

Een verkennend onderzoek naar de nationaliteit en verblijfsspositie van Roma in Nederland

‘Bijzonder ingewikkeld om aan papieren te komen’

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Summary

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Utrecht, augustus 2022



Summary

Reason for the research: determination procedure to establish statelessness

In 2020, a bill was submitted to establish a new determination procedure for statelessness. Commissioned by the Scientific Research and Documentation Centre (WODC) of the Ministry of Justice and Security, the Verwey-Jonker Institute has conducted a qualitative study, to gain more insight into the situation of Roma residing in the Netherlands who are dealing with statelessness and/or lacking residence rights.

When a person has no nationality because no state recognises him or her as a citizen, or when a person has no effective nationality, then we speak of (de jure or de facto) statelessness. The Dutch state has ratified two United Nations treaties to combat statelessness. In the Netherlands, at the time this report was written, statelessness is only recognised for persons who have source documents that prove their statelessness, or for the birth of children for whom it is established that the parents are stateless. It is possible, however, that people do not have the right source documents, making it impossible to determine their statelessness. The Dutch do not have a handy procedure to determine statelessness. Moreover, the determination of statelessness is not linked to the right of residence, so problems with a person's residence status may continue after the determination procedure has been established.

Problem definition and method

The purpose of this research is to provide a description of the residential position of Roma. Initially, the central problem definition for this research was as follows:

What are the characteristics and backgrounds of the stateless Roma residing in the Netherlands and the Roma residing in the Netherlands whose nationality is unknown, and what are suitable directions for resolving the residence problems they face?

During the research, this main question turned out to be difficult to answer, as Roma interpret statelessness differently. It also appeared, as the study progressed, that next to statelessness, the right of residence plays an important role, in particular when we asked the Roma specifically about the consequences of not having the right of residence.

We ultimately interviewed nineteen Roma respondents, with a variation in gender, age, residence status and region. In addition, a total of 25 professionals were interviewed, partly in the form of focus groups. The professionals we interviewed came from municipalities where many Roma live, including Tilburg, Enschede, Ede, Lelystad and Nieuwegein. Together with these respondents, we also looked for ways to reduce statelessness and the lack of residence rights among the research population. These possible solutions are part of the underlying report.

Different interpretations of statelessness

The Roma respondents we interviewed for the study do not always know what statelessness means, whether it applies to them and, if so, in what way. There are respondents who are registered with the municipality as being stateless. Yet, there are also respondents who are registered with the municipality as 'nationality unknown'. These respondents were also unable to claim a nationality with the help of the municipality, for example by starting a procedure in a state of former Yugoslavia. They were unsuccessful because they were unable to prove they had been born there. In addition, respondents could mean by statelessness that they have no papers to prove their identity. The respondent may not have been registered at birth and is therefore not registered in any country. The loss of a passport was considered by one respondent as resulting in statelessness as well. However, this does not directly mean that there is no right to a nationality. Because it was not always easy to find out during the interviews in which way the respondents were considered stateless and because different interpretations were used, we put the term 'statelessness' in the report in inverted commas. Hence this refers to perceived or experienced statelessness.

Causes and consequences of 'statelessness'

The causes of the (experienced) 'statelessness' mentioned by respondents are diverse. In some cases, the causes lie in the break-up of Yugoslavia. Respondents who were born in border areas are not recognised by the states of former Yugoslavia. These states therefore do not want to provide them with the required documents. Respondents say they are discriminated because of their cultural background. Since, according to them, these states do not want to help them obtain documents, respondents find it difficult to claim the nationality of one of these states or, on the contrary, to prove that they are stateless.

In the Netherlands, too, respondents experience a certain degree of arbitrariness on the part of the government when it comes to obtaining the Dutch nationality. They compare the procedures and do not always understand why there are differences in the outcomes. Even through the lawyers involved, respondents do not always know how their personal situation was constructed from a legal point of view. Respondents feel they are treated as 'third-class citizens' because of the difficulties surrounding their nationality.

There are respondents who reside in the Netherlands illegally and for whom statelessness has not been established. Because a form of statelessness applies to them, they find it very difficult to start certain procedures with the IND, to obtain the right of residence. The IND asks them, for example, to provide a passport from their country of origin. Yet, they do not possess such a passport or have difficulty applying for one, partly due to the language barrier they encounter in the countries concerned. Moreover, the costs of a trip to these countries can be an obstacle, or they cannot leave their children behind in the Netherlands. Another consequence of statelessness mentioned by respondents, is that they have to leave the Netherlands if they are pronounced undesirable, but with their nationality unknown they do not know where they should go. As a result, these people disappear into Dutch illegality. Another problem respondents can experience as a consequence of their statelessness, is having trouble naturalising.

The lack of right of residence among Roma

The interviews with Roma show that there are various reasons why they did not have the right of residence when they were born. An important reason is the lack of a birth registration. It is possible that a person does not possess any documents of this kind, does not know whether the birth was registered and, if so, where. It is also relatively common for a child not to be registered at birth at all, because the parents are unfamiliar with this procedure or with the language of the country in which the child is born. Another reason for the lack

of a right of residence is that the parents themselves do not have any papers to prove their own identity. Having no right of residence due to the absence of a birth certificate can then be transmitted intergenerationally. Some respondents were not recognised by their fathers, who did have a nationality and/or a Dutch right of residence, and they mentioned this as a reason for their lack of a right of residence. In addition, parents were not always lawfully married, especially if the mother did not have any identity papers or a right of residence. In addition, the fact that some children are registered at birth and recognised by their father while others are not, creates differences within families.

Consequences of an illegal residence

In the study, we also asked Roma whether they consider it problematic to have no right of residence. In the interviews with both the Roma and the professionals, several negative consequences came up. First of all, Roma - also those who have lived in the Netherlands for a long time - cannot legally work or claim social security benefits (including the food bank) as a consequence of their illegal stay. Secondly, as a result of the General Income-dependent Regulations Act (AWIR: Algemene Wet Inkomensafhankelijke Regelingen), they experience hindrances in being able to live with family members who do have a residence permit or Dutch passport. Some municipalities have come up with ad hoc tolerance constructions to keep the situation liveable for Roma. Another important and pressing consequence of illegal residence is that, after reaching the age of eighteen, the future prospects of young Roma vanish. After this age limit, they experience problems finding an internship, legal work and legal housing. Although the study seems to suggest that the right of residence is more important to Roma than obtaining the Dutch nationality, Roma who have been living in the Netherlands for a long time or who were even born here, struggle with their identity formation, sense of belonging and future perspectives.

Obtaining a Dutch right of residence or becoming a Dutch citizen

Respondents still try to arrange their birth registration and recognition at a later age in order to obtain either the right of residence in the Netherlands or the Dutch nationality. However, this can be very difficult. For example, they have to prove who their father is by taking a DNA test, which can be difficult if the relationship with the father is poor or if the father is unreachable. Respondents talk about different 'routes' for obtaining Dutch residence rights, such as an asylum procedure or marriage to a Dutch citizen. There were also respondents who had obtained the nationality of one of the (EU) states in former Yugoslavia and who therefore had a right of residence in the Netherlands. Finally, we heard about the experiences of people who get stuck in various procedures and derive a temporary right of residence from this, without having a residence permit. They perceive the costs of various procedures (such as a DNA test, naturalisation, civic integration) as an obstacle to obtaining the right of residence or the Dutch nationality.

Meeting the conditions: the complexity of the bureaucratic process

Meeting the conditions for obtaining or retaining the right of residence is proving difficult for this group. The complexity of the bureaucratic system causes people, including Roma, to get into trouble with their right of residence. The stories of the Roma in this study show that they cannot obtain the requested documents, such as birth certificates or an official rejection as a citizen by the European member state in which they were born. This is a frequently mentioned cause of the lack of a legal residence in the Netherlands. We also note that procedures concerning statelessness, an 'unknown nationality' and residence rights are legally complex, both for Roma and for professionals in the different municipalities. For this reason, some municipalities engage legal

advisors or lawyers for support. We did notice, however, that there is a lack of uniformity in the way the municipalities we studied deal with this right of residence issue; while one municipality makes an effort in supporting their Roma community, another does very little for this group.

Directions towards solutions and conclusions

Finally, we asked both Roma and professionals about possible solutions to the problems surrounding statelessness and the right of residence. In the analysis, the researchers considered these paths toward resolution in the light of the entire study.

For national government/policy makers

- The statelessness determination procedure law can offer a solution for certain stateless Roma families. However, this will only help Roma to a limited extent, as the findings suggest that the lack of residence rights causes more problems for Roma than their statelessness alone. In addition to this, we should note that Roma constitute only a small part of a large group of unrecognised stateless people in the Netherlands, who could certainly benefit from this determination procedure (UNHCR, 2011).
- Respondents, both Roma and professionals, state that Roma need a more outreaching government to support them with the problems they face in their daily lives. The promotion of the cooperation between municipalities and key figures from the Roma community who play an intermediary role, already happening in some municipalities, is a possible solution to this problem. We do see differences between municipalities in the support of Roma, and for the target group it would be desirable to eliminate these differences.
- To identify a nationality in a country of origin of a Roma person, requires that more attention be paid to the situation of Roma in these countries of origin. If these countries do not want to cooperate in the identification

of people with a Roma background, the Roma in the Netherlands should not suffer as a result and end up in a legal vacuum. A convenient and more straightforward procedure for proving lack of documentary evidence should be available in the Netherlands.

- Because they do not have the Dutch nationality, Roma, regardless of age, who have lived in the Netherlands for a long time or were even born there, struggle with their identity formation and future prospects. They feel excluded from society and their humanity is undermined. This degradation also fuels their distrust in institutions. Our findings show that Roma feel discriminated against by institutions, such as the IND. It is advisable to reconsider the conditions for obtaining a Dutch passport for this specific group.

For municipalities

- Within municipalities, more attention should be paid by primary care (people working in birth care/obstreticians) to the recognition and birth registration of Roma children.
- Municipalities that encounter this issue of right of residence may reconsider their cooperation with the legal desk on this specific topic. What can the legal desk do and what not? For professionals, municipalities can develop an appropriate roadmap on how Roma, and other people with these issues, can be supported.
- Another idea is to create a short, legal handbook for professionals to guide them in supporting this vulnerable target group, and then to refer them to the right support agencies.
- We conclude that it would be good for municipalities to have a budget out of which they can settle the costs for this specific target group. Appointing a case director to liaise on these issues with the country of origin is also recommended.

Finally: an ethical afterthought

It was very difficult to reach the target group for this study. This is due to the special problematic of statelessness and because it concerns people who are in an extremely vulnerable situation. However, during our conversations with Roma, we also encountered reluctance or resistance to participate in a study like this. They did not feel that yet another survey would actually help them. The system is complex and it is often unclear to Roma why certain procedures fail (for example at the IND). This has led to distrust of the government and institutions. A study that does not contribute to improving the situation of this group of people can increase this distrust. The Ministry of Justice and Security should therefore take the input from this study seriously and work to effectively improve the situation of this group of people.

COLOFON

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Foto omslag	123RF, Vapi, 58904233
Uitgave	Verwey-Jonker Instituut Kromme Nieuwegracht 6 3512 HG Utrecht T (030) 230 07 99 E secr@verwey-jonker.nl I www.verwey-jonker.nl

De publicatie kan gedownload worden via onze website:
<http://www.verwey-jonker.nl>

ISBN 978-94-6409-178-6

© Verwey-Jonker Instituut, Utrecht, augustus 2022.

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