Racialized Citizenship and Minority Statelessness: Roma as (Non-)Citizens in Europe

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Abstract

The predicament of stateless people has been long neglected in academic and policy debates in comparison to the position of refugees. However, more recent UNHCR reports shed light on statelessness and revealed that 75 per cent of stateless people belong to minorities. This paper offers a comparative socio-legal analysis of selected cases of minority statelessness. It initially focuses on the Romani minorities of Central and South East Europe to examine the reasons why they are at risk of statelessness. Then it compares their position to other stateless minorities: Russian speakers in the Baltic States, children of the 'Windrush' generation in the United Kingdom, the Dominicans of Haitian descent, and Rohingya minority in Myanmar. With the theoretical reconsideration of racialized citizenship, I argue that in these selected cases the states introduced legislation, discourses and practices, which retroactively transformed minorities in question from citizens to irregular or illegitimate migrants.

Key words

Statelessness, minorities, citizenship, migration, racialization, Roma, Russian speaking minority, Windrush generation, Dominicans of Haitian Descent, Rohingya

Introduction

In 2017 UNHCR published a report according to which 75 per cent of stateless people around the Globe belong to minority groups (UNHCR 2017). In November 2018, the UN Forum on Minority Issues focused on statelessness recognizing it as a topic specifically concerning minorities (OHCHR 2018). Hannah Arendt highlighted the connection between the position of minorities and statelessness already in *The Origins of Totalitarianism*. Here she also conceived the theoretical foundations for statelessness research and the definition of citizenship as the 'right to have rights' (Arendt 1968, 298). Yet the question of why certain minorities are specifically vulnerable to statelessness has remained under-researched. This paper offers a socio-legal enquiry into selected case studies of minority statelessness in a number of post-socialist and post-colonial contexts: Romani minorities in Central and South East Europe, Russian speaking minorities in the Baltics, the Windrush Generation in the United Kingdom, Dominicans of Haitian descent in the Dominican Republic, and Rohingya minority from Myanmar. While these minorities became stateless or are at risk of statelessness in different contexts, I argue that the principle states used to render them stateless was similar: the state authorities constructed these minorities as stateless by introducing legislation, discourses and practices that retroactively transformed them from citizens to irregular or illegitimate migrants. However, these transformations did not necessarily translate the lack of citizenship into the lack of 'the right to have rights' (Blitz 2017, Swider 2017). In this paper, I reintroduce the concept of racialized citizenship to make a socio-legal enquiry on when stateless minorities are deprived of their most basic human rights.

Statelessness has been an under-theorized non-citizenship status (Belton 2011, Staples 2012, Tonkiss and Bloom 2015). Although Hannah Arendt set the theoretical foundations for the scholarly inquiry on statelessness, there has been less research conducted on the position of stateless persons in comparison to the status of refugees and other migrants (Belton 2011). The position of a stateless person has also not been in the forefront of debates in the international community. While 145 states are parties to the 1951 *UN Convention Relating to the Status of Refugees* and 146 to the 1967 *Protocol*, only 91 are parties to the *1954 Convention Relating to the Status of Stateless Persons* and 74 to the 1961 *Convention on the*

Reduction of Statelessness. However, more recently, there has been more theoretical debate and research on statelessness (Weissbrodt 2008, Blitz and Sawyer 2011, Blitz and Lynch 2011, Staples 2015, Lawrence and Stevens 2017, Bloom, Tonkiss and Cole 2017, Owen 2018, Gibney 2019). Among other things, these debates showed that the status of a refugee and of a stateless person do not necessarily overlap, and that a great number of stateless persons never left the territory where they were born (Belton 2015).

The concept of statelessness has multiple definitions, which can lead to confusion. The 1954 Convention offered the following legal definition of (*de jure*) statelessness in Article 1(1): "the term 'stateless person' means a person who is not considered as a national by any State under the operation of its law" (Convention 1954). Yet in practice, some minorities have been considered as stateless in political, but not in necessarily in a legal sense. For example, some political science scholars argued that Scots in the United Kingdom and Catalans in Spain are stateless nations (Keating 2003). However, they are not legally stateless as they possess citizenship in the United Kingdom and Spain respectively, on one hand. On the other hand, Roma, Kurds and Palestinians are similarly categorized as stateless nations in political terms and they are also often stateless legally or are at least lacking effective citizenship, which would protect their rights (Jenne 2000, Fiddian-Qasmiyeh 2015).

The second perplexity around the definition of statelessness arises from the distinction between *de jure* and *de facto* statelessness. David Weissbrodt stated, '[p]ersons who are de facto stateless often have nationality according to the law, but either this nationality is not effective or they cannot prove their nationality' (Weissbrodt 2008, 84). Human rights activists have been critical towards the concept of *de facto* statelessness as some states used it to refrain from recognizing individuals who were *de jure* stateless (De Chickera 2013, Manly 2015). The 2010 UNHCR Prato Conclusion offered another definition of *de facto* statelessness: "de facto stateless persons are persons outside the country of their nationality who are unable or, for valid reasons, are unwilling to avail themselves of the protection of that country" (UNHCR 2010). As for *de jure* statelessness, the UNHCR Prato Conclusions of 2010 and 2014 UNHCR *Handbook on Protection of Stateless Persons* urged the authorities responsible for statelessness determination not to leave the statelessness definition to the endless legal acrobatics, but only take those states into consideration to which individual could have genuine links.

In this paper, I follow previous research, which shows that the reality of statelessness and lack of citizenship can be in practice much murkier and therefore needs to be analyzed beyond the scope of the legal definition (Sigona 2015, Sardelić 2015, Bloom, Tonkiss and Cole 2017). Additionally, I apply David Owen's conceptualization of *de jure* statelessness as either structural or administrative (Owen 2018): structural *de jure* statelessness arises from the right of a state to determine its own citizenry, while administrative from the lack of relevant documents, especially birth certificates. Unlike in Weissbrodt's definition, Owen's conceptualization recognizes individuals who are not able to prove their nationality as *de jure* stateless.

In 2014 UNHCR published a Global Action Plan to End Statelessness by 2024 in which it hinted that most stateless people belong to minorities. The report identified "prevailing social views regarding ethnic, racial, religious or other minorities" (UNHCR 2014, 15) as one of the main obstacles in implementing its plan for reducing and ultimately ending statelessness. Both the 2014 Action Plan and 2017 UNHCR Statelessness Report (UNHCR 2017) highlighted that minorities are more at risk of becoming stateless. These documents also encompasses the position of those people who have not been legally recognized as stateless in the states where they reside, but are nevertheless without access to citizenship (Sardelić 2015). Both publications also follow Arendt's assumption that stateless minorities would lack the protection of human rights and it is only with citizenship that these rights could be guaranteed. However, this paper analyses the reasons why all minorities are not equally vulnerable to statelessness. While some lack political rights (Swider 2017), others also have no official access to social and economic rights, for example, the right to education, work and health care. This paper argues that it is the latter group who usually also falls into the regime of deportability (De Genova 2002) and irregularization (Jansen, Celicates and Blois 2014) even in cases when the stateless minorities in question have never crossed any borders themselves. I claim that these stateless minorities have been re-interpreted as aliens and stripped of rights based on practices of racialized citizenship regimes.

This paper begins with the theoretical conceptualization of racialized citizenship and methodological postulation of how this concept can be used for the socio-legal analysis of minority statelessness. It then analyses different case studies of minority statelessness after post-socialist state disintegration. It examines citizenship acts of the states in question and particularly policy reports of international organizations (such as: UNHCR and Council of Europe, Intra-American Human Rights Commission) that deal either with statelessness or the position of minorities. The paper first focuses on the position of marginalized Romani minorities who were vulnerable to stateless after the disintegration of Czechoslovakia and the collapse of the former Yugoslavia. While research on stateless Romani minorities in these contexts has been done before

(Cahn 2012, Sardelić 2015, Sigona 2015, Bhabha 2017, Sardelić 2019), this paper aims to shed a new theoretical light on it by applying the concept of racialized citizenship. The paper then compares the position of stateless Roma to the position of Russian speaking minorities who are Latvian and Estonian non-citizens: can their statelessness also be considered as a product of racialized citizenship regime? The paper continues with an analysis of cases of statelessness in postcolonial contexts. It looks at another recently highly publicized case linked to statelessness: the children of the so-called Windrush generation in the United Kingdom (UK), who came to UK as citizens, but in 2010 the UK Home Office destroyed the proof of their citizenship. In another postcolonial context, around 200,000 Dominican citizens of Haitian descent were stripped of their citizenship retroactively and pronounced as illegal immigrants. Similarly, Rohingya in Myanmar were previously thought of as a traditional minority, but were not recognized as such in the 1982 Myanmar Citizenship Law. The paper concludes by scrutinizing the connection between racialized citizenship regimes and minority statelessness.

Socio-Legal Enquiry into Racialized Citizenship Regime

Based on socio-legal analysis, this paper enquires whether and how racialized aspects of citizenship regimes contribute to minority statelessness in a legal sense. I follow the socio-legal definition of citizenship regimes introduced by Shaw and Štiks: "the concept encompasses a range of different legal statuses, viewed in their wider political context, which are central to exercise of civil rights, political membership and –in many cases – full socio-economic membership in a particular territory" (Shaw and Štiks 2009, 6). In its 2017 report entitled *Denial and Denigration: How Racism Feeds Statelessness*, Minority Rights International Group highlighted minority statelessness as "often an outcome of discrimination and racism" (MRG 2017). This paper aims to distinguish between cases where minority statelessness is a result of discrimination and where it is also caused by racism.

In his chapter *The History of Racialized Citizenship,* David FitzGerald indirectly connected racialized citizenship to statelessness by arguing that racialization of citizenship emerges "through rules of birthright acquisition, naturalization and denationalization" (FitzGerald, 2017: 130). Racialized citizenship can also manifest itself as a preferential treatment of a more dominant group and not only as discrimination of the group subjected to racism (*Ibid.*). FitzGerald defines racism and race in the following way:

> "Racism refers to the sorting of social groups by their supposedly inherited and unchangeable physical attributes and/or phenotype, attributing differential moral and mental capacities to those physical characteristics, and then using those putative differences to legitimate the unequal distribution of resources and treatment. Race is a subset of ethnicity […]. What makes race distinctive from other forms of ethnicity is the perceived inalterability of belonging to the category and/or emphasis on phenotype" (FitzGerald 2017, 130).

The *inalterability of belonging* is the most important feature of racialized citizenship, according to FitzGerald. While forced assimilation might be discriminatory, he claims, it is not a feature of racialized citizenship as it implies that the boundaries between groups can be altered (Fitzgerald 2017: 132). FitzGerald identifies the trend of deracialization of citizenship over history, but points out that racialized citizenship still appears in contemporary contexts, such as the case of mass denationalization of Dominicans of Haitian descent, which I discuss in more detail in the next sections.

In another attempt to classify racialized citizenship, Paul Silverstein (2008) connects it to Balibar and Wallerstein's understanding of 'racism without race' or cultural racism. Cultural racism is founded on perceived cultural differences that classify groups and not necessarily biological features. In other words, they connect racism to "insurmountable cultural differences" (Balibar and Wallerstein 1992, 28-29). While analyzing manifestly neutral content of French citizenship, Silverstein identified racialized practices toward citizens from former colonies and especially citizens with Muslim background. In a more recent attempt to classify racialized citizenship, Nelson Torres-Rios (2018) uses doctrinal legal research to claim that Puerto Ricans are second-class U.S citizens. Although according to the 1917 Jones Act they are U.S. citizens, Puerto Ricans have no right to vote at the U.S. national lever, if they reside in Puerto Rico (Torress-Rios 2018, 7). Studying U.S Supreme Couty decisions, Torress-Rios showed Puerto Ricans were described as racially inferior as a justification for second-class citizenship (Torres-Rios 2018, 22). Another account on racialized citizenship showed that racialized citizens are not mere observers of their predicament, but do contest it both in public as in private sphere (Erel and Reynold 2018, Bauer 2018).

None of the previous theoretical comprehensions of racialized citizenship has explicitly dealt with whether and how it is connected to the creation of stateless minorities. This paper acknowledges previous research which showed that stateless minorities are not simply passive observers of their own predicament, but do search for alternative ways to access rights

that are denied to them by law (Sigona 2015, Sardelić 2017). Yet it also takes a step back to analyse the reasons for why do certain minorities end up as stateless in the first place. It recognizes that there are limits to what non-citizens, especially stateless persons, can achieve with their acts of citizenship (Bloemraad, Sarabia and Fillingim 2017). The paper highlights it is not only (non-)citizens that perform citizenship (Isin 2017), but also state authorities when they define the exclusion and belonging within their citizenry.

Instead of doctrinal legal research, I use the socio-legal approach of constitutional ethnography as developed by Kim Lane Scheppele Scheppele defines constitutional ethnography in the following manner: "Constitutional ethnography is the study of the central legal elements of polities using methods that are capable of recovering the lived detail of the politico-legal landscape" (Scheppele 2004, 395). Citizenship (or the lack thereof) is one such 'central legal element of polities'.

Using constitutional ethnography to analyse selected cases of minority statelessness, I distinguish between discriminatory and racialized citizenship regimes in terms of 'inalterability of belonging' as theorized by FitzGerald (2017). Discriminatory citizenship regimes offer assimilation as an unequal form of inclusion, on one hand. On the other hand, racialized citizenship regimes do not offer any form of inclusion. Contrary to FitzGerald, instead of focusing on physical differences as the main demarcation of racism, I use Balibar's and Wallerstein's understanding of 'racism without race' as employed by Silverstein in his definition of racialized citizenship and also in my own previous work (Sardelić 2014). Selected cases of minority statelessness are from diverse contexts. Yet following the approach of connected sociologies (Bhambhra 2014), I aim to underline the similarities in states' approaches towards these minorities.

Varieties of Minority Statelessness

According to Nicholas de Genova (2017), the construction of a migrant status comes from the processes of unequal bordering, which assign uneven rights to different statuses:

> □T□he juridical status and social condition that we conventionally designate as 'migrant' (or 'immigrant') in fact signifies what is always a rather variegated or heterogeneous spectrum of legal distinction and social inequalities and differences: there are many types of migrants, and it is precisely the work of immigration regimes and citizenship law to hierarchically sort them and rank them […]. Nevertheless, it is the bordered definition of state territoriality that constitutes particular forms and expressions of human mobility as 'migration' and classifies specific kind of people who move as 'migrants'. To reiterate: borders make migrants (De Genova 2017, 18).

The processes of bordering appear even in cases where those designated as migrants have never crossed any borders themselves, but the territorial borders or citizenship regime might have changed (De Genova 2017, 28). While migrant statuses are hierarchical and unequal, in most common apprehensions citizenship status should represent an equal status of all who possess it. Yet numerous studies have shown that citizens can be unequal in rights even if they all possess the same citizenship status (Rigo 2005, Cohen 2009, Hepworth 2014). One of the most extreme inequalities within citizenship status is the arbitrary deprivation of this status of some citizens leading to statelessness. Similarly to how irregular migrants are constructed through the regular processes of bordering (De Genova 2017, 24), I argue that the practices which arbitrarily deprive some minorities of their citizenship are rarely arbitrary themselves: they show systemic citizenship denials produced by states (Stevens 2017) and some common structural or administrative features of statelessness (Owen 2018).

As newer studies critical towards Arendt's conceptualization of statelessness have argued (Swider 2017, Blitz 2017, Stevens 2017), not all cases of statelessness necessarily lead to the loss of rights nor do they necessarily arise from a totalitarian state. In this paper, I introduce the concept of *total infringement of citizenship*, which represents (usually unrecognized) statelessness status coupled with the loss of human rights. This is where stateless people fall in the category that Arendt called the 'abstract nakedness of being nothing but a human' (Arendt 1968, p299-300). The total infringement of citizenship, I argue, is ultimately linked to racialized citizenship regimes.

One of the most common predicaments that stateless minorities face is states' denial of their statelessness. Hence their *de jure* stateless status is often not recognized. The states would usually categorize them as irregular, undocumented or illegal migrants who came from somewhere else. Yet it is the states in question who construct these minorities as stateless by laws and policies that take their citizenship status away on the territory where they were previously citizens. The clearest example of such practices can be detected in the cases of state disintegration, such as in the case of Roma of former Czechoslovakia and Yugoslavia and Russian-speaking minorities in the Baltic states.

Romani Minorities

When discussing statelessness and the position of minorities Arendt does not mention Romani minorities[1] despite the fact that they were subjected to similar citizenship deprivation practices as Jews before and during WWII (Sardelić 2017b). Roma were not recognized as a minority in the Minority Treaties and Arendt only examined the position of minorities mentioned in the Treaties. Nevertheless, Roma were and still are particularly at risk of statelessness. As I wrote in my previous work (Sardelić 2015), the two clearest examples where Romani minorities faced statelessness was in the case of the disintegration of Czechoslovakia and of former Yugoslavia. The fact that both peaceful and violent disintegrations lead to the most marginalized populations ending up at risk of statelessness shows that wars were not a decisive factor for the risk of statelessness. The most important factors were redrawing the borders or the transforming criteria on who constitutes citizenry, on one hand. On the other hand, the transforming criteria of citizenry inclusion usually worked together with previous exclusionary and discriminatory measures towards the minorities in question.

Around 150,000 Roma had to acquire citizenship in the Czech Republic after its independence in 1993 and as many as 25,000 of them found themselves at risk of statelessness (Linde 2006, Kochenov 2007). The socialist Czechoslovak government relocated numerous Roma from the Slovak to the Czech part of the Federation. The official reason was employment in the more industrialized regions. Unofficially, the government applied this policy so Romani population would be evenly distributed in both parts of the Federation (Kochenov 2007). Although the government relocated Roma to the Czech part, in many cases Romani individuals did not have their residence properly registered there. After the fall of the Berlin Wall most relocated Roma lost their previous employment due to factory closures and many were forced into informal woek.(Donert 2017). This affected their citizenship status. Since 1969 all Czechoslovak citizens had either Slovak or Czech republican citizenship (Baršová 2014). Roma who were relocated from Slovakia to Czechia were identified as Slovak republican citizens as well as their children who might have never been in Slovakia (Kochenov 2007).

In 1992, the Czech government introduced a new Citizenship Act (Baršová 2014). According to this Act, all residents with Slovakian republican citizenship had to naturalize as Czech citizens after the 'velvet divorce'. There were no criteria that would directly target Roma, but the marginalization and stereotypes about Roma left them in a legal limbo and without the possibility of naturalization. According to the provisions in Article 7 of the 1993 Citizenship Act only residents with register residence and no criminal record for 5 years could naturalize. This disproportionally affected Roma who were either not officially registered or had criminal records due to misdemeanours (informal work, small thefts etc.). For example, according to Beata Struhárová (1999), Lúdovít Gorej was a Romani man with a Slovakian republican citizenship who was raised in an orphanage on Czech territory since he was an infant. In 1996 he was sentenced to expulsion because he stole 4 euros worth of sugar beets. Between 1994 and 1997, 663 individuals designated as Slovak citizens were expelled. The vast majority were expelled due to minor offences and were Roma (Struhárová 1999). The state authorities treated many Roma as thieves or unsettled nomads and hence underserving of Czech citizenship. This was despite the fact that the former socialist government relocated them and their unemployment was a consequence of broader transition processes.

Critical civil society reports showed that the inability to access Czech citizenship was not arbitrary but targeted Roma who were as a result disproportionally affected (Šiklová and Miklušáková 1998). In 1996, the Czech Government amended the Citizenship Act giving the Ministry of Interior discretion to overlook the clear record requirement for naturalization. In 1998 Vaclav Havel gave amnesty to all Slovak citizens who were sentenced for less than 5 years (Struhárová 1999). The Citizenship Act was again amended in 1999 so that the former federation citizens could become Czech citizen by declaration (Baršová 2014).

Roma who resided in the Czech territory were mostly entitled to Slovak citizenship and were therefore not considered as *de jure* stateless. Czechia used this fact to retroactively irregularise their status and designate them as migrants, which made them deportable (De Genova 2002), albeit at the time they did not cross any international borders and many of them did not even cross the Czech republican border. While the1992 Citizenship Act did not create a statelessness situation *per se*, it left future generations of Roma at risk of administrative *de jure* statelessness (Owen 2018) and without access to rights connected to citizenship and even residence. The provisions in the 1993 Czech Citizenship Act targeted Roma as a racialized group: national authorities ascribed nomadism and criminalities as cultural traits of Roma. The initial Czech Citizenship Act, therefore, can be considered as an outcome of a racialized citizenship regime as it designated a great number of Roma not being able to naturalize because of their belonging to a particular minority group.

While the cases of hindered citizenship access after the Czechoslovak disintegration were mostly resolved with the amendments to the Citizenship Act by the turn of millennium, it remained a protracted and intergenerational problem for

[1] I talk about Romani minorities in plural when I want to highlight the plurality of identities, which are named as Roma (see Sardelić 2015). When I use the term Roma I follow either the official literature or the denomination that Romani activists take.

Romani minorities after the collapse of Yugoslavia. Statelessness of Romani minorities from the former Yugoslav space was a result of restrictive citizenship acts (similar to those in Czech case), destruction of citizenship registries, forced displacement and overall discrimination of Roma (Cahn 2012, Sardelić 2015).

In the aftermath of Yugoslav wars and multiple border re-drawings, many Romani individuals became forcedly displaced, particularly those who fled during the 1998/99 war in Kosovo (Perić and Demirovski 2000) to the North Macedonia and other parts of the Federal Republic of Yugoslavia: Serbia and Montenegro. Roma who fled to the North Macedonia crossed an international border and, in most cases, received a form of refugee status (Sardelić 2015). By receiving the refugee status, they fell under the 2010 Prato Definition of being *de facto* stateless. Yet Romani individuals who fled to Serbia and Montenegro did not cross any internationally recognized borders at the time as Serbia, Montenegro and Kosovo were still one state (Sardelić 2018). They were hence categorized as internally displaced persons. In the consequent years Montenegro proclaimed its independence (in 2006, widely internationally recognized) as well as Kosovo (in 2008, not internationally recognized). In addition, many birth registries and other vital state records had been destroyed or relocated during the war in Kosovo (UNHCR 2011).

The emergence of new borders caused a conundrum in citizenship and migrant taxonomy in the post-Yugoslav states. While previously being in the domain of a single state, the internally displaced persons found themselves in a new citizenship constellation (Baubock 2010) of three independent states (Sardelić 2015).Montenegro's independence was internationally recognized, but in official documents the state authorities kept referring to forced Romani migrants from Kosovo as internally displaced persons and not as refugees (Sardelić 2015) and hence they were not accorded rights as refugees. At the same time, they were not given the rights of citizens. To describe this situation with De Genova's words: "Borders cross everyone, including those who never cross borders" (De Genova 2017, 28).

Montenegro's parliament made amendments to the Law on Foreigners to include the definition of stateless person (Article 2) in 2017 and statelessness determination procedure (Article 59) in 2018 after the Universal Periodic Review has highlighted this procedure was missing (UNHCR 2018b). The Law identified the right of temporary residence for stateless persons. Yet it left those Romani minorities, who were administratively stateless because of lack of documents, in a legal limbo (Owen 2018). According to the 2018 European Commission Montenegro Report "new law on foreigners adopted in February 2018 a separate procedure for determining statelessness was introduced. So far, there are no officially recognised stateless persons, despite having an estimated number of 486 people who consider themselves stateless living in the country" (EC 2018). A 2013 previous UNHCR Report stated that the former Yugoslav states (excluding Slovenia), who were signatories of the 2011 Zagreb Declaration, estimated around 20,000 individuals without proper personal identification documents and hence at risk to become *de jure* statelessness (UNHCR 2013, 3).

As in the Czech case, it was civil society actors in the region such as the WeBLAN[2] (Western Balkans Legal Aid Network) and international NGOs, such as the European Roma Rights Centre (ERRC), European Network on Statelessness (ENS) and the Institute for Statelessness and Inclusion (ISI) who most broadly highlighted the predicament of stateless Roma in the post-Yugoslav states (ERRC 2017). In the case of Yugoslav countries, it would be difficult to prove that the newly established definitions of citizenry had a direct attempt to exclude Roma as it more targeted others (Sardelić 2015). However, Roma had more issues in regularizing their status in the long run than other minorities who might have been initially targeted. Although states contributed to the position of Roma with past racist practices (such as segregation and forced relocations), they did not take their position into consideration when constructing new citizenship legislation.

Russian speaking minorities in the Baltic states

The 2017 UNHCR Global Trends Report identified that the largest documented stateless populations in the European Union live in two Baltic states: 233,571 in Latvia and 80,314 in Estonia. These stateless populations mostly belong to Russian speaking minorities[3] who are not proficient in the majority languages, Estonian and Latvian: in the Soviet period Russian was also an official language. However, despite the fact that these populations fit the 1954 Convention's definition of *de jure* statelessness, Estonia and Latvia do not consider them as stateless in their national legislation. In Latvia, they are legally recognized as *non-citizens* by the Former USSR Citizens Act (Kruma 2015: 8) and in Estonia as persons of *undefined* (Jarve and Poleshchuk 2010, 1) or *undetermined* (Semjonov, Karzetskaja and Ezhova 2015, 1) citizenship and named as aliens.

[2] More on WeBLAN: https://www.statelessness.eu/blog/addressing-statelessness-western-balkans-%E2%80%93-ens-and-weblan-joint-workshop

[3] As pointed out by Kudaibergenova (2019), Russian-speaking minorites is a problematic concept. In the former Soviet states almost all the residents spoke Russian. It is equally problematic to assume that Russian speaking minorities all spoke Russian as their mother tongue.

While Latvia distinguishes between stateless persons and non-citizens in its laws (Kruma 2015, 7) and has signed and ratified 1954 and 1961 Statelessness Conventions, Estonia did not sign the Conventions and does not include statelessness as a category in its law (Semjonov, Karzetskaja and Ezhova 2015). International organizations (such as, Council of Europe, UN, OSCE) refer to these populations as stateless in its reports (Kudaibergenova 2019): yet the state authorities in Latvia and Estonia do not recognize them as stateless. For example, the Latvian Government (2018) states on its website: "Latvia's non-citizens are not stateless persons. The protection provided to non-citizens in Latvia extends beyond that which is required by the 1954 Convention Relating to the Status of Stateless Persons. The fact that non-citizens cannot be considered stateless persons has been acknowledged by the United Nations High Commissioner for Refugees (UNHCR) - see UNHCR's Global Trends report (published on 19 June 2017)." The mentioned UNHCR Global Trends report, however, counts Latvian non-citizens as stateless, but concludes they do not fall under protection of the 1954 Convention as their basic human rights are already protected by the Latvian state as they have guaranteed residence and diplomatic protection (UNHCR 2017b, 69). The Estonian authorities claimed they have not acceded to the Statelessness Conventions as "in their assessment, there are no stateless persons in Estonia, just number of *individuals with undefined citizenship"* (Semjonov, Karzetskaja and Ezhova 2015, 15).

After the Soviet Union's disintegration in the 1990s, the official discourse of the three Baltic countries was that they are not declaring independence, but rather restoring it from the Soviet Occupation. Unlike the two other Baltic states, Lithuania adopted the so-called zero option after the restoration of its independence in 1990: all residents were either automatically citizens (who had citizenship before 1940 and their descendants) or had relatively unobstructed access to it (Kuris 2010). The two main minorities, Russian and Poles, were relatively small in Lithuania and did not represent a threat to Lithuania's national identity (Kuris 2010). Estonia and Latvia took a different approach: individuals who were Estonian and Latvian citizens before 16th June 1940 and their descendants were automatically Estonian and Latvian citizen, while those who migrated after this date had to naturalize. The naturalization process included a test in the majority languages, Latvian and Estonian, the only two official languages after the collapse of the Soviet Union. In the beginning of the 1990s, the radical political discourse described the migrants who came to Estonia through the USSR state-promoted relocation policy as illegal: "During the autumn/winter of 1991-92, some Estonian politicians including a number of representatives with the congress of Estonia, argued that all those who entered Estonia after 16 June 1940, did so illegally and therefore have no automatic right to citizenship" (Semjonov, Karzetskaja and Ezhova 2015, 1). Subsequently, in 1992, around 500,000 people in Estonia (UNHCR 2016, 16) were deprived of their citizenship (representing 32% of the population) and 700,000 in Latvia (Ivlevs and King 2012, 4).

The position of non-citizens of Latvia and aliens in Estonia represents a special conundrum in statelessness studies. As they are *in stricto sensu* not citizens of any state, they fit the definition of statelessness, but not the total infringement of citizenship. Their statelessness is unrecognized and formulated as a different 'non-citizenship' status. At the same time, their rights are approximated to those of citizens: with the major exception of political rights (voting rights), non-citizens of Latvia and people with undetermined citizenship in Estonia possess other economic and social rights that most stateless populations do not (Swider 2017). One of these rights is the possession of non-citizen and alien's passport, which gives their holders right to visa-free travel in the Schengen countries as well as the Russian Federation. Aliens in Estonia and Non-citizens in Latvia are protected against deportation and the states recognize their link with the territory. That is why Kochenov and Dimitrovs conclude that they cannot be considered as stateless similarly to other populations:

"non-citizenship of Latvia verges on a nationality without citizenship or political participation. To the bearers it brings a large array of rights traditionally associated with citizenship, including the unconditional right to enter Latvian territory, to remain, and to build a life there: work, non-discrimination and permanent residence are all included in the package. It definitely does not imply "classical" statelessness in the sense of international law" (Kochenov and Dimitrovs 2016, 64).

In consequent years, both Latvia and Estonia amended their citizenship legislation so as to reduce childhood statelessness. The first reforms for facilitated access to citizenship began in 1998 (Kudaibergenova 2019) and culminated in 2015 in Estonia, when all children under 15 born in Estonia to Alien parents automatically became citizens (if their parent's did not submit a written objection) whereas in 2013 they became citizens upon their parents' request (Semjonov, Karzetskaja and Ezhova 2015, Kruma 2015).

Nevertheless, despite such appropriations, Russian speaking minorities are discriminated against not only in the political domain, but also in terms of employment and access to education (Kudaibergenova 2019). They are clearly unequal in

comparison to those who hold Estonian or Latvian citizenship because they are *in stricto sensu de jure* stateless. Yet the question is whether their statelessness can be connected to racialized citizenship and total infringement of citizenship. The initial citizenship acts in Latvia and Estonia did make citizenship acquisition difficult, but not impossible. These laws can be perceived in the sense of forced assimilation, but not in terms of inalterability of belonging (Fitzgerald 2017), which is a prerequisite for racialized citizenship.

Children of the Windrush Generation in the UK

From 2012, the UK Home Office has been introducing immigration policies referred to as 'hostile environment' policies. These policies received their name from the statement of Theresa May, who was the home secretary at the time: "The aim is to create, here in Britain, a really hostile environment for illegal immigrants" (The Guardian, 28 November 2017). The so-called Windrush generation scandal in 2018 demonstrated a product of this policy: hostile environment did not simply address the situation of 'illegal immigrants', but it contributed to the 'production of illegality' (De Genova 2002b) not only of migrants, but of those with precarious citizenship. It transformed citizens to 'illegal migrants'. The Windrush generation refers to people who came to the UK from the Caribbean UK colonies between 1948 and 1971. The name Windrush refers to the first ship Empire Windrush (Pennant and Sigona 2017) that arrived from the Caribbean with the new workers UK needed due to the labour shortages after the WWII. According to the 1948 UK Citizenship Act, they were citizens at the time of their arrival, not immigrants. When the status of colonial citizenship regime changed, the 1971 Immigration Act gave the Windrush generation automatic 'leave to remain' in the UK, which granted them access to the new British citizenship. Many of them did not regularise their status as citizens because the leave to remain status already provided them with the right to work, education and access to health care (Sigona 2018). The other reason was the inexplicably high citizenship registration fee (Harvey 2018). The only proof that the Windrush generation had to confirm their leave to remain status were the landing cards, which the UK Home Office destroyed in 2010 (Sigona 2018).

The Windrush generation individuals were former UK citizens (with CUKC status) who became 'aliens who are citizens'(Stevens 2017, 217) and hence deportable to the Caribbean states they were never citizens of. The 'evidentiary challenges' (Stevens 2017, 3) the Windrush generation faced left their children born in the UK in an exemplary case of administrative statelessness (Owen 2018). As their parents could not prove their citizenship and the leave to remain status, this created a legal limbo for the next generation since they fell in the category of people 'who cannot prove what they are not, not a citizen of any state or "stateless", any more than they can prove who they are' (Stevens 2017, 3). The Home Office destruction of landing cards left the Windrush generation and their children with no viable options for how to prove their citizenship and that they should not be deported. Without access to healthcare, work and housing, they felt the consequences of the hostile environment as they were constructed as 'illegal immigrants' as 'borders pervade everyday lives' (Tonkiss 2018).

It is not possible to conclude that the destruction of the landing cards by the home office had a direct racist attempt. But the end product was the same: it was the black UK citizens who had difficulties proving their identity (Tonkiss 2018). As Tonkiss commented: "The construction of nationality also intersects with other perceived markers of social diversity. […] It is predominantly these people, and not their white counterparts with similar family histories of migration, who are persistently required to prove their belonging" (Tonkiss 2018). The destruction of landing cards did lead to the total infringement of citizenship because of the racialized citizenship being embedded within the British citizenship legislation and practices by authorities. At the time when the Windrush generation arrived to the UK, they did not nominally cross any borders of the 'British Empire': yet it was the change in the citizenship regime and subsequent practices of the state that rendered them as 'illegal immigrants'.

Haitians in the Dominican Republic

Two other examples from the postcolonial contexts include the statelessness of Haitians in the Dominican Republic and the Rohingya from Myanmar. As Kristy Belton argued, the *in situ* statelessness of Haitians in the Dominican Republic represents a case of *rooted displacement* (Belton 2015) and she calls the stateless Haitians in the Dominican Republic as *non-citizen insiders* (Belton 2017). From the 1920s Haitians have been crossing to the Dominican Republic as migrant workers (via unclearly defined border), especially in the then flourishing sugar industry after the US occupation of both Haiti and the Dominican Republic (Belton 2017). Many Haitians were employed as undocumented workers. Until 2010, the Dominican Republic has generally applied *ius soli* principle granting citizenship on the basis of birth on its territory except of children of diplomats, who fell into the 'in transit' category. The children of undocumented migrants were entitled to Dominican citizenship if born on its territory. According to the report of the Inter-American Commission on Human Rights (IAHRC), the deprivation of citizenship started with systematic refusal of Dominican authorities to issue birth

certificates to children of undocumented Haitian migrants. In 2013 the Dominican Republic's Constitutional Court limited the *ius soli* principle by reinterpreting the 1929 Citizenship Act: in this reinterpretation they associated the irregular migrant status with the 'in transit' status. With this reinterpretation, the authorities of the Dominican Republic retroactively deprived around 200,000 Dominican citizens of Haitian Descent of their citizenship and made all who came to the Dominican Republic after 1929, stateless (IAHRC 2015, 21).

The IAHRC report stated that the deprivation of citizenship was accompanied by discourses demanding Haitians to be deported from the country because they were portrayed as criminals (IAHRC 2015). Although of Haitian descent, these former Dominican citizens never knew Haiti as their home country (Belton 2015). Racism towards afro-descendants had historical roots in colonialism and slavery, but also in the Dominican Republic nation-building, which constructed its historical narratives of white Spanish heritage as distinct from black Haitians. Yet, according to IAHRC, there was also a wide-spread denial of racism: "For their part, at every meeting held with the State, all officials firmly denied the existence of racism or discriminatory practices in the country against Dominicans of Haitian descent, Haitians, or persons of African descent in general" (IAHRC 2015, 144). The deprivation of citizenship was not directly racist, but it targeted undocumented migrants, who were, according to the new interpretation, 'in transit'. However, most of the people 'in transit' were of Haitian Descent and the reinterpretation of the Constitutional Court did not give them any possible means to be naturalized: this signals the inalterability of belonging and with it the regime of racialized citizenship.

Rohingya from Myanmar

The 2017 UNHCR Global Trends Report states there are 1.5 million stateless Rohingya in Myanmar and Bangladesh (ISI 2018). Rohingya minorities have been named as "the world's most persecuted minority" (OHCHR 2017). Many reports on statelessness have claimed that Rohingya became statelessness with the 1982 Citizenship Law as they were not recognized as 135 'national races' that were present in the country in 1823, that is before the British colonial occupation of Burma (Nyi Nyi Kyaw 2017, Cheesman 2017). However, on the basis of primary sources in Burmese language, some scholars have critically argued that the development around citizenship policies and practices have not been as straightforward as portrayed by major international organizations (Chessman 2017, Nyi Nyi Kyaw 2017, Parashar and Alam 2018). These scholars argue that it was not the 1982 Citizenship Law itself that deprived Rohingya of their citizenship, but the practices of the state authorities that destroyed the documents of Rohingya proving their citizenship or refused to register them according to the new citizenship act.

The first post-colonial Constitution of Burma (drafted in 1947) introduced the term indigenous or national races, but did not name Rohingya as one of the national races. However, the 1948 Citizenship Act recognized virtually all the inhabitants of Burma as citizens. Belonging to the pre-1823 indigenous or national races was not the only possible way to be recognized as a citizen of Burma (Parashar and Alam 2018, 98). Although Rohingya were not explicitly recognized as belonging to one of the national races in the legislation, they were recognized as such in the later parliamentary debate (Parashar and Alam 2018, 100). Tracing the genealogy of the concept of 'national races', Nick Chessman argued that they emerged as a determinant of Burmese politics more recently, only a few decades ago, in 1964. At this point the political discourse in Burma started changing, when general Ne Win gave centrality to the concept of 'national races' in his Union Day speech (Chessman 2017, 465). As the borders between Myanmar, Bangladesh and India were initially not strongly defined, the discourse accompanying the concept of 'national races' was that there had been continuous 'illegal migration' to Myanmar from the neighbouring countries since the colonial period.

In the following decades the status of Rohingya also changed dramatically: while previously thought of as one of the national races, they were increasingly perceived as foreign Bengalis who came to Myanmar as British sponsored labour migrants and as 'illegal migrants' who came after the Burmese independence (Parashar and Alam 2018). The 1982 Citizenship Law indeed gave the primacy to 'national races', but it also included safeguards according to which those recognized as citizens with the 1948 Citizenship law could not be automatically deprived of citizenship. Rather, the Rohingya were deprived of citizenship because the authorities refused to register them as citizens (Parashar and Alam 2018) and gave a white temporary residence card (Nyi Nyi Kyaw 2017, Cheesman 2017). The official Burmese explanation for this practice was that Rohingya who were given white cards have dubious citizenship status and it still needed to be determined whether or not they are citizens of Myanmar (Nyi Nyi Kyaw 2017). It was the introduction of these cards that left Rohingya in a legal limbo, neither as citizens or as foreigners in Myamar, not the Citizenship Act itself, as is often wrongly interpreted (Nyi Nyi Kyaw 2017, Cheesman 2017). Since belonging to 'national races' is the most important political category in Myanmar, Rohingya activists argued that Rohingya are too a national race based on historical sources; this is the claim that the Government of Myanmar and Buddhist nationalist dispute (Cheesman 2017). The practices of the

state caused multiple forced displacements of people with ambiguous legal status both within Myanmar and in the neighbouring countries, especially Bangladesh. Rohingya were the minority who was the most hit by irregularization of their status and displacement as the practices and discourses transformed them from previous citizens to less than aliens (as they did also not have a clear foreigner status).

Conclusion: Total Infringement of Citizenship

This paper analysed five cases of minority statelessness, two of them connected to the post-socialist context (Romani minorities, Russian speaking minorities) and three to postcolonial contexts (Windrush generation, Dominicans of Haitians descent and Rohingya). The contexts in which the minority statelessness occurred are diverse, yet they all show one resemblance: previous citizens were transformed into unwanted, undocumented or irregular aliens. In all analysed cases the states were (at least initially) not willing to recognize minorities who were deprived of citizenship as being stateless, but rather dubbed them as foreigners from somewhere else. In most cases the transformation from citizens to aliens also meant a total infringement of citizenship, that is deprivation of citizenship accompanied by deprivation of political, economic and social rights. The exceptional case was the Russian speaking minorities in Estonia and Latvia: while clearly discriminated in their everyday lives, the Baltic states did not deny their belonging to the state and gave them residency rights and protection from deportation. They did, however, introduce a hierarchy of belonging, according to which they did have most rights as citizens, except for voting rights.

Unlike the case of Russian speaking minorities in the Baltic states, all the other cases discussed can be categorized as a stateless minority with total infringement of citizenship: the deprivation of citizenship was accompanied by deprivation of political, social and economic rights. In addition, while the number of Russian speaking minorities without citizenship was well documented, the numbers in other cases are only estimates. These cases also showed that total infringement of citizenship is based on racialized citizenship regimes. According to the citizenship laws, discourses and practices around citizenship and belonging, all these minorities were denied their belonging to the states in questions. They found themselves with in-between statuses (Sardelić 2015, Lori 2017), where they fit neither the definition of a citizen nor of a stateless persons. Yet the state discourses clearly demarcate the difference from citizens based on inalterability of belonging (or more precise, non-belonging) and was hence based on racialized citizenship. Nevertheless, racialized citizenship regimes are, however, not static, but transformable and can with time either become more fortified or abolished. The study of racialized citizenship regimes shows that while minority statelessness does often occur in post-socialist or post-colonial settings, it cannot be considered as a simple straightforward result of socialism or colonialism. While these served as a background of previous discrimination, it is the introduction of new legislation, discourses and practices of the new states that denies citizenship and constructs minority statelessness just as well.

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