

Serbia



INTRODUCTION

Praxis is a non-governmental organisation based in Belgrade, Serbia dedicated to the protection and promotion of human rights. Since 2004, Praxis has focused on the issues most relevant to refugees, IDPs, and members of vulnerable minority groups, such as the Roma community. One such issue is the plight of the many people who are currently stateless, legally invisible and/or at risk of statelessness in the Western Balkans region. Praxis has spearheaded a multi-tiered effort aimed at solving this problem and preventing and reducing statelessness, involving advocacy for changes to law and practice, provision of free legal aid to persons at risk, publishing human rights reports on the subject, and providing training and awareness raising. Praxis' legal advocacy is informed by its overall goals: the eradication of discrimination, poverty and racism, and a vibrant civil society shaped by democracy, the rule of law, and respect for human rights.

Serbia is one of the countries covered by the [Statelessness Index](https://index.statelessness.eu/) (<https://index.statelessness.eu/>), an online comparative tool that assesses European countries' law, policy and practice on the protection of stateless people and the prevention and reduction of statelessness against international norms and good practice. The Index was developed and is maintained by the [European Network on Statelessness \(ENS\)](#),¹ a civil society alliance of 150 organisations and individuals in 41 countries working to end statelessness and ensure that stateless people in Europe access their rights.

The Statelessness Index data shows how, despite a positive record on accession to international treaties, when it comes to fulfilling these obligations, the picture in [Serbia](#) is not always so positive. The Index shows, for example, that efforts to prevent and reduce statelessness are inhibited by gaps in the implementation of legal safeguards against childhood statelessness and birth registration requirements.

This briefing focuses on problems occurring in relation to birth registration immediately after birth and the prevention of statelessness among children born in Serbia. It also points to some positive solutions in relation to subsequent birth registration.



UNIVERSAL ACCESS TO IMMEDIATE BIRTH REGISTRATION

Despite the fact that Serbia has ratified the Convention on the Rights of the Child and the International Covenant on Civil and Political Rights, which guarantee that every child shall be registered immediately after birth and shall have the right from birth to a name², and that the Serbian Constitution prescribes that every child shall have the right to personal name and entry in the registry of births³, these rights are denied to children in Serbia whose parents do not possess personal documents. The provisions of two bylaws⁴ stipulate that parents' data are entered into the birth notification form and birth registry books on the basis of their birth certificates (and marriage certificates if they are married) and identity cards (or passports for foreigners). This means that if a mother does not possess such documents, it will not be possible to determine the personal name of the child and the child will remain unregistered. It further means that it will be necessary to conduct one of the following procedures: determination of personal name, subsequent birth registration, or determination of the date and place of birth. Each of these procedures can last several months, or up to a year or more in complex cases. Therefore, the legal framework and practice

do not ensure that children are registered immediately after birth where parents are undocumented.

At the end of 2016, the Serbian Government attempted to solve this problem through an instruction (as a part of the Baby, Welcome to the World Project), establishing a simple and facilitated procedure of birth registration intended to enable the registration of children born in hospital whose mothers do not possess personal documents. However, the Instruction is not a legally binding act and its provisions contradict the existing legally binding regulations. In 2017, Praxis conducted a survey which showed that nothing had changed in practice and that children of undocumented parents, born in a hospital, remained without a personal name and complete birth registration and, therefore, could not obtain a birth certificate.⁵ It is clear that this problem must be solved in a systemic way by amending the relevant by-laws that prevent birth registration of children whose parents do not have documents.

For this reason, in July 2018 and again in June 2019, Praxis sent appeals to the Ministry of Public Administration and Local Self-Government, as the competent body for amendments of the bylaws in question. However, the Ministry did not recognise the need for amendments, explaining that the Serbian legal framework enabled every person to be registered in the birth registry, ignoring the fact

that children of undocumented parents cannot be registered *immediately* after birth. This policy is in contrast to the conclusions of a 2017 seminar on the Social Inclusion of Roma in the Republic of Serbia, which state that the competent ministries shall ensure the fulfilment of the right to report and register births of children born inside and outside health institutions to undocumented parents.⁶ It is also in contrast to the Serbian Government's own stated commitment to fulfil the Sustainable Development Goals, including to 'provide legal identity for all, including birth registration.'⁷

The failure of the Serbian Government to guarantee the right to birth registration immediately after birth for all children has been underlined by international organisations and treaty bodies who have pointed to Serbia's obligations to ensure that every child is registered in the birth registry immediately after birth (Universal Periodic Review 2018⁸, Concluding observations by the Committee on the Rights of the Child 2017⁹, Annual progress report of the European Commission for Serbia 2018¹⁰ and 2019¹¹).

In October 2019, the Ministry for Public Administration and Local Self-Government, the Ombudsperson and UNHCR signed a Memorandum of Understanding to improve joint cooperation on resolving birth registration problems and other rights related to personal status that continue to disproportionately impact on the Romani population, with special emphasis on new-born children.

The Serbian Government should amend the by-laws requiring parents to have identity cards and birth certificates in order to register a birth, to guarantee every child's right to be registered in the birth registry books immediately after birth, regardless of the status of their parents, in line with international law.



STATELESS CHILDREN BORN IN SERBIA

Serbia is state party to the 1961 Convention on the Reduction of Statelessness. The Law on Citizenship of the Republic of Serbia¹² contains a provision on the prevention of statelessness among children born in Serbia in Article 13, which prescribes that a child born or found on the territory (foundling) acquires Serbian nationality by birth if both parents are unknown, of unknown nationality or stateless, or if the child is stateless. Although this provision is automatic in the law, in practice this is not the case as a procedure for acquisition of nationality by birth must be submitted before the Ministry of Interior. If the parents or guardians fail to initiate such a procedure, the child will remain stateless. Furthermore, initiating such a procedure is in no way a guarantee that the child will, in fact, acquire nationality.

Due to the lack of regulations on the evidentiary requirements for this procedure and what constitutes proof of the child's statelessness, the Ministry of Interior has a flexible approach in practice.

A further issue with the implementation of Article 13 of the Law on Citizenship is that the Ministry of Interior interprets this article as applying only to children under the age of 18, which is a lower standard than the 1961 Convention and constitutes a gap for young people if no one has initiated a procedure to confirm their nationality as a minor. This means that, contrary to international standards, the only route to a nationality for a stateless young person born on the territory of Serbia, whose nationality has not been confirmed as a minor, is through naturalisation. There is a

further practical barrier in that the naturalisation procedure is 15 times more expensive than the procedure for acquisition of nationality by birth.

The Serbian Government should ensure that Article 13 of the Law on Citizenship is implemented as it is set out in law, so that nationality is acquired automatically and without conducting a separate procedure, in order to prevent childhood statelessness. The time limit for acquiring nationality by birth should be extended in line with the 1961 Convention to ensure a young person may acquire nationality on reaching the age of majority.



LATE BIRTH REGISTRATION

Significant progress was made in Serbia in 2012 to facilitate access to late birth registration when the Law on Non-Contentious Procedure¹³ was amended to enable those who could not be registered in the birth registry to do so through a non-contentious procedure before the court. Prior to this, it was impossible to complete the administrative procedure for late birth registration where the mother was undocumented, unknown or unable to participate in the procedure, or where there were no witnesses to or evidence of the date and place of birth. The 2012 amendments prescribed a simplified procedure for determination of date and place of birth for those who could not complete the administrative procedure as above and many people were able to obtain personal documents as a result.

However, despite this progress, some practical challenges remain. For example, the prescribed deadlines are often not met, or fees may be requested of applicants who should be exempt under the law. There are also practical problems relating to implementation of court decisions and registering data in the birth registry books by the registrars.

The Serbian Government should ensure equal and adequate implementation of regulations governing the procedures for birth registration before all bodies and in all individual cases.

SUMMARY OF RECOMMENDATIONS

The Serbian Government should:

- Amend the by-laws requiring parents to have identity cards and birth certificates in order to register a birth, in order to guarantee every child's right to be registered in the birth registry books immediately after birth, regardless of the status of their parents, in line with international law.
- Ensure that Article 13 of the Law on Citizenship is implemented as it is set out in law, so that nationality is acquired automatically and without conducting a separate procedure, in order to prevent childhood statelessness.
- Extend the time limit for acquiring nationality by birth in line with the 1961 Convention to ensure a young person born stateless on the territory may acquire nationality on reaching the age of majority.
- Ensure equal and adequate implementation of regulations governing the procedures for birth registration before all bodies and in all individual cases.

ENDNOTES

¹ www.statelessness.eu

² Article 7, paragraph 1 of the Convention on the Rights of the Child; Article 24, paragraph 2 of the International Covenant on Civil and Political Rights

³ Article 64, paragraph 2 of the Constitution of the Republic of Serbia (*Official Gazette of the Republic of Serbia, no. 98/2006*)

⁴ Article 5 of the Rulebook on the procedure for the issuance of birth notification and form of the issuance of birth notification in a health care institution (*Official Gazette of RS, nos. 5/2011, 9/2016, 16/2016, 36/2016 and 103/2018*) and points 10 and 24 of the Instruction on administering registry books and forms of registry books (*Official Gazette of RS, nos. 109/2009, 4/2010, 10/2010, 25/2011, 5/2013.94/2013 and 93/2018*).

⁵ See: *Determining the Date and Place of Birth, Right to Citizenship and Permanent Residence Registration - Analysis of Remaining Obstacles*, Praxis 2017; available at: https://www.praxis.org.rs/images/praxis_downloads/UNHCR_izvestaj_2017.pdf

⁶ See the Operational conclusions and the obligations of the State stemming from them at: <http://www.praxis.org.rs/index.php/en/praxis-in-action/status-and-socioeconomic-rights/item/1371-the-state-committed-to-ensure-that-every-child-is-registered-at-birth>

⁷ Sustainable Development Goals, Goal 16.9, available at: <http://www.ciljeviodrzivograzvoja.net/wp-content/uploads/2016/01/SDGs-ENG.pdf>

⁸ Report of the Working Group of the UN Human Rights Council on the Universal Periodic Review for Serbia, recommendation 114.28, available at: <https://www.ohchr.org/EN/HRBodies/UPR/Pages/RSindex.aspx>

⁹ Concluding observations on the combined second and third periodic reports of Serbia by the Committee on the Rights of the Child from 2017, recommendation 31, available at:

<http://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=6QkG1d%2fPPRiCAqhKb7yhsvbbsmSbdrUo%2fjYBx50fDh007%2bQBbVI9wXsq7oeQOPr3yRlBxmlQ3VRQ0E1ojTHB4LQ132IHm6hUqzJFgcBHRPmUISL7tU8kh6tVRIAPRZJu>

¹⁰ Serbia 2018 Report, page 29, available at: <https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/20180417-serbia-report.pdf>

¹¹ Serbia 2019 Report, page 29, available at: <https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/20190529-serbia-report.pdf>

¹² *Official Gazette of RS, nos. 135/2004, 90/2007 and 24/2018*

¹³ *Official Gazette of RS no. 85/2012*

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