

COUNTRY BRIEFING  
AUGUST 2024

# Serbia



## INTRODUCTION

The [Statelessness Index](https://index.statelessness.eu/) (<https://index.statelessness.eu/>) is 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 \(ENS\)](#),<sup>1</sup> a civil society alliance of over 180 organisations and individuals in 41 countries working to end statelessness and ensure that stateless people in Europe access their rights.

ENS worked with its member<sup>2</sup> to research and compile comparative information on statelessness in Serbia.<sup>3</sup> This briefing summarises the findings on how Serbian law, policy, and practice performs against international norms and good practice on the protection of stateless persons and the prevention and reduction of statelessness. It covers five thematic areas – International and Regional Instruments, Stateless Population Data, Statelessness Determination and Status, Detention and Prevention and Reduction – and makes a series of recommendations to the Serbian Government for reform.

To be stateless is not to be considered as a national by any State under the operation of its law. It is a legal anomaly that prevents more than 10 million people around the world - and more than half a million in Europe - from accessing fundamental civil, political, economic, cultural, and social rights.

## INTERNATIONAL AND REGIONAL INSTRUMENTS

Various international and regional treaties provide for the protection of stateless persons and the prevention and reduction of statelessness.

Serbia is party to the 1954 and 1961 UN statelessness conventions with no reservations and these have direct effect. However, Serbia is not party to the European Convention on Nationality nor the Council of Europe Convention on the Avoidance of Statelessness in Relation to State Succession. Serbia is one of few countries in Europe to have signed the Convention on the Rights of All Migrant Workers and Members of their Families, but it is yet to accede to the treaty. Positively, Serbia is party to all other relevant international and regional conventions with no reservations, and these have direct effect.

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[Serbia should accede to the European Convention on Nationality, the Convention on the Avoidance of Statelessness in Relation to State Succession, and the International Convention on the Rights of All Migrant Workers and Members of their Families.](#)

## STATELESS POPULATION DATA

States should collect reliable quantitative and qualitative data on statelessness and adopt and strengthen measures to count stateless persons on their territory.<sup>4</sup> Identification of stateless people is the first

step to protecting their rights, but also leads to a better understanding of the challenges that need to be addressed. The availability of reliable data is linked to whether procedures to identify and determine statelessness exist.

Data on statelessness in Serbia is not comprehensive. Some data on populations at risk of statelessness in specific parts of the country is available, for example, studies examining rates of birth registration or possession of identity documents among Romani families in specific communities. The census has a category 'without nationality', though some counted in this category may be facing administrative hurdles to acquiring proof of nationality, rather than stateless. No mapping study of statelessness at country level has been carried out, and data on stateless people held in detention is not published. The authorities collect data on the countries of origin of refugees and asylum seekers in Serbia rather than nationality. There are also potentially overlapping data categories.

According to the census conducted in 2022, 675 people are without a nationality, down from 5,951 people in the previous census. NGO Praxis conducted field visits in Roma settlements in 2023 and identified 431 individuals at risk of statelessness, although this number is likely to be significantly higher as the visits were conducted only in selected areas of the country.

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[The Serbian Government should comprehensively map the population affected by statelessness in the country.](#)

The Serbian Government should collect and publish data on stateless people held in detention and stateless refugees and asylum-seekers, and should limit the use of overlapping categories.



## STATELESSNESS DETERMINATION AND STATUS

To be able to provide the protection and rights enshrined in the 1954 Convention, including a residence permit and the right to work, study and facilitated naturalisation, State parties need to be able to identify stateless people on their territory. UNHCR recommends that this is best fulfilled through a dedicated statelessness determination procedure.<sup>5</sup>

Serbia does not have a dedicated statelessness determination procedure nor any other mechanism to identify and determine statelessness (although an ad hoc procedure was implemented in 2011 to recognise 155 people from Albania as stateless). The Law on Foreigners provides for a definition of a stateless person in national law, but it is narrower than the 1954 Convention definition. Rights granted to stateless people include a travel document, right to work, social security, education, free legal aid, protection against discrimination, and healthcare under certain conditions. The law also prescribes that the 1954 Convention should be applied to stateless individuals if this is more favourable for them. However, there is no clear procedure to allow stateless people to access these rights.

Serbia does not explicitly guarantee entry into the territory for undocumented people fleeing the war in Ukraine. It provides temporary protection to stateless people displaced from the war in Ukraine only if they had been granted 'asylum' or 'equivalent national protection' in Ukraine without specifying the meaning of equivalent national protection. Stateless people who were in Ukraine on other grounds, including those who held a permanent residence permit, are not eligible for temporary protection.

The Serbian Government should establish in law a dedicated statelessness determination procedure and protection status in line with UNHCR Guidelines and good practice.

The definition of a stateless person should be fully aligned with the 1954 Convention definition..

The Serbian Government should guarantee entry into the territory for undocumented and stateless people fleeing the war in Ukraine, and ensure access to adequate protection for all stateless people from Ukraine.



## DETENTION

Stateless people face a heightened risk of arbitrary detention particularly where procedural safeguards to identify and determine statelessness and related barriers to removal are lacking.<sup>6</sup>

Powers to detain are provided for in Serbian law, alternatives to detention are established in law (such as compulsory stay in a designated place, temporary withdrawal of travel documents, and/or confiscation of material possessions), there is a maximum time limit and free legal assistance provided by NGOs, but there is no periodic

review of detention. The law states that compulsory stay must be considered prior to detention. In practice, a proposed country of removal is only identified after detention. The Law on Free Legal Aid does not prescribe legal aid in relation to detention. If removal has been delayed, a temporary ID card may be issued on release and the option to register for temporary stay on humanitarian grounds provided after a year. However, the lack of documentation and inability to prove one's identity can be a reason for prolonging detention. Statelessness is not explicitly considered a juridically relevant fact in decisions to detain and is not identified as giving rise to vulnerability.

The Serbian Government should establish a periodic review of detention, and guarantee access to legal aid for matters relating to detention. The lack of documentation and inability to prove one's identity should not be considered a reason for prolonging detention.

The Serbian Government should consider statelessness as juridically relevant in decisions to detain and should consider it to be a factor increasing vulnerability.



## PREVENTION AND REDUCTION

There is no simplified or accelerated route to naturalisation for stateless people in Serbia. There are legal safeguards in nationality law to prevent statelessness in the case of children born on the territory or to Serbian nationals abroad, foundlings and adopted children. However, there are implementation gaps. Parents are not provided with information about their child's nationality rights and relevant procedures. The authorities interpret the safeguard for stateless children born in Serbia as applying only to minors, and in practice, a request must be submitted to the competent authority for a decision to be made on the acquisition of nationality.

Late birth registration is possible, but there is a significant barrier in that births cannot be registered and birth certificates issued if parents are undocumented (without a lengthy procedure). Serbia has received several recommendations from international bodies to address this issue, which disproportionately impacts on Romani communities. Reports suggest that children born to same-sex parents or through surrogacy also face barriers to registering their births in Serbia.

Deprivation of nationality is established in law and provisions safeguard against statelessness. However, there are cases in practice of 'quasi-loss' of nationality, in which a person is said never to have had Serbian nationality, even though it was assumed they did, and competent bodies issued nationality certificates for years based on this assumption. Unlike in other cases of deprivation of nationality under the law, there is no due process in such cases through which a competent body may examine if withdrawal of the assumption of nationality would lead to stateless.

The Serbian Government should introduce a facilitated route to naturalisation for stateless people including to exempt them from stringent requirements they may be unable to meet due to their statelessness.

The Serbian Government should implement the legal safeguard in nationality law to prevent statelessness in line with its obligations under the 1961 Convention.

The Serbian Government should facilitate and guarantee the immediate birth registration of all children born on its territory

regardless of the documentation, residence status or identity of the child's parents.

The Serbian Government should remove all barriers to late birth registration to facilitate access to nationality documentation and prevent statelessness.

## SUMMARY OF RECOMMENDATIONS

The Serbian Government should:

- Accede to the European Convention on Nationality, the Convention on the Avoidance of Statelessness in Relation to State Succession, and the International Convention on the Rights of All Migrant Workers and Members of their Families.
- Comprehensively map the population affected by statelessness in the country. Collect and publish data on stateless people held in detention and stateless refugees and asylum-seekers, and limit the use of overlapping categories.
- Establish in law a dedicated statelessness determination procedure and protection status in line with UNHCR Guidelines and good practice.
- Align the definition of a stateless person with the definition from the 1954 Convention.
- Guarantee entry into the territory for undocumented and stateless people fleeing the war in Ukraine, and ensure access to adequate protection for all stateless people from Ukraine.
- Establish a periodic review of detention and guarantee access to legal aid for matters relating to detention.
- Prohibit the extension of detention on grounds of lack of documentation or inability to prove one's identity.
- Consider statelessness as juridically relevant in decisions to detain and as a factor increasing vulnerability.
- Introduce a facilitated route to naturalisation for stateless people including to exempt them from stringent requirements they may be unable to meet due to their statelessness.
- implement the legal safeguards in nationality law to prevent statelessness in line with its obligations under the 1961 Convention.
- Facilitate and guarantee the immediate birth registration of all children born on its territory regardless of the documentation, residence status or identity of the child's parents.
- Remove all barriers to late birth registration to facilitate access to nationality documentation and prevent statelessness.

## ENDNOTES

<sup>1</sup> <https://www.statelessness.eu/>.

<sup>2</sup> Milan Radojev, Praxis, <https://praxis.rs/>.

<sup>3</sup> <https://index.statelessness.eu/country/serbia>.

<sup>4</sup> Conclusions of the Council of the European Union and the Representatives of the Governments of the Member States on Statelessness, 4 December 2015, <http://www.consilium.europa.eu/en/press/press-releases/2015/12/04/council-adopts-conclusions-on-statelessness/>.

<sup>5</sup> UNHCR (2014) Handbook on Protection of Stateless Persons, available at:

<http://www.unhcr.org/uk/protection/statelessness/53b698ab9/handbookprotection-stateless-persons.html>

<sup>6</sup> ENS (2017) Protecting Stateless Persons from Arbitrary Detention: An Agenda for Change, available at:

<https://www.statelessness.eu/updates/publication/protecting-stateless-persons-arbitrary-detention-agenda-change>

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