

## CASE NOTE

# *FASLLIU AND REXHA V ALBANIA*: THE RIGHT TO BIRTH REGISTRATION UNDER THE *ICCPR*

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## I INTRODUCTION

On 29 October 2024, the United Nations ('UN') Human Rights Committee ('Committee') considered the right to birth registration under art 24(2) of the *International Covenant on Civil and Political Rights* ('*ICCPR*') for the first time in *Daniel Faslliu, Marjeldo Rexha and Hajrije Rexha v Albania* ('*Faslliu and Rexha*').<sup>1</sup> The case concerned the refusal by the Albanian authorities to register the births of three Roma children who had been born abroad, putting them at risk of statelessness and hampering their access to basic rights and services, including education and healthcare.<sup>2</sup> The Committee found violations of the rights to birth registration, to acquire a nationality, to be recognised as a person before the law and the prohibition of discrimination based on ethnicity.<sup>3</sup>

Birth registration is essential for establishing children's legal identity, as it records place of birth, parentage and often, nationality.<sup>4</sup> Despite its critical

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<sup>1</sup> *International Covenant on Civil and Political Rights*, opened for signature 16 December 1966, 999 UNTS 171 (entered into force 23 March 1976); United Nations ('UN') Human Rights Committee ('UNHRC'), *Views: Communication No 3602/2019*, UN Doc CCPR/C/142/D/3602/2019 (29 October 2024) ('*Faslliu and Rexha*').

<sup>2</sup> *Faslliu and Rexha* (n 1) [3.2].

<sup>3</sup> *ibid* [8].

<sup>4</sup> UN Department of Economic and Social Affairs Statistics Division, *UN Legal Identity Agenda* (Web Page) <<https://unstats.un.org/legal-identity-agenda/>>, archived at <[perma.cc/69RK-SJ8C](https://perma.cc/69RK-SJ8C)>.

importance, millions of children worldwide<sup>5</sup> — including in Europe —<sup>6</sup> remain unregistered. Children born into Roma communities are particularly vulnerable, since they often live in poverty and irregular conditions stemming from systemic and longstanding discrimination.<sup>7</sup> Recognising the importance of birth registration, the Committee found that without it individuals remain legally invisible and that upholding these rights is paramount to enjoy other socio-economic rights.<sup>8</sup> Notwithstanding some remaining questions in the decision, in particular the determination of statelessness, the Committee took an important step on the road to securing legal identity for all.<sup>9</sup>

## II FACTS

Daniel Fasliu, a Romani child, was born in Greece in 2014 to Albanian parents without legal residence status.<sup>10</sup> His birth was registered at a Greek civil registry office but the birth certificate did not indicate his name, nor did it have the proper legalisation stamp or an apostille.<sup>11</sup> Without a legal residence status, his parents had only been able to obtain an incomplete certificate attesting the birth as a matter of fact and referring to the child as ‘nameless’.<sup>12</sup> Based on that incomplete document, the Albanian authorities refused to register the child.<sup>13</sup> After Fasliu moved back to Albania in 2014, he was not able to attend school and was not accepted by the healthcare institutions because he was not registered.<sup>14</sup>

Marjeldo Rexha and Haijrije Rexha, Romani twins, faced a similar situation.<sup>15</sup> They were born in Greece in 2002 to Albanian parents without a residence permit.<sup>16</sup> Their births were registered in Greece but the birth certificates were incomplete, referring to them as ‘first twin’ and ‘second twin’.<sup>17</sup> In turn, their births could not be registered in Albania, where they were living.<sup>18</sup> By consequence, they could not attend school nor had access to social and health services.<sup>19</sup>

Since there were no effective remedies available to them in Albania, Fasliu, Rexha and Rexha filed a complaint to the Committee based on arts 2 and 3 of the *Optional Protocol to the International Covenant on Civil and Political Rights*

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<sup>5</sup> UN International Children’s Emergency Fund (‘UNICEF’), *Birth Registration* (Web Page) <<https://www.unicef.org/protection/birth-registration>>, archived at <[perma.cc/XCT8-7XP2](https://perma.cc/XCT8-7XP2)>.

<sup>6</sup> Statelessness Index, *Birth Registration and the Prevention of Statelessness in Europe: Identifying Good Practices and Remaining Barriers* (Thematic Briefing, European Network on Statelessness (‘ENS’), May 2020) 6.

<sup>7</sup> European Roma Rights Centre, Institute on Statelessness and Inclusion and ENS, *Roma Belong: Statelessness, Discrimination and Marginalisation of Roma in the Western Balkans and Ukraine* (Report, October 2017) 33–8.

<sup>8</sup> *Fasliu and Rexha* (n 1) [7.10].

<sup>9</sup> Target 16.9 of the Sustainable Development Goals aims to achieve ‘legal identity for all, including birth registration’: *Transforming our world: the 2030 Agenda for Sustainable Development*, UN Doc A/RES/70/1 (21 October 2015).

<sup>10</sup> *Fasliu and Rexha* (n 1) [2.1], [2.4].

<sup>11</sup> *ibid* [2.4].

<sup>12</sup> *ibid* [2.3].

<sup>13</sup> *ibid* [2.3]–[2.4].

<sup>14</sup> *ibid* [2.4].

<sup>15</sup> *ibid* [2.1], [2.5].

<sup>16</sup> *ibid* [2.5].

<sup>17</sup> *ibid*.

<sup>18</sup> *ibid*.

<sup>19</sup> *ibid*.

(‘*Optional Protocol*’).<sup>20</sup> They alleged violations of their rights to birth registration, nationality, recognition as a person before the law, family life and participation in public life, and the prohibition of discrimination based on ethnicity under arts 16, 17, 24(1)–(3), 25 and 26 of the *ICCPR*.<sup>21</sup>

### III HOLDING

#### A *Admissibility*

The Committee found the complaint admissible, except regarding the rights to family life and to take part in public life, because the complainants had not submitted any specific information to that end.<sup>22</sup>

#### B *Merits*

The starting point of the Committee’s analysis was the right to birth registration in art 24(2), which it conceptualised as a gateway right to enjoy other fundamental rights.<sup>23</sup> Although Albania had reformed its laws, the Committee held that it had not submitted any information as to whether the claimants had been effectively registered.<sup>24</sup> Since they had been unregistered for four and 15 years respectively at the time of the complaints’ submission, the Committee found that Albania had not exercised due diligence in discharging its positive obligation to assist the claimants in the registration of their births.<sup>25</sup>

The Committee then considered the violations flowing from the lack of birth registration. While it acknowledged that birth registration in itself does not confer nationality on a child, it held that birth registration is essential for the acquisition of nationality because it proves the link between the child and the state.<sup>26</sup> Therefore, states have a positive obligation to ensure that all children have a nationality when they are born.<sup>27</sup> The Committee noted that the Albanian authorities had insisted on the submission of birth certificates that the parents had been unable to submit, without providing any exceptions for people in situations of particular vulnerability.<sup>28</sup> Since the delay in birth registration had put the claimants at risk of statelessness and had deprived them of basic rights, such as education and healthcare, Albania had not exercised due diligence in discharging its positive obligation to establish their nationality under art 24(3).<sup>29</sup>

Since the claimants were Roma, the Committee found that Albania’s failure to register them amounted to discrimination based on ethnicity, in light of arts 24(1) and 26.<sup>30</sup> According to the Committee’s established jurisprudence, the prohibition of discrimination may be breached by a seemingly neutral measure that results in

<sup>20</sup> *ibid* [1], [2.9]; *Optional Protocol to the International Covenant on Civil and Political Rights*, opened for signature 16 December 1966, 999 UNTS 171 (entered into force 23 March 1976).

<sup>21</sup> *Faslliu and Rexha* (n 1) [3.1].

<sup>22</sup> *ibid* [6.5]–[6.6].

<sup>23</sup> *ibid* [7.3].

<sup>24</sup> *ibid* [7.6].

<sup>25</sup> *ibid* [7.6]–[7.7].

<sup>26</sup> *ibid* [7.4].

<sup>27</sup> *ibid*.

<sup>28</sup> *ibid* [7.5].

<sup>29</sup> *ibid* [7.5], [7.7].

<sup>30</sup> *ibid* [7.8]–[7.9].

discriminatory effects.<sup>31</sup> In this case, Albanian law did not discriminate explicitly but had a disproportionate impact on the Roma community.<sup>32</sup> Since Roma live in exceptional poverty in Albania due to historical exclusion, they are more likely to move to Greece irregularly and to be expelled than non-Roma.<sup>33</sup> By consequence, they face barriers in obtaining documentation needed for birth registration, exposing their children to a disproportionate risk of statelessness.<sup>34</sup>

Finally, the right to recognition as a person before the law had been violated, based on art 16.<sup>35</sup> Referring to *Yean and Bosico v Dominican Republic* ('*Yean and Bosico*') before the Inter-American Court of Human Rights ('IACtHR'), the Committee clarified that the right signifies the capacity to bear rights and obligations — that is, to possess legal personality.<sup>36</sup> According to *General Comment No 17*, birth registration is designed to promote recognition of the child's legal personality.<sup>37</sup> The Committee also found that legal personality is necessary to enjoy other socioeconomic rights, such as healthcare and education.<sup>38</sup> It held that the 'legally invisible' claimants had found themselves in a legal limbo.<sup>39</sup>

#### IV ANALYSIS

*Fasliu and Rexha* represents a milestone in addressing birth registration, statelessness and racial discrimination before the Committee — three intricately linked human rights issues. Interpreting the right to birth registration for the first time, it recognised states' positive due diligence obligation to assist in the registration of births.<sup>40</sup> Moreover, while every child has the right to be registered 'immediately', the application of the immediacy requirement is generally left to states' discretion.<sup>41</sup> The requirement must, however, be interpreted in favour of the child.<sup>42</sup> In this regard, the Committee held that a four-year delay after birth is excessive.<sup>43</sup> As regards nationality, the Committee confirmed its prior position adopted in *Zhao v Netherlands* that the burden of proof in determining

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<sup>31</sup> *ibid* [7.8].

<sup>32</sup> *ibid* [7.9].

<sup>33</sup> *ibid*.

<sup>34</sup> *ibid*.

<sup>35</sup> *ibid* [7.10]–[7.11].

<sup>36</sup> *ibid* [7.10]; *Yean and Bosico v Dominican Republic (Judgment)* (Inter-American Court of Human Rights, Series C No 130, 8 September 2005) [176]–[178] ('*Yean and Bosico*').

<sup>37</sup> UNHRC, *General Comment No 17: Article 24 (Rights of the child)*, UN Doc HRI/GEN/1/Rev.1 (29 July 1994) [7].

<sup>38</sup> *Fasliu and Rexha* (n 1) [7.10].

<sup>39</sup> *ibid* [7.11].

<sup>40</sup> *ibid* [7.7].

<sup>41</sup> Ineta Ziemele, 'A Commentary on the United Nations Convention on the Rights of the Child, Article 7: The Right to Birth Registration, Name and Nationality, and the Right to Know and Be Cared for by Parents' in André Alen, Johan Vande Lanotte, Eugeen Verhellen, Fiona Ang, Eva Berghmans and Mieke Verheyde (eds), *A Commentary on the United Nations Convention on the Rights of the Child* (Brill Nijhoff 2007) 8.

<sup>42</sup> *ibid*; Jazmine Hesham Elmolla, 'Birth Registration in Crisis: Exploring a Rights-Based Approach to Birth Registration through the Experience of Syrian Refugees' (2019) 31(4) *International Journal of Refugee Law* 541, 545.

<sup>43</sup> *Fasliu and Rexha* (n 1) [7.6].

statelessness must be shared between the state and the individual,<sup>44</sup> reinforcing this principle as part of its jurisprudential *acquis*.<sup>45</sup>

The risk of statelessness featured prominently in the Committee's reasoning.<sup>46</sup> However, it may be questioned whether the claimants were not, in fact, effectively stateless. Because they did not identify themselves as stateless, the Committee did not examine this issue.<sup>47</sup> However, the claimants' position appears inconsistent, since they stated that 'in practice, the acquisition of citizenship is possible only if the child's birth has been registered', implying that they had not acquired Albanian nationality.<sup>48</sup> While children of Albanian parents are legally entitled to Albanian nationality, determining statelessness requires a mixed assessment of law and fact.<sup>49</sup> The UN High Commissioner for Refugees holds that if a person meets the criteria for automatic nationality acquisition, they are not a national if the authorities treat them as a non-national.<sup>50</sup> The facts do not indicate whether the claimants ever attempted to have their nationality confirmed or applied for identity documents reflecting their Albanian nationality, but this appears unlikely. The attitude of the Albanian authorities — continually refusing to register their births and denying them access basic services — seems to indicate that the authorities did not treat them as nationals, which suggests that they were effectively stateless.<sup>51</sup>

The Committee also discussed the right to recognition before the law, taking a step further than in *Zhao v Netherlands*. In that case, the complainant had argued that the right to nationality is linked to the individual's enjoyment of legal personality and respect for human dignity but had not invoked art 16 of the *ICCPR*.<sup>52</sup> In its concurring opinion, Committee member H el ene Tigroudja regretted that the rights to legal personality and humane treatment in arts 16 and 7 had not been addressed.<sup>53</sup> In *Faslliu and Rexha*, the Committee accepted the close link between birth registration and legal personality,<sup>54</sup> as other human rights bodies and courts have done. For instance, the IACtHR adopted this view in *Yean and Bosico* — to which the Committee referred — and the African Commission on Human and Peoples' Rights has followed suit.<sup>55</sup> The European Court of Human

<sup>44</sup> UNHRC, *Views Adopted by the Committee under Article 5 (4) of the Optional Protocol, concerning Communication No 2918/2016*, UN Doc CCPR/C/130/D/2918/2016 (20 January 2021) [8.3] ('*Zhao v The Netherlands*').

<sup>45</sup> *Faslliu and Rexha* (n 1) [7.4].

<sup>46</sup> *ibid* [7.5]–[7.6].

<sup>47</sup> *ibid* [1].

<sup>48</sup> *ibid* [2.1] and [3.3].

<sup>49</sup> *ibid*; UN High Commissioner for Refugees ('UNHCR'), *Handbook on Protection of Stateless Persons* (Handbook, 30 June 2014) [23]–[24] ('*UNHCR Handbook*').

<sup>50</sup> *UNHCR Handbook* (n 49) [37].

<sup>51</sup> *Faslliu and Rexha* (n 1) [3.3]–[3.4]. See also UNHCR and Tirana Legal Aid Society, *Mapping of the Population at Risk of Statelessness in Albania* (Report, May 2018) 42: 'As a result of various obstacles in the birth registration process, there are certain occasions when children have the right to Albanian citizenship (*ius sanguinis*), but they are not recognised as nationals because they are not registered'.

<sup>52</sup> *Zhao v The Netherlands* (n 44) [3.1].

<sup>53</sup> *ibid*, Annex II [2]–[4].

<sup>54</sup> *Faslliu and Rexha* (n 1) [7.10]–[7.11].

<sup>55</sup> *ibid* [7.10]; *Yean and Bosico* (n 36) [176]–[178]; *The Nubian Community in Kenya v The Republic of Kenya (Judgment)* (African Commission on Human and Peoples' Rights ('ACHPR'), Communication No 317/2006, 28 February 2015) [151]; *Open Society Justice Initiative v C ote d'Ivoire (Judgment)* (ACHPR, Communication No 318/06, 28 February 2015) [97], [138].

Rights has not, although Judge Vučinić raised it in his partially dissenting opinion in *Kurić and Others v Slovenia*.<sup>56</sup> The Committee did not address the right to humane treatment, likely because the claimants had not raised it.

Finally, the decision was important since it linked birth registration, and by extension statelessness, to racial discrimination. Since racial discrimination is a root cause of statelessness, largely responsible for statelessness affecting minorities globally, it is fundamental that courts and bodies address it accordingly.<sup>57</sup> The Committee's position was especially salient since it did not address explicitly discriminatory laws or practices but rather tackled systemic discrimination resulting from historic marginalisation and exclusion of Roma.<sup>58</sup>

## V CONCLUSION

The Committee's findings in *Fasliu and Rexha* are an important advancement for the protection of children at risk of statelessness under the *ICCPR*. By concluding that art 24(2) of the *ICCPR* protects both a substantive right for children to be registered and a positive, due diligence duty for the state to assist in that registration, the decision sets an important precedent to ensure birth registration for all children on a global level. Linking birth registration to legal identity, the Committee has joined other human rights courts and bodies in addressing the situation of individuals who remain 'legally invisible' in society. Equally important is the Committee's recognition of systemic discrimination based on ethnicity against Roma children — a highly necessary progression of Roma rights in Europe.

*Fasliu and Rexha* may shape the Committee's future jurisprudence addressing childhood statelessness in a significant manner. Although the Committee's decisions are not legally binding and lack any enforcement mechanism,<sup>59</sup> the Committee may further reinforce the international recognition of the unique vulnerability faced by stateless children, especially children belonging to racial minorities.

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<sup>56</sup> *Kurić and Others v Slovenia* (European Court of Human Rights, Grand Chamber, Application No 26828/06, 12 June 2012) 92 (partly concurring, partly dissenting opinion of Judge Vučinić).

<sup>57</sup> Fernand de Varennes, Special Rapporteur on Minority Issues, *Effective promotion of the Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities*, UN Doc A/73/205 (20 July 2018) [20]–[21]; José-María Arraiza, Phyu Zin Aye and Marina Arraiza Shakirova, 'Fighting Imagined Invasions with Administrative Violence: Racism, Xenophobia and Nativism as a Cause of Statelessness in Myanmar, the Dominican Republic and Assam (India)' (2020) 2(2) *Statelessness and Citizenship Review* 195, 196–8; James A Goldston, 'Holes in the Rights Framework: Racial Discrimination, Citizenship, and the Rights of Noncitizens' (2006) 20(3) *Ethics and International Affairs* 321, 327, 334–5.

<sup>58</sup> *Fasliu and Rexha* (n 1) [7.9].

<sup>59</sup> Christian Tomuschat, 'International Covenant on Civil and Political Rights' (Introductory Note, UN Audiovisual Library of International Law, 2008) 3.