons remained without citizenship in Estonia.[14]

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11) European Roma Rights Centre (1998) *A Pleasant Fiction: The Human Rights Situation of Roma in Macedonia,* Country Reports Series No. 7, Budapest: European Roma Rights Centre.

12) J. Dedić, V. Jalušić and J. Zorn (2003). *The Erased: Organized Innocence and the Politics of Exclusion,* Ljubljana: Peace Institute; *Kuric and Others v. Slovenia*, Application no. 26828/06, Council of Europe: European Court of Human Rights, 13 July 2010.

13) Council of Europe Commissioner for Human Rights, 12 February 2004, Report by Mr. Alvaro Gil-Robles, Commissioner for Human Rights, on his visit to Estonia, 27–30 October 2003, for the attention of the Committee of Ministers and the Parliamentary Assembly, CommDH5, paragraph 7.

14) Council of Europe Commissioner for Human Rights, 11 July 2007, Memorandum to the Estonian Government: Assessment of the progress made in implementing the 2004 recommendations of the

Latvia has had similar issues. In February 2009, the Grand Chamber of the European Court of Human Rights ruled on a petition arising from stateless Russians in Latvia, finding that the country was in violation of a number of provisions of the European Convention on Human Rights. The case concerned the calculation of the pension entitlement of Ms. Natalija Andrejeva, an ethnic Russian made stateless as a result of Latvian laws adopted in the wake of the dissolution of the Soviet Union. The European Convention includes no right to citizenship or nationality, and the ban on discrimination applying under the Convention in the case is not a freestanding right. The Court nevertheless held that Latvian authorities had violated the ban on discrimination (Article 14) in conjunction with Ms. Andrejeva's right to the peaceful enjoyment of her possessions (Article 1 of Protocol 1), because assessments undertaken when calculating Ms. Andrejeva's pension would not have been carried out were she a Latvian citizen. The Court also found Latvia in violation of the Convention on the Right to Fair Trial Provisions (Article 6), because her access to the Senate of the Supreme Court had been arbitrarily hindered.[15] The case is one of several recently ruled on by the Court, in which the implications of the ruling extend to a class of individuals well beyond the individual case at issue, and which therefore have extensive implications for requirements of legal reform.[16]

Other minorities have also been rendered stateless in successor states to the former Soviet Union. In the Republic of Moldova, for example, authorities have in some cases issued documents declaring Roma persons stateless, although they have evident, durable ties to Moldova and should have been recognized as citizens.[17]

The formal exclusion of tens of thousands of persons from citizenship has given rise to regional lawmaking. The Council of Europe adopted, first, the European Convention on Nationality[18] with a specific chapter on nationality in the context of state succession and, thereafter, the Council of Europe adopted the Convention on the Avoidance of Statelessness in Relation to State Succession.[19] The latter

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Commissioner for Human rights of the Council of Europe, For the attention of the Committee of Ministers and the Parliamentary Assembly, CommDH(2007)12.

15) European Court of Human Rights (Grand Chamber), judgment 19 February 2009, Case of *Andrejeva v. Latvia* (Application no. 55707/00).

16) See especially, Case of Broniowski v. Poland, (Application no. 31443/96), 22 June 2004, as well as, more recently, by implication, D.H. and Others v. the Czech Republic, 13 November 2007.

17) Author discussions with National Roma Centre, Chisinau, Republic of Moldova, February 2011.

18) ETS No. 166, opened for signature 6 November 1997; entry into force 1 March 2000. Elspeth Guild has distinguished the terms "citizen" and "national" as follows: "citizen: this group is defined by national law, commonly contained in constitutions; as a term, it is most evident by its absence in international human rights conventions. . . ."; "national: in this concept there is an inference that the relationship between the individual and the state is recognised beyond the borders of the state; the national is the citizen viewed from outside the state. . . ." (see E. Guild (2004) *The Legal Elements of the European Identity: EU Citizenship and Migration Law*, The Hague: Kluwer Law International, pp. 20–21). See also the useful summary provided in A.M. Boll (2007) *Multiple Nationality and International Law*, Leiden: Martinus Nijhoff Publishers, pp. 57–92. Unless otherwise specified, this paper will use the terms "citizen" and "national" as synonymous.

19) ETS No. 200, opened for signature 19 May 2006; entry into force 1 May 2009.

treaty elaborated the approach set out in the particular chapter of the former. In the European Convention on Nationality, there is a specific commitment undertaken by States to avoid statelessness, derived from general principles of rule of law and human rights. Secondly, in setting the parameters of domestic laws on citizenship in the context of state succession, as well as in evaluating the eligibility of any particular person for citizenship in a new state, the following criteria were named as central:

(a) the genuine and effective link of the person concerned with the State;
(b) the habitual residence of the person concerned at the time of State succession;
(c) the will of the person concerned;
(d) the territorial origin of the person concerned.

Under the subsequent Council of Europe Convention on the Avoidance of Statelessness in Relation to State Succession, the principles above are elaborated in Article 5 to specify, under the "Responsibility of the successor State" to include habitual residence, having a connection with the state, having a legal bond, or being born on the territory.

Yet, these two Conventions, both adopted after the collapses of the three major Communist Federations, for the most part have arrived too late to prevent crises of statelessness in the successor states. In some cases, the European Court of Human Rights has avoided correcting harms imposed by arbitrary denial of citizenship in the context of state succession.[20]

4. End of Bipolarity 2: The European Project

The treaties of the Council of Europe, named above, have been important for developing law in areas not given extensive attention by international human rights lawmakers as the post-World War II era gave rise to the international refugee and statelessness conventions.[21] In terms of overall significance, however, these measures have been dwarfed by two other European level developments, namely, the expansion and integration of the European Union on the one hand, and the steady development of European Court of Human Rights case law eroding the gap of legitimate treatment between nationals and non-nationals on the

[20] See, for example, European Court of Human Rights, Admissibility Decision, Case of *Slivenko and Others v. Latvia*, 23 January 2002: "…for the purposes of Article 3 of Protocol No. 4 the applicants' 'nationality' must be determined, in principle, by reference to the national law. A 'right to nationality' similar to that in Article 15 of the Universal Declaration of Human Rights is not guaranteed by the Convention or its Protocols, although an arbitrary denial of nationality may under certain circumstances amount to an interference with the rights under Article 8 of the Convention (see, *mutatis mutandis, Karassev and Family v. Finland*, no. 31414/96, 12.1.1999, to be reported in ECHR 1999-II)."

[21] See Equal Rights Trust (2010) *Unravelling Anomaly: Detention, Discrimination, and the Protection Needs of Stateless Persons*, London: Equal Rights Trust.

other.[22] The European project has extended a number of rights to non-nationals which have traditionally been reserved for citizens, thereby to a certain extent weakening the divide between these two categories.[23]

The European Union's role in strengthening the rights of persons in the territory of a state of which they are not citizens has been large, and primarily with respect to citizens of one European Union Member State present or resident in another. This has been true particularly since European Union integration entered its intensive phases following the Treaty of Maastricht (1992), which initiated among other things the status of 'citizenship of the European Union', existing parallel to national citizenship and conferred upon all persons enjoying the citizenship of a Member State of the European Union. This new status has been linked directly to fundamental purposes of the Union, namely promoting the free movement of goods, services and people.[24] The traditional powers of national authorities to legitimately refuse entry into the territory of non-nationals, as well as to distinguish legitimately between their own citizens and those of other states, has been almost completely inverted where citizens of another European Union Member State are concerned. Under EU law, EU nationals are afforded a formal equal footing in the labour market, and enjoy all labour protections a national would. They also enjoy the right to vote and stand in local and European Parliament elections. Distinctions in the provision of goods such as public housing between citizens and other EU nationals are now abolished.

To understand the potential implications of these developments on certain excluded minorities, even ones in situations of deep exclusion, it is helpful to return to the example of the Czech Republic, noted above. In 1992, the Czech parliament passed a citizenship law, one of the aims of which was to deny Roma citizenship in the new Czech state, and ideally to create the conditions for forcing as many Roma as possible to go to Slovakia. Major segments of the Czech Romani community have links at some level to Slovakia.[25] However, they also have genuine and effective links to the Czech state; were habitually resident in the Czech Republic at the time of the break-up of Czechoslovakia; and wanted to stay in the Czech Republic. That is, they met three of the four criteria set out by the European Convention on Nationality. In addition, many were born in the Czech

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22) Nationality is one of only a very limited number of grounds for which the Court has deemed that "very weighty reasons" would have to be put forward to justify a difference in treatment (see European Court of Human Rights, Judgment, *Gaygusuz v. Austria*, 31 August 1996). This issue is treated in detail below.

23) See B. Blitz & C. Sawyer (2011) *Statelessness in the European Union*, Cambridge: Cambridge University Press.

24) There is an extensive body of literature on EU citizenship. Particularly insightful is E. Guild (2004) *The Legal Elements of European Identity: EU Citizenship and Migration Law,* The Hague: Kluwer Law International.

25) The Czech Romani community was almost entirely killed in the Holocaust. After World War II and throughout Communism, Roma were resettled from Slovakia to the Czech Republic, particularly to areas from which approximately three million ethnic Germans had been expelled in 1945 and 1946.

Republic. The arbitrary, racially discriminatory denial of Czech citizenship to these persons would therefore be seen to be egregious. Some of these people managed to secure Czech citizenship.[26] However, the vast majority acquired Slovak citizenship and residence in the Czech Republic. Until early 2004, this distinction mattered very much. Nevertheless, on 1 March 2004, both the Czech Republic and Slovakia joined the European Union and as a result, a vast range of previous situations in which a legitimate distinction could be drawn between those Roma who had only managed to secure Slovak citizenship on the one hand, and persons with Czech citizenship on the other, disappeared. Thus, through the acquisition of European Union rights, efforts by one European country to exclude, on racially discriminatory grounds, members of one pariah minority, have been at least temporarily stopped.

In addition to extensive provisions rendering equal the treatment of citizens of EU countries throughout the Union, the EU has also in recent years made laws requiring Member States to provide an effective ban on racial discrimination in a number of sectoral fields (education, employment, housing, health care and social services),[27] as well a ban on discrimination on a range of grounds in the field of employment.[28] These efforts complement over three decades of legal development of the ban on sex discrimination.[29] Efforts to specify procedures, remedy, scope and a number of aspects of the specific dimensions of the rules framework of the ban on discrimination on grounds of ethnicity or perceived race in particular aim to eliminate negative treatment of minorities inside states. While the expulsion of EU citizens from one state to another is permissible only under stringent conditions,[30] such removals now in fact take place.[31]

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26) Under pressure from the European Union and the international community, Czech lawmakers undertook a number of legal reforms partially restoring access to Czech citizenship for excluded Slovak citizens. This included a major legal reform in which all persons of then-Slovak republican nationality on the territory of the Czech Republic on 1 January 1993 (the day of the division of Czechoslovakia and the creation of independent Czech and Slovak republics) were entitled to Czech citizenship if they had been on the territory of the Czech Republic for the entire six-year period intervening.

27) European Council of the European Union Directive 43/2000. Implementing the principle of equal treatment between persons irrespective of racial or ethnic origin.

28) European Council of the European Union Directive 2000/78/EC of 27 November 2000. Establishing a general framework for equal treatment in employment and occupation.

29) Summaries of EU gender equality law are available at: http://ec.europa.eu/employment_social/gender_equality/legislation/index_en.html.

30) Directive 2004/38/EC of the European Parliament and of the Council of 29 April 2004 on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States amending Regulation (EEC) No 1612/68 and repealing Directives 64/221/EEC, 68/360/EEC, 72/194/EEC, 73/148/EEC, 75/34/EEC, 75/35/EEC, 90/364/EEC, 90/365/EEC and 93/96/EEC, *Official Journal* L 158, 30/04/2004 P. 0077 – 0123. During the period 2007–2010, there are indications that a taboo against expelling EU citizens may have broken down, particularly in light of actions by the Danish, French and Italian governments to collectively expel Roma from Bulgaria and Romania. Section VIII below addresses this issue in further detail.

31) See http://www.bbc.co.uk/news/world-europe-11344313.

In August 2010, the then French President Nicholas Sarkozy announced a range of measures aimed at dismantling settlements of Roma from Bulgaria and Romania in France, including the forced expulsion from France of a number of these Roma. The European Union institutions did not take sufficient action to counter this policy, which called into question France's respect for EU free movement law.[32] Almost immediately, across Europe, a discourse re-emerged of branding Roma "foreigners" in the media and by populist politicians.[33] The episode highlighted the extent to which the apparent revolution brought about by EU law is in fact only as strong as the EU institutions' willingness to ensure its enforcement.

Further, implementation of these new EU directives banning discrimination, which entered into force in 2004, has not happened everywhere. Their efficacy in reversing decades or centuries of pariah treatment is not yet known. In addition, these rules do not extend to procedures concerning citizenship or, for that matter, any other form of personal establishment status. Moreover, both of the named directives include explicit statements to the effect that the provisions of the directive do not concern discrimination based on nationality. This is potentially, in certain scenarios (particularly where the person concerned is not a national of another EU Member State), a massive loophole.

In addition, the laws described above apply only in European Union Member States. More broad territorial coverage is provided by the Council of Europe's institutional framework which includes the European Convention on Human Rights and its supervisory tribunal, the European Court of Human Rights. The Article 1 provision of the European Convention on Human Rights outlines that the rights of the Convention shall be guaranteed to all persons on the territory and has in practice been of greater significance than similar guarantees under international law or regional law elsewhere in the world. This is as a result of the power of the Council of Europe, and in particular its premiere body, the European Court of Human Rights. The decoupling of fundamental rights from citizenship has been particularly strong in Europe, both because of the European Union, as well as developments in European Convention law.

Some noteworthy interventions by the Court in this area have included: rejecting the effort by France to administratively designate part of in the international zone of a Paris airport as "extra-territorial" for the purposes of reviewing requests for asylum (implicating in particular Article 3 ban on cruel and degrading treatment guarantees);[34] similarly, rejecting Belgium's denial of *bona fides* to applicants

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32) Inciteful comment on the (lack of) an EU response is available at: http://leighphillips.wordpress.com/2010/08/02/maybe-the-roma-need-their-own-love-parade-to-get-the-eu-to-notice-them/.

33) See Romea.cz, *Romové vzali věci ze skládky, podle médií však rabují*, available online at http://www.romea.cz/index.php?id=detail&detail=2007_8455.

34) European Court of Human Rights, Judgment, *Amuur v. France*: "[…] Despite its name, the international zone does not have extraterritorial status. […]" (25/06/1996, REF00000573).

for asylum on the territory;[35] rejecting the effort by Austria to provide unemployment benefits solely on the basis of nationality;[36] a number of decisions, particularly with respect to Turkey which have recognised extra-territorial obligations of the State.[37]

In addition, the Court has advanced a detailed ban on direct[38] and indirect discrimination,[39] and has read the protection of minorities into certain of the Convention's provisions,[40] despite the fact that no explicit provision on the protection of minorities is included in the Convention.

The Council of Europe has also been instrumental in strengthening the rights of citizens of certain other states, in particular States Parties to the European Social Charter, which sets out that the extensive social rights of the Charter are to be enjoyed by citizens of one Charter Party "lawfully resident or working regularly" in another Charter Party. The approach of strengthening the rights of particular non-nationals in European states has also been taken by the European Union in bilateral treaties with a number of countries, in particular Turkey, and is also very evident in frameworks for relations between the European Union, its Member States, and wealthy non-EU States in close proximity, such as Norway and Switzerland.

In addition, the Council of Europe has devoted explicit lawmaking to the protection of minorities. The Council of Europe's Framework Convention for the Protection of National Minorities[41] includes, at Article 16, a prohibition on states from taking measures which alter the composition of the population.

5. The End of Bipolarity 3: Two-Tier Europe

The European institutions' efforts notwithstanding, it is apparent that there are two Europes. One of these Europes is comprised of the European Union and its Member States, plus several others, such as Switzerland. The other Europe lies at various stages of remove from the European Union. These two Europes now have

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35) European Court of Human Rights, Judgment 5 February 2002. *Conka v. Belgium*.

36) European Court of Human Rights, Judgment 31 August 1996, *Gaygusuz v. Austria*.

37) See, for example, *Cyprus v. Turkey*, 4 EHRR 482 (1976).

38) The Court's case-law establishes that "discrimination means treating differently, without an objective and reasonable justification, persons in relevantly similar situations" (*Willis v. the United Kingdom*, no. 36042/97, § 48, ECHR 2002-IV); the Court has also held that "The right not to be discriminated against in the enjoyment of the rights guaranteed under the Convention is also violated when States without an objective and reasonable justification fail to treat differently persons whose situations are significantly different" (European Court of Human Rights, Judgment, Thlimmenos v. Greece (*Application no. 34369/97*), 6 April 2000). Prior to the Court's 2007 Grand Chamber decision in *D.H. and Others v. the Czech Republic,* it did not examine extensively the distinction between direct and indirect discrimination.

39) D.H. and Others v. the Czech Republic, 13 November 2007.

40) *Connors v. United Kingdom*, 27 May 2004, para. 84.

41) Adopted February 1995, H(1995)010, text available online at http://www.coe.int/t/dghl/monitoring/minorities/1_AtGlance/PDF_H(1995)010_FCNM_ExplanReport_en.pdf.

citizenships of different levels of prestige,[42] a fact which gives rise to new forms of exclusion of minorities from full and effective citizenship.

5.1. *Persons without Status*

Many Roma in Europe, particularly Roma from the countries of Central and Southeastern Europe, lack one or more personal documents, creating conditions for exclusion from services, as well as systematic frustration of fundamental human rights. In some situations, birth at home gives rise to a failure to secure a birth certificate, leading to non-recognition as a legal person, as guaranteed inter alia under Article 16 of the International Covenant on Civil and Political Rights (ICCPR). In some areas, lack of documents is such a severe issue that it becomes inter-generational. Barriers arising from a lack of documents can be daunting, and the lack of one document can lead to the inability of a person to access further documents. The lack of access to personal documents and citizenship threatens the ability of Roma to gain access to services crucial to the realisation of a number of fundamental rights and freedoms, such as the right to vote, the right to adequate housing, the right to social assistance, the right to education and the right to the highest attainable standards of physical and mental health. Countries and regions with particularly extreme problems in this area include Albania, Bosnia and Herzegovina, Croatia, Italy, Greece, Kosovo, Macedonia, Montenegro, Romania, Russia, Serbia, Slovakia and Ukraine, although this list is by no means exhaustive.[43] Tens of thousands of persons throughout Europe are affected by a lack of documents, rendering them in essence administratively non-existent. Such persons are in principle the citizens of one or more states – they are rarely *de jure* stateless. However, their exclusion has been formalized in such a way that they are in danger of becoming stateless, or of bequeathing statelessness to their children.[44]

In some cases, a lack of personal documents can be traced directly to state policies. Roma who left former Yugoslavia in the 1980s and 1990s and went to Italy, Germany and elsewhere experienced particular challenges when their pass-

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[42] This point is dramatically illustrated by the acts of Mr. Marin Mogos and his family, arrested at their home in Germany on 7 March 2002, at approximately 4.30 a.m., and expelled by force by the German authorities to Romania from Munich Airport, despite pending domestic appeals, as well as a pending application before the ECtHR. The family had been in Germany continuously since 1990. In 1990 they had given up their Romanian passports and declared themselves stateless. From 1997 onwards they had the status of "tolerated" ("geduldet"). Upon arrival at Bucharest's Otopeni Airport, they refused to re-accept their Romanian citizenship and thus were not readmitted to Romania. They lived in the transit zone of Bucharest Airport for the next five years. Mr. Mogos committed suicide on 17 March 2007, still at Bucharest Airport.

[43] For a comprehensive overview of the human rights situation of Roma in Europe, see Commissioner for Human Rights (2012) *Human Rights of Roma and Travellers in Europe,* Strasbourg: Council of Europe.

[44] J. Bhabha (2011) *Children Without a State: a Global Human Rights Challenge*, Cambridge, MA: Massachusetts Institute of Technology.

ports expired. In the case of persons from Serbia during the 1990s, men might not have been able to approach the Serbian Embassy for passport renewal if they had not served in the military. In cases concerning persons from other former Yugoslav republics, they might be unable to demonstrate citizenship of the country concerned. This was particularly true of persons from Croatia, the former Yugoslav Republic of Macedonia and Slovenia, all of which adopted restrictive citizenship laws during the break-up of the former Yugoslavia. The lack of a valid passport has rendered it almost impossible for Roma to secure valid residence permits in countries of migration, such as Italy, particularly in cases where they reside in informal settlements without a valid address. Thus, even in cases where there may be a formal entitlement to citizenship, such as the result of birth on the territory, administrative obstacles in many cases preclude access to citizenship. Many of the persons concerned now have children and grandchildren, who may be formally stateless.[45]

In Central, South Eastern and Eastern Europe, a lack of documents is often an indicator of a combination of factors including the rigidity of the administration in providing certain documents, combined with the decline of the prestige of the citizenship at issue and the decline of the power of the State. In one scenario, persons unable to pay for maternity care may flee hospital with their newborn children before receiving a birth certificate for the infant.[46] Alternately, some children are born at home, and after a short period of time, it may be impossible to procure a birth certificate because of administrative costs or fines. A person without a birth certificate will then be unable to access personal identity cards, health insurance documents, internal passports and other documents, and later will be effectively excluded from items such as a driving license. These persons may be unable to enrol in school, gain access to health care, or secure social assistance benefits to which they may be otherwise entitled, including social housing. Such persons effectively have no administrative existence.[47] This problem affects thousands of people, particularly in Romania and the countries of former Yugoslavia.[48]

In a case against Russia, the European Court of Human Rights has ruled that the denial or seizure of personal documents can violate the European Convention.[49] It has also identified Convention violations for reasons in which there is a link

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45) Council of Europe, European Commission against Racism and Intolerance (ECRI), *Third Report on Italy*, adopted on 16 December 2005, paragraph 96. See also Council of Europe Commissioner for Human Rights, Viewpoint, "No-one should have to be stateless in today's Europe", 09/06/2008, www.coe.int/commissioner.

46) Author field research, 1996–present.

47) Plan International, 2009. Count Every Child – the Right to Birth Registration, *Plan International Publications*, available online at http://plan-international.org/birthregistration/files/count-every-child-2009. See also B. Blitz and M. Lynch (2011) *Statelessness and Citizenship*, Edward Elgar Publishing.

48) Concerning Romania, see United Nations Development Programme (UNDP) (2002) *The Roma in Central and Eastern Europe: Avoiding the Dependency Trap*, available online at http://hdr.undp.org/en/reports/regional/europethecis/Avoiding_the_Dependency_Trap_EN.pdf.

49) European Court of Human Rights, Judgment 24 October 2003, *Smirnova v. Russia*.

between personal documents issues and racial discrimination.[50] However, there remains a gap between rulings on abuses involving the active seizure of documents and/or very evident discriminatory actions or results arising from a lack of documents on the one hand, and measures to provide sufficient legal force to compel states to address a general lack of documents among 'pariah' minorities, on the other. As a result, growing numbers of people pursue lives, to the best extent they can, without any formal standing before the public authority.

5.2. *Status without Rights*

The mirror inverse of the problem of an increasing distance between the formal trappings of the bond between person and state, is the problem of new forms of status which confer few or no rights on the bearer. Exemplary in this regard are forms of protection against expulsion provided in Germany, Austria and the former Yugoslav Republic of Macedonia, which do not confer residence status or any progressive accrual of rights.

The German form is the status called "Duldung" or "geduldet" ("tolerated") provided to persons who originally enjoyed temporary protection. In the case of Roma, this concerns persons from primarily Bosnia and Herzegovina, Serbia or Kosovo. The German "tolerated" status, and similar statuses now found with worrying frequency in other countries of Europe, is provided to persons who are not citizens of the state. Its very allocation is however a seemingly final pronouncement that such persons will never form a relationship with the state. "Tolerated" status does not bring with it a residence permit – it is merely a stop on expulsion. It must be renewed at very frequent intervals, in some instances every few weeks.[51] Members of the same family are often awarded "tolerated" status at different times, meaning that the head of a household may be almost constantly queuing to renew the status of various members of family.

"Tolerated" status frequently includes restrictions on freedom of movement, access to employment and various forms of social and health protection,[52] although

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[50] See, for example, European Court of Human Rights, Judgment 13 December 2005, *Timishev v. Russia*.

[51] A number of international monitoring bodies have expressed concerns at the treatment of non-citizens in Germany. For example, the UN Committee against Elimination of Racial Discrimination has expressed concerns about the absence of any protection accorded to populous *de facto* minority groups resident in Germany for longer periods of time (see CERD/C/338/Add.14, 10 August 2000). The Council of Europe's European Commission against Racism and Intolerance (ECRI) noted that around nine per cent of the entire population (circa 7 000 000 persons) do not have German citizenship and called for regularization of status of long-term foreign residents (see Council of Europe's European Commission against Racism and Intolerance, *Second Report on Germany,* adopted on 15 December 2000 and made public on 3 July 2001, para. 9). See also ECRI's *Third Report on Germany,* 8 June 2004, para. 53).

[52] Insured persons in the Federal Republic of Germany enjoy equal access to the benefits of statutory health insurance, irrespective of their nationality or origin. The legislation governing the statutory health insurance scheme contains no restrictions on benefit based on the nationality of the claimant. In the case of asylum seekers and persons facing deportation, however, protection available is limited, as a general

provisions vary by state. Although the tolerated status presumes that the person concerned is not stateless (but rather merely unable or unwilling to leave), in practice it operates as a similar void category or status, with the added detrimental quality that there is almost no international law guidance on "toleration".

It is estimated that there are around 200 000 persons with "tolerated" status in Germany.[53] Numerous Romani individuals have had no administrative status in Germany other than "tolerated" for periods sometimes exceeding ten years.[54] These ten years would not count as residence for the purposes of an application for citizenship via naturalisation, because they are not considered a period of legal residence.

In November 2006, the German Interior Ministers decided that persons currently in Germany with "tolerated" status for more than six years could have access to a durable residence permit if they could demonstrate legitimate employment by 2009.[55] The impact of this reform is as yet unclear. The provisions of a similar regime in Austria were the subject of a recent Constitutional Court challenge.[56]

The repeated provision of extremely short-term "tolerated" status and similar non-status provisions elsewhere has effectively prevented tens of thousands of third-country nationals in Germany and elsewhere from integrating into host societies, although such persons may have given birth to children on the territory (and those children may be enrolled in and regularly attending schools) and may have formed extensive genuine and effective ties to the host country.

Persons provided with "tolerated" status and their children may labour under conditions of great stress due both to the ever-present threat of expulsion and very frequent interaction with public officials responsible for the allocation of "tolerated" status who are very often hostile. There are also widespread and plausible allegations that, among persons from Europe, Roma are more likely to be provided with "duldung" status (rather than a more durable status, including the progressive accrual of rights) compared with non-Romani third-country

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rule, to the treatment of acute illnesses and pain. Other health care benefits may be granted on a discretionary basis.

53) See http://www.bundesregierung.de/Content/DE/Publikation/IB/Anlagen/auslaenderbericht-7-tabellenanhang-barrierefrei,property=publicationFile.pdf (accessed 22 September 2008), p. 223, on file with the author.

54) Here again there appears to be no public data by ethnicity. However, out of a total of around 282,100 persons from Serbia and Montenegro in Germany at the end of 2006, around 194 400 had been in Germany for periods of ten years or longer. See http://www.bundesregierung.de/Content/DE/Publikation/IB/Anlagen/auslaenderbericht-7-tabellenanhang-barrierefrei,property=publicationFile.pdf (accessed 22 September 2008), p. 214, on file with the author.

55) See http://www.bundesregierung.de/Content/DE/Publikation/IB/Anlagen/auslaenderbericht-7-barrierefrei,property=publicationFile.pdf (accessed 22 September 2008), on file with the author.

56) Ruling in June 2008, the Court set a time limit of nine months, i.e., to March 2009 to amend Austrian law to provide a right to apply ("Antragsrecht") for a permit for humanitarian reasons. Details are available online at http://www.oe24.at/zeitung/oesterreich/politik/article323890.ece (accessed 8 October 2008).

nationals,[57] which raises concerns of racial discrimination with respect to but not limited to the International Convention on All Forms of Racial Discrimination (ICERD).[58]

The "tolerated" status is also directly linked with the ultimate act of exclusion of minorities – their forced expulsion from the territory. This is most evident in Europe now in the relationship between the Federal Republic of Germany and Serbia. Serbia has been compelled to conclude readmission agreements with a number of Western European countries, as well as with the EU. Since 2003, Serbian officials have stated that these will result in the expulsion of "tens of thousands" of Serbian citizens, "four fifths" of whom are Romani.[59] Forced expulsions to Serbia have been ongoing for a number of years, involving tens of thousands of persons, particularly from Denmark, Germany, Switzerland and Sweden, and pressure to increase the number of Roma received into the country is steady.[60]

6. The Endurance of Blood

Any discussion of statelessness ultimately implicates questions of citizenship – both its content and the criteria according to which it is allocated. On 15 July 1999, Germany concluded a decade-old debate by finally amending its citizenship law to include for the first time the concept of a right to citizenship arising as a result of birth on the territory (*ius soli*).[61] Germany's citizenship law had long been seen as exemplary of the problem that 'Germanness' was seen solely in terms

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57) Author field research 1996–2007, as well as Brigitte Mihok (2001) *Zurück nach Nirgendwo: Bosnische Roma-Flüchtlinge in Berlin,* Berlin: Metropol-Verlag.

58) The UN Committee on the Elimination of Racial Discrimination (CERD) has explicitly instructed States Parties to the ICERD "to take all necessary measures in order to avoid any form of discrimination against immigrants or asylum-seekers of Roma origin" (CERD, *Discrimination against Roma*: 16/08/2000, General Recommendation 27, Article 1, para 5).

59) See C. Cahn (2003) 'Die Politik der Abschiebung: Europa under der Versuch einer Lenkung der Roma', in: *Jahrbuch zur Organisation fur Sicherheit und Zusammenarbeit in Europa (OSZE),* Band 9, Baden-Baden: Nomos Verlagsgesellschaft, p. 231.

60) United Nations Development Programme and the Agency for Human and Minority Rights Government of the Republic of Serbia, March 2008, *Reintegration of Returnees in Serbia: An Overview of Awareness Raising Activities of the Agency for Human and Minority Rights*, Belgrade, pp. 2–3.

61) The Act to Amend the Nationality Law established that children born in Germany of foreign parents acquire German citizenship at birth if one parent has been legally and ordinarily resident in Germany for eight years and is a citizen of the European Union with a right of freedom of movement, or a citizen having an equivalent status from another country within the European Economic Area, or a citizen of Switzerland, or has an EU right of residence or settlement permit. Citizens of Turkey and other non-EU or EEA states are covered by the alternative "possession of a settlement permit". Children who have acquired German citizenship on the basis of the principle of *ius soli* have to opt for either the German or the foreign citizenship when they come of age. If they opt for German citizenship, they have to give up their foreign citizenship unless it is impossible or unreasonable for them to do so. They have to make this decision before they reach the age of 23. Children under the age of 10 who were born before 1 January 2000 and who would, at birth, have met the requirements of the principle of *ius soli* first introduced by the Act to Amend the Nationality Law were given a special naturalization entitlement which expired on

of descent: only those persons who could prove that they were 'German by blood' were entitled to citizenship. Persons born to two parents with "tolerated" status in Germany are in most cases still not entitled to German citizenship, even with the *ius soli* provisions.

The changes of 1989 seem to be part of a globalizing, multicultural trend toward de-ethnicized citizenship. In fact, the opposite appears to be true. Blood-based citizenship provisions have proved remarkably durable in post-1989 Europe, and in fact have enjoyed a remarkable renaissance. In amending its citizenship law to include *ius soli* provisions, Germany by no means removed or even dampened the law's *ius sanguines* elements. A number of countries have seen a reinvigoration of legal affirmation of the kinship elements of citizenship. Countries such as Ireland have adopted *ius soli* provisions, only to have these inspire popular revolt. In a referendum on the matter, the Irish public deleted the automatic right of citizenship by birth on the territory, opting for a more qualified *ius soli* provision. Other countries have, however, managed to establish new *ius soli* provisions.[62]

By far the more common provision of law affirming the kinship basis of citizenship[63] in Europe are preferential elements. In many countries, ethnic kin have access to citizenship by right – i.e., outside the naturalization procedure – to which others will not. Said differently, many European states operate, either explicitly in law or as a result of regularized practice, "laws of return" for ethnic kin, meaning that claims for citizenship for descendants are not extinguished as a result of non-residence on the territory of that state by the parents (or grandparents, or beyond).[64] Although legal provisions and practice diverge between various European states, this approach distinguishes European approaches to *ius sanguines* from, for example, *ius sanguines* provisions in the United States and

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31 December 2000. Under this interim rule, too, the children have to opt for either German or foreign citizenship upon attaining the age of majority.

62) Belgium Luxembourg, Sweden, Finland and Portugal, with Portugal's reform particularly praised (R. Bauböck (2006) Who are the citizens of Europe?, in *Eurozine,* available online at http://www.eurozine.com/articles/2006-12-23-baubock-en.html (accessed 28 March 2009)).

63) Katherine Verdery has recently explored in detail links between kinship and national ideology: "I find it helpful to assimilate national identities into the larger category of social relations within which I think they belong: kinship. In my view, the identities produced in nation-building processes do not displace those based on kinship but – as any inspection of national rhetorics will confirm – reinforce and are parasitic upon them. . . . Nationalism is thus a kind of ancestor worship, a system of patrilineal kinship, in which national heroes ocuppy the place of clan elders in defining the nation as a noble lineage". Verdery also refers to Benedict Anderson's view that we should treat nationalism "as if it belonged with 'kinship' and 'religion', rather than 'liberalism' or 'fascism'". (K. Verdery (1999) *The Political Lives of Dead Bodies: Reburial and Postsocialist Change*, New York, NY: Columbia University Press).

64) A non-exhaustive list of countries in Europe operating "right of return" for ethnic kin includes: Armenia, Belarus, Bulgaria, Croatia, Czech Republic, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Lithuania, Moldova, Norway, Poland, Russia, Serbia, Slovakia, Slovenia, Spain, Ukraine and the United Kingdom. Bauböck contends that, in the European Union, "Seven of the old member states and all new ones permit their emigrants to transfer their citizenship by descent from generation to generation without any residence requirements in the country of origin" (Bauböck, *op. cit.*).

elsewhere. The practice of preferentially allocating citizenship to ethnic kin is questionable from the point-of-view of international human rights law.[65]

Severing the link between citizenship and ethnicity has been a core element of the parallel projects of replacing ethnic nationalism with civic nationalism, and enriching *ius soli* while limiting *ius sanguines*. The importance of such shifts for minorities should be apparent; among other things, the more citizenship, the coin of belonging in the polity, is linked directly to ethnicity, the greater the chance that majorities possess an unholy degree of ownership over the state. Also, preference of ethnic kin establishes an unjust order at odds with the ideal of the republic; a polity founded on ethnic preference is *ipso facto* an unjust public order.

In addition, empirical evidence indicates that linking the polity directly to ethnicity can give rise to manifold problems in practice which harm the democratic order. This can be seen especially when ethnic kin with no living and active involvement and role in the public life of the country. Some contend that the push for war in Yugoslavia was fuelled to an inordinate extent by diaspora communities in Canada, the United States and elsewhere.[66] Similar issues are evident in the Baltics. While extending franchise to ethnic kin outside the state is not the only scenario in which persons with at best attenuated links to the polity can decide its future, doing so certainly heightens the chances of such an outcome.

These practices in fact are now *a la mode*: Russia famously handed out Russian citizenship to ethnic Russians in South Ossetia and then invaded to protect "its citizens". Both Ukraine and Russia strategically distribute citizenship in the separatist Transnistria part of the Republic of Moldova. Many states with overt or covert nationalist ambitions appear to be following suit: Romania liberally distributes citizenship to Moldovans, Hungary to ethnic Hungarians in neighbouring states, and Bulgaria to Macedonians. The project of disentangling ethnicity from citizenship is thus among the many casualties of recent history.

7. Roma Exclusion

In very large numbers, Roma have been denied citizenship of new states (the Czech Republic, Croatia, Macedonia, Slovenia and elsewhere) at the founding moment, as former federations collapsed or were transformed. As a result, tens of

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65) The International Convention on the Elimination of All Forms of Racial Discrimination (ICERD) defines racial discrimination as "any distinction, exclusion, restriction or preference (emphasis added) based on race, colour, descent, or national or ethnic origin which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of human rights and fundamental freedoms". ICERD Article 5(d)(iii) explicitly extends the ban on racial discrimination to "the right to nationality".

66) See Paul Hockenos (2004) *Homeland Calling: Exile, Patriotism and the Balkan Wars*, Ithaca, NY: Cornell University Press.

thousands of Roma are now stateless. Still other states (Austria, Germany, Greece and Spain) have only managed relatively recently (the 1970s, 1980s and 1990s) to extend the provision of citizenship to Roma, previously viewing Roma as in principle not entitled or included in the circle of "the nation".

We know comparatively less about the functioning of discriminatory forces in the allocation of citizenship via naturalization, except where discriminatory practices have taken place on an egregious and massive scale. One cannot, for example, miss the fact that nearly all non-Roma arriving in Germany from the former Yugoslavia during the late 1980s and during the 1990s have, by now, been integrated in Germany via the provision of citizenship where they have applied for it, while tens of thousands of Roma remain under the "tolerated" status described above, or indeed have moved on to other places, such as the United States.[67]

It has been extremely difficult to challenge such practices through legal or political action. In Italy, the European Roma Rights Centre (ERRC) raised exclusion from the polity issues with a focus on racially discriminatory denial of the right to housing. The European Committee of Social Rights, the arbiter of the rights in the Social Charter, ultimately side-stepped the issue.[68] Similar complaints have been raised concerning exclusionary practices in France, with similar results.[69]

The European Court of Human Rights similarly has limited powers to challenge directly the discriminatory denial of citizenship, and has had limited opportunities to use the powers it may have in this area.[70] In a number of judgments during the past decade, it has however found states in violation of a number of provisions of the European Convention on Human Rights in cases concerning what might be termed "effective citizenship" for Roma, involving for example the arbitrary denial of education on racially discriminatory grounds,[71] rules barring Roma and others from high political office,[72] rigid practices of non-recognition of traditional practices,[73] as well as other exclusion issues. It has also rejected the

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67) Mihok, *op. cit*.

68) European Committee of Social Rights, *Decision on the Merits*, 7 December 2005, *European Roma Rights Centre v. Italy*, Complaint No. 27/2004, paras. 16–18, available online at http://www.coe.int/t/dghl/monitoring/socialcharter/Complaints/CC27Merits_en.pdf.

69) GISTI et al. (2008) *Plainte contre la France pour violations du droit communautaire en matière de libre circulation des personnes*, Paris: Gisti, pp. 27–29.

70) Arguably new powers may be available to the Court in this area as a result of the entry into force of Protocol 12, providing a comprehensive ban on discrimination in the exercise of any right secured by law. However, to date a limited number of states are bound by Protocol 12, and the Court as yet has not ruled on any cases challenging discrimination in the Allocation of citizenship, or in citizenship proceedings.

71) *D.H. and Others*, Grand Chamber Judgment 13 November 2007; *Sampanis and Others v. Greece*, Judgment 5 June 2008; *Oršuš and Others v. Croatia*, Grand Chamber Judgment 16 March 2008.

72) *Sejdic and Finci v. Bosnia and Herzegovina*, Grand Chamber Judgment 22 December 2009.

73) *Munoz Diaz v. Spain*, Judgment 8 December 2009.

most dramatic forms of physical exclusion of Roma, most notably expulsion from the country.[74]

Current developments however point to an erosion of protection, with very troubling implications for Roma. In recent years, explicit efforts to expel Roma from European states, including Romani citizens of the European Union, have come ever more explicitly into the public eye, and have become ever more explicitly shorn of any pretence that they are anything but blatantly racially discriminatory actions against Roma. In July 2010, in the most radical of such efforts to date, the French government decided to take action to liquidate circa 300 irregular Romani settlements in France and to expel many of their inhabitants, including persons from Bulgaria and Romania, European Union Member States.[75] These actions by France follow similar measures developed by the Italian government during 2007–2009, as well as smaller scale efforts to expel Roma by other EU Member States. The citizenship of Roma is shown to be of a lesser status than that of other Europeans; the nascent citizenship of Europe is shown to be weak.

8. Conclusion

Despite efforts by pan-European bodies at both supplementing and ameliorating the powerful links between social, political and civic inclusion on the one hand, and the nation-state on the other – efforts supplementing international law and in principle opening unique possibilities for new forms of integration – Europe in fact remains a place in which hundreds of thousands of persons are formally excluded from the polities of the places where they live, or indeed in many cases from any polity. The post-1989 period has seen these exclusionary dynamics reinvigorated through the forces of ethnic war, ethnic cleansing, the disintegration of three major multinational federations, as well as through repeated powerful xenophobic mobilisations throughout the continent. Statelessness, an extreme expression of this exclusion, remains to be tackled in Europe, close to sixty years since the first treaty-based efforts to end the phenomenon.

74) *Conka v. Belgium*, Judgment 5 February 2002.
75) http://www.bbc.co.uk/news/world-europe-10892669.