

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, Internally Displaced Persons (IDPs), and members of minority groups at risk of discrimination, 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 spear-headed 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/>), 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 170 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. For example, efforts to prevent and reduce statelessness in Serbia are inhibited by gaps in the implementation of legal safeguards to prevent 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. Furthermore, it points to some positive solutions in relation to subsequent birth registration, but also indicates the obstacles that occur in practice in the procedures for subsequent 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 name)², and that the Serbian Constitution prescribes that every child shall have the right to a personal name and entry in the registry of births,³ these rights are denied to children in Serbia whose parents do not possess personal documents. Provisions in two bylaws⁴ stipulate that parents' data is 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). In practice, this means that if a mother does not possess such documents, it isn't possible to determine the personal name of the child and the child will remain unregistered. In order to overcome this issue, it is 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 (and particularly mothers) 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

In October 2019, the Ministry for Public Administration and Local Self-Government, the Ombudsperson and UNHCR signed a Memorandum of Understanding to improve cooperation on resolving birth registration problems and other rights related to personal status that continue to disproportionately impact the Romani population, with special emphasis on new-born children. As a result of this cooperation, at the end of 2020, the competent ministries⁶ issued an instruction on

how to deal with birth registration of children whose parents are undocumented.

However, once again, this instruction is not legally binding. The new instruction provides even fewer solutions to prevent childhood statelessness. It does not address the question of how to register a child whose mother does not have personal documents immediately after birth, but merely directs the authorities on how to act to subsequently register the mother in the birth books and/or obtain personal documents for her.

Praxis has sent repeated appeals to the competent Ministry of Public Administration and Local Self-Government in 2018, 2019, and 2021 to address this issue. 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.

The failure of the Serbian Government to guarantee the right to birth registration immediately after birth for all children has been underlined by numerous 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.⁷ This policy disregards the Serbian Government's own stated commitment to fulfil the Sustainable Development Goals and its 2020 Action Plan commitments to the European Commission in the context of the EU Accession process.

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 Serbia⁸ contains a provision to prevent statelessness among children born in Serbia, 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 law, in practice it is not, 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 Serbian citizenship.

Furthermore, the Ministry of Interior interprets the provision as applying only to children under the age of 18, which is a lower standard than the 1961 Convention and thus creates a gap in the safeguard 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. The naturalisation

procedure is 15 times more expensive than the procedure for acquisition of nationality by birth, creating further barriers.

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 Serbian Government should extend the time limit for acquiring nationality by birth 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 Procedure⁹ 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 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.

What is more, progress in this area could be significantly jeopardised by a recent Supreme Court of Cassation ruling on the jurisdiction of the non-contentious court in the procedure for registration in birth registry books.¹⁰ The Court took the position that non-contentious procedures for determining the date and place of birth could only be conducted if the administrative procedure for subsequent registration in birth registry books had previously been unsuccessful. The ruling also finds that people registered in the Kosovar birth registry books cannot go through the non-contentious court procedure, despite the fact that Serbia has not recognised Kosovo and citizens cannot exercise any rights in Serbia on the basis of Kosovar documents. In practice, if applied by first instance courts, this ruling will significantly prolong and complicate registration in the birth registry books. Many citizens who were born and registered in Kosovo will be left without the possibility of registering in Serbia, even though they have not lived in Kosovo for years, have lived in cohabitation and had children in Serbia, and meet the requirements for Serbian citizenship.

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 Ministry of Public Administration and Local Self-Government, Ministry of Interior, Ministry of Health and Ministry of Labor, Employment, Veterans and Social Affairs.

⁷ Universal Periodic Review 2018, available at: <https://www.ohchr.org/EN/HRBodies/UPR/Pages/RSindex.aspx>;

Concluding observations by the Committee on the Rights of the Child 2017, available at:

<http://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=6QkG1d%2fPPRiCAqhKb7yhsvbbsmSbdrUo%2fjYBx5OfDhOO7%2bQBbVI9wXsq7oeQOPr3yRlBxmq3VRQ0E1ojTHB4LQ132IHm6hUqzJFgcBHRPmUISL7tU8kh6tVRiAPRZJu>;

Concluding observations by the Human Rights Committee 2017, available at:

https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CCPR%2fC%2fSRB%2fCO%2f3&Lang=en; Concluding observations by the Committee on the Elimination of Discrimination against Women 2019, available at:

https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CEDAW%2fC%2fSRB%2fCO%2f4&Lang=en; Annual progress reports of the European Commission for Serbia 2018, 2019 and 2020, available at: <https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/20180417-serbia-report.pdf>, <https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/20190529-serbia-report.pdf> and https://ec.europa.eu/neighbourhood-enlargement/sites/default/files/serbia_report_2020.pdf

⁸ *Official Gazette of RS, nos. 135/2004, 90/2007 and 24/2018*

⁹ *Official Gazette of RS no. 85/2012*

¹⁰ <https://www.vk.sud.rs/sites/default/files/attachments/Zakljucak%20-%20Nadleznost%20vanparnicnog%20suda%20u%20postupku%20upisa%20u%20maticnu%20knjigu%20rodjenih.pdf>

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