

Contents

| | |
|--|-----------|
| International and Regional Instruments | 3 |
| 1954 Convention | 3 |
| 1961 Convention | 4 |
| Other conventions..... | 5 |
| Stateless Population Data | 11 |
| Availability and sources..... | 11 |
| Stateless in detention data..... | 15 |
| Statelessness Determination and Status | 16 |
| Definition of a stateless person..... | 16 |
| Existence of a dedicated SDP | 16 |
| Stateless status without a clear identification mechanism..... | 18 |
| Detention | 22 |
| Detention screening | 22 |
| Alternatives to immigration detention..... | 27 |
| Procedural safeguards..... | 28 |
| Protections on release..... | 32 |
| Return and readmission agreements | 33 |
| Prevention and Reduction | 36 |
| Stateless born on territory | 36 |
| Foundlings | 40 |
| Adoption..... | 42 |
| Ius sanguinis | 43 |
| Birth registration | 44 |

ENS Statelessness Index Survey 2019: Serbia

| | |
|---|-----------|
| Reduction | 52 |
| Withdrawal of nationality | 54 |
| Jurisprudence and Training | 58 |
| Published judgments | 58 |
| Legal training | 58 |
| Pro Bono | 59 |
| Literature..... | 59 |

International and Regional Instruments

| Cat | Q | Sub | Subtheme | Question | International Norms & Good Practice | Answer | Source |
|-----|---|-----|-----------------|---|---|---------------|--|
| IOB | 1 | a | 1954 Convention | Is your country party to the 1954 Statelessness Convention? | UN Convention Relating to the Status of Stateless Persons, 1954 | Yes. | <p>Decree on Ratification of the 1954 Convention Relating to the Status of Stateless Persons and Final Act of the UN Conference on Legal Status of Stateless Persons, Official Gazette of the Republic of Federal Peoples Republic of Yugoslavia - International Agreements, no. 9/59.</p> <p>Notification of succession of the Federal Republic of Yugoslavia, 12 March 2001: https://treaties.un.org/Pages/ViewDetailsII.aspx?src=TREATY&mtdsg_no=V-3&chapter=5&Temp=mtdsg2&clang=_en</p> <p>Serbia succeeded to the Convention on the basis of Art 60(4) of the Constitutional Charter of the State Union of Serbia and Montenegro, Official Gazette of Serbia and Montenegro, no. 1/2003: http://www.worldstatesmen.org/SerbMont_Const_2003.pdf</p> |
| IOB | 1 | b | | If yes, when was ratification/accession? | | 12 March 2001 | <p>Notification of succession of the Federal Republic of Yugoslavia, 12 March 2001: https://treaties.un.org/Pages/ViewDetailsII.aspx?src=TREATY&mtdsg_no=V-3&chapter=5&Temp=mtdsg2&clang=_en</p> |

International and Regional Instruments – 2019

| | | | | | | | |
|-----|---|---|-----------------|---|---|---|---|
| IOB | 1 | c | | Are there reservations in place? Please list them. | Best practice is no reservations. If there are, they should have little or no impact on the rights of stateless people. | No, there are no reservations in place. | UN Treaty Collection, Reservations and Declarations for Convention relating to the Status of Stateless Persons: https://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg_no=V-3&chapter=5&Temp=mtdsg2&clang=_en#2 |
| IOB | 1 | d | | Does the Convention have direct effect? | Best practice is that the Convention has direct effect, though this may depend on the legal regime. | Yes. | Constitution of the Republic of Serbia, Official Gazette of the Republic of Serbia, no. 98/2006, Art. 16(2) & 16(3): “Generally accepted rules of international law and ratified international treaties shall be an integral part of the legal system in the Republic of Serbia and applied directly.” Ratified international treaties must be compatible with the Constitution: https://www.ilo.org/dyn/natlex/docs/ELECTRONIC/74694/119555/F838981147/SRB74694%20Eng.pdf |
| IOB | 2 | a | 1961 Convention | Is your country party to the 1961 Statelessness Convention? | UN Convention on the Reduction of Statelessness, 1961 | Yes. | The Law on Ratification of the Convention on the Reduction of Statelessness, Official Gazette of the Republic of Serbia - International Agreements, no 8/2011 |
| IOB | 2 | b | | If yes, when was ratification/accession? | | 8 th of December, 2011 | Notification of accession of the Republic of Serbia, 7 December 2011: https://treaties.un.org/doc/Publication/CN/2011/CN.782.2011-Eng.pdf |
| IOB | 2 | c | | Are there reservations in place? Please list them. | As above | No, there are no reservations in place. | UN Treaty Collection: https://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg_no=V-4&chapter=5&clang=_en |

International and Regional Instruments – 2019

| | | | | | | | |
|-----|---|---|-------------------|---|---|---|--|
| IOB | 2 | d | | Does the Convention have direct effect? | As above | Yes | Constitution of the Republic of Serbia, Art. 16 (2) & 16(3): “Generally accepted rules of international law and ratified international treaties shall be an integral part of the legal system in the Republic of Serbia and applied directly.” Ratified international treaties must be in accordance with the Constitution: https://www.ilo.org/dyn/natlex/docs/ELECTRONIC/74694/119555/F838981147/SRB74694%20Eng.pdf |
| IOB | 3 | a | Other conventions | State party to European Convention on Nationality 1997? Please list any reservations. | European Convention on Nationality, 1997 | No | Council of Europe, Chart of signatures and ratifications of Treaty 166 (European Convention on Nationality): http://www.coe.int/en/web/conventions/full-list/-/conventions/treaty/166/signatures?p_auth=DpBZwnVo |
| IOB | 3 | b | | State Party to European Convention on Human Rights 1950? Please list any relevant reservations. | European Convention on Human Rights, 1950 | Yes, Serbia is a State Party to ECHR. No reservations in force. | Law on Ratification of the European Convention on Human Rights, Official Gazette of Serbia and Montenegro – International Agreements, no. 9/2003, 5/2005, 7/2005 – correction and Official Gazette of Serbia, 12/2010. Reservations and Declarations for Treaty No.005 (Convention for the Protection of Human Rights and Fundamental Freedoms): https://www.coe.int/en/web/conventions/full-list/-/conventions/treaty/005/declarations?p_auth=PnAxVuNA |

International and Regional Instruments – 2019

| | | | | | | |
|-----|---|---|---|--|--|--|
| IOB | 3 | c | State Party to Council of Europe Convention on the avoidance of statelessness in relation to State succession 2006? Please list any reservations. | Council of Europe Convention on the Avoidance of Statelessness in Relation to State Succession, 2006 | No | Chart of signatures and ratifications of Treaty 200 (Council of Europe Convention on the avoidance of statelessness in relation to state succession): https://www.coe.int/en/web/conventions/full-list/-/conventions/treaty/200/signatures?p_auth=PnAxVuNA |
| IOB | 3 | d | Bound by Directive 2008/115/EC of the European Parliament and of the Council (EU Returns Directive). Please list any relevant reservations. | Directive 2008/115/EC of the European Parliament and of the Council (EU Returns Directive) | No. | Serbia is not a Member State of the European Union. |
| IOB | 3 | e | State Party to Convention on the Rights of the Child 1989? Please list any relevant reservations. | Convention on the Rights of the Child 1989 | Yes, Serbia is a State Party to the Convention and there are no reservations in force. | Law on Ratification of the Convention on the Rights of the Child, Official Gazette of the Republic of Socialistic Federal Republic of Yugoslavia, no. 7/71, 15/90 and Official Gazette of the Republic of Socialistic Republic of Yugoslavia, no. 4/96 and 2/97. Notification of succession to the Convention on the Rights of the Child, 12 March 2001: https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-11&chapter=4&clang=en Serbia succeeded to the Convention on the basis of Art 60(4) of the Constitutional Charter of Serbia and |

| | | | | | | | |
|-----|---|---|--|--|---|---|---|
| | | | | | | | Montenegro. UN Treaty Collection: https://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-11&chapter=4&clang=en#EndDec |
| IOB | 3 | f | | State Party to International Covenant on Civil and Political Rights 1966? Please list any relevant reservations. | International Covenant on Civil and Political Rights 1966 | Yes, Serbia is a State Party to the Covenant. There are no reservations in force. | <p>Law on Ratification of International Covenant on Civil and Political Rights, Official Gazette of the Republic of Socialistic Federal Republic of Yugoslavia, no. 7/71.</p> <p>Notification of succession to the International Covenant on Civil and Political Rights, 12 March 2001: https://treaties.un.org/doc/Publication/CN/2001/CN.233.2001-Eng.pdf</p> <p>Serbia succeeded to the Covenant on the basis of Art 60(4) of the Constitutional Charter of Serbia and Montenegro. UN Treaty Collection: https://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-4&chapter=4&clang=en</p> |
| IOB | 3 | g | | State Party to International Covenant on Economic, Social and Cultural Rights 1966? Please list any relevant reservations. | International Covenant on Economic, Social and Cultural Rights 1966 | Yes, Serbia is a State Party to the Covenant. There are no reservations in force. | <p>Law on Ratification of International Covenant on Economic, Social and Cultural Rights, Official Gazette of the Republic of Socialistic Federal Republic of Yugoslavia, no. 7/71.</p> <p>Notification of succession to the Covenant, 12 March 2001: https://treaties.un.org/doc/Publication/CN/2001/CN.233.2001-Eng.pdf</p> <p>Serbia succeeded to the Covenant on the basis of Art 60(4) of the</p> |

| | | | | | | | |
|-----|---|---|--|--|--|--|--|
| | | | | | | | Constitutional Charter of Serbia and Montenegro. UN Treaty Collection: https://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-3&chapter=4&clang=en |
| IOB | 3 | h | State Party to Convention on the Elimination of all Forms of Discrimination Against Women 1979? Please list any relevant reservations. | Convention on the Elimination of all Forms of Discrimination Against Women 1979 Gen. Rec. 32 on the gender-related dimensions of refugee status, asylum, nationality and statelessness. | Yes, Serbia is a State Party to the Convention and there are no reservations in force. | Law on Ratification of Convention on the Elimination of all Forms of Discrimination Against Women, Official Gazette of the Republic of Socialistic Federal Republic of Yugoslavia, no.11/81. Notification of succession to the Convention, 12 March 2001: https://treaties.un.org/doc/Publication/CN/2001/CN.156.2001-Eng.pdf Serbia succeeded to the Convention on the basis of Art 60(4) of the Constitutional Charter of Serbia and Montenegro. UN Treaty Collection: https://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-8&chapter=4&clang=en | |
| IOB | 3 | i | State Party to Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment 1984? Please list any relevant reservations. | Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment 1984 | Yes, Serbia is a State Party to the Convention and there are no reservations in force. | Law on Ratification of Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Official Gazette of the Republic of Socialistic Federal Republic of Yugoslavia, no.9/91. Notification of succession to the Convention, 12 March 2001: https://treaties.un.org/doc/Publication/CN/2001/CN.238.2001-Eng.pdf | |

| | | | | | | | | |
|-----|---|---|--|---|--|--|--|--|
| | | | | | | | | |
| IOB | 3 | j | | State Party to International Convention on the Elimination of All Forms of Racial Discrimination 1966? Please list any relevant reservations. | International Convention on the Elimination of All Forms of Racial Discrimination 1965 | Yes, Serbia is a State Party to the Convention and there are no reservations in force. | <p>Law on Ratification of International Convention on the Elimination of All Forms of Racial Discrimination, Official Gazette of the Republic of Socialistic Federal Republic of Yugoslavia, no.31/67.</p> <p>Notification of succession to the Convention, 12 March 2001: https://treaties.un.org/doc/Publication/CN/2001/CN.166.2001-Eng.pdf</p> <p>Serbia succeeded to the Convention on the basis of Art 60(4) of the Constitutional Charter of Serbia and Montenegro. UN Treaty Collection: https://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-9&chapter=4&clang=en</p> | |
| IOB | 3 | k | | State Party to the International Convention on the Protection of the Rights of all Migrant Workers and Members of their Families 1990? Please list any relevant | International Convention on the Protection of the Rights of all Migrant Workers and Members of their Families 1990 | No. Convention has been signed but not ratified. | UN Treaty Collection: https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-13&chapter=4&clang=en | |

| | | | | | | | |
|--|--|--|--|---------------|--|--|--|
| | | | | reservations. | | | |
|--|--|--|--|---------------|--|--|--|

Stateless Population Data

| Cat | Q | Sub | Subtheme | Question | International Norms & Good Practice | Answer | Source |
|-----|---|-----|--------------------------|---|---|--|--|
| POP | 1 | a | Availability and sources | Does the Government have a 'stateless' category in its data collection systems (e.g. census)? Please list available figures for the total stateless population on the territory and describe how data is disaggregated (e.g. by sex, age, residence). | <p>Gen. Rec. 32, CEDAW: States parties should gather, analyse and make available sex-disaggregated statistical data and trends.</p> <p>Council of the European Union (2015): Recognise the importance of exchanging good practices among Member States concerning the collection of reliable data on stateless persons as well as the procedures for determining statelessness.</p> <p>UNHCR (2014): Improve quantitative and qualitative data on stateless populations.</p> <p>Institute on Statelessness and Inclusion (2014): States should strengthen measures to count stateless persons on their territory.</p> | <p>There is a category for statelessness in the Census in Serbia, which was last conducted in 2011. According to this data, around 99% of the population are Serbian nationals; a total of 0.62% are foreign nationals; and 0.08% are without nationality. In numbers, a total of 5951 declared themselves to be 'persons without nationality' in 2011. Of these, 5764 were born in ex-Yugoslav countries, and 187 were born in other countries. However, it cannot be concluded that all of them were stateless, because it is possible that some of them were nationals by law but were facing administrative difficulties certifying their nationality.</p> | <p>Official Census 2011 results, Book 9, Migrations: http://pod2.stat.gov.rs/ObjavljenePublikacije/Popis2011/Knjiga%209_Migracije-Migrations.pdf (SR)</p> |
| POP | 1 | b | | Do government authorities define data categories that may overlap (e.g. unknown nationality) or where stateless people might be more highly represented (e.g. Palestinian)? Please explain and provide any available figures. | As above | <p>No. The only data available is from the census (as above). There is no reliable indirect source of statistics on stateless persons. Since 2015 some data about country of origin of refugees exists within UNHCR and relevant state bodies (e.g. in 2017, 39 persons from Palestine and two persons from Western Sahara and, in 2018, 86 persons from Palestine expressed the intention to seek asylum in Serbia). However, data is not systematised and no conclusions or predictions about stateless persons can be drawn from that.</p> | <p>Official Census 2011 results, Book 9, Migrations: http://pod2.stat.gov.rs/ObjavljenePublikacije/Popis2011/Knjiga%209_Migracije-Migrations.pdf (SR)</p> <p>The Belgrade Centre for Human Rights, Right to Asylum in the Republic of Serbia 2017, Belgrade 2018, p. 21: http://www.bgcentar.org.rs/bgcentar/eng-lat/wp-content/uploads/2018/04/Right-to-Asylum-in-the-Republic-of-Serbia-2017.pdf</p> |

Statelessness Population Data – 2019

| | | | | | | | |
|-----|---|---|--|--|----------|--|---|
| | | | | | | | The Belgrade Centre for Human Rights, Right to Asylum in the Republic of Serbia 2018, Belgrade 2018, p. 14: http://www.bgcentar.org.rs/bgcentar/eng-lat/wp-content/uploads/2014/01/Right-to-Asylum-2018.pdf |
| POP | 1 | c | | What is UNHCR's estimate for the stateless/at risk of statelessness population and what is the source for this estimate? | As above | UNHCR has carried out two surveys on people at risk of statelessness in Serbia: in 2010 and in 2015. The overall objective of the surveys was to obtain reliable and representative data on statelessness of Roma, Ashkali and Egyptians (RAE) in Serbia since statelessness and lack of documents in Serbia mainly affects RAE population. The survey was carried out in 'Roma' settlements on a sample which included 1,987 households with a total of 8,765 (RAE) members. According to this data, the share of persons without basic identity documents among the RAE population in Serbia has dropped from 6.8% in 2010 to 3.9% in 2015. According to the 2015 survey: 1% of RAE who live in 'Roma' settlements are not registered in birth registries (approx. 700 people). 5.2% of RAE who live in 'Roma' settlements have no identity cards (approx. 2700 people). | UNHCR, Persons at risk of statelessness in Serbia, Progress report 2010-2015, June 2016: http://www.unhcr.rs/media/docs/UNHCR_Brosura_Apatridi_ENGLESKI.pdf UNHCR, Persons at risk of statelessness in Serbia, June 2011: http://www.refworld.org/pdfid/4fd1bb408.pdf |
| POP | 1 | d | | Have there been any surveys or mapping studies to estimate the stateless population in the country? | As above | Aside from the UNHCR surveys (see 1c above), no other mapping studies have been done. | |

Statelessness Population Data – 2019

| | | | | | | | |
|-----|---|---|--|---|----------|---|--|
| POP | 1 | e | | Are there any other sources of estimates for the stateless population not covered by the above? Please list sources and figures. | As above | <p>There is data on the number of children who are not registered in birth registry books (and therefore at risk of statelessness) from UNICEF surveys carried out as a part of the global program Multiple Indicator Cluster Survey – MICS. According to the 2014 survey, Roma have the lowest birth registration rate (94%). The births of 95% of children under five years-old in Roma settlements have been registered. The birth registration rate is lower among children age 0-5 months (83%) and among children from the poorest wealth quintile (89%).</p> <p>According to the survey carried out in late 2014 among internally displaced Roma in Serbia, 5% of Roma IDP households have one member not registered in the birth registries, and less than 1% of domiciled Roma households. 9% of IDP Roma and 6% of domiciled Roma have a member of their household who cannot obtain a nationality certificate.</p> | <p>Statistical Office of the Republic of Serbia and UNICEF, Serbia Multiple Indicator Cluster Survey 2014 and Serbia Roma Settlements Multiple Indicator Cluster Survey, 2014, Final Reports, Belgrade, Serbia: https://mics-surveys-prod.s3.amazonaws.com/MICS5/Europe%20and%20Central%20Asia/Serbia%20%28Roma%20Settlements%29%2014/Final/Serbia%20%28National%20and%20Roma%20Settlements%29%202014%20MICS_English.pdf</p> <p>UNHCR and the Commissariat for Refugees and Migration of the Republic of Serbia, Assessment of the needs of internally displaced Roma in Serbia, May 2015, p. 41-42 and 73: http://www.unhcr.rs/media/UNHCR_Roma_IDPs_Needs_Assessment.pdf</p> |
| POP | 1 | f | | Are there issues with the reliability of data or indications that the stateless population may be over/under reported? If yes, please describe. | As above | <p>Yes. The data related to stateless persons and those at risk of statelessness are not completely reliable in Serbia. Statelessness related problems are primarily connected to the lack of birth registration. The exact number of those who are not registered has never been determined, which was the main reason for UNHCR to conduct the two abovementioned surveys (see Answer 1c). However, these surveys are limited too. Firstly, there is no precise number for the Roma population in Serbia. The surveys were conducted in Roma</p> | Praxis casework/practice. |

Statelessness Population Data – 2019

| | | | | | | | |
|-----|---|---|--|--|----------|---|--|
| | | | | | | settlements only. Therefore, the results are an estimation. Census data is based only on self-declaration, without any further questions on statelessness. It is likely that the stateless population in Serbia is underreported. The UNHCR surveys showed that the number of people at risk of statelessness significantly dropped to about 700 persons. On the other hand, Praxis as a legal aid provider still identifies new cases of those not registered or with undetermined nationality which leads us to conclude that the number could be higher. | |
| POP | 1 | g | | Please provide any available figures for stateless refugees and/or asylum-seekers and clarify if the Govt also counts these groups in figures for the stateless population (i.e. to avoid under/over-reporting). | As above | There is no available data. Statistics on asylum seekers contain only data on the country of origin. There is no data about stateless asylum seekers, or their number is unrealistically low. Out of 7.651 persons who expressed the intention to seek asylum in the first 11 months of 2018, none of them was recorded as stateless (there were no persons from ‘unknown countries’ either, but there were 86 persons from Palestine). In 2017, of 6,199 persons who expressed the intention to seek asylum, none of them was recorded as stateless (there were no persons from ‘unknown countries’ either, but there were 39 persons from Palestine and two persons from Western Sahara). In 2017, among refused asylum applications, two applications were filed by stateless persons. | <p>The Belgrade Centre for Human Rights, Right to Asylum in the Republic of Serbia 2017, Belgrade 2018, p. 21 & 56: http://www.bgcentar.org.rs/bgcentar/eng-lat/wp-content/uploads/2018/04/Right-to-Asylum-in-the-Republic-of-Serbia-2017.pdf</p> <p>The Belgrade Centre for Human Rights, Right to Asylum in the Republic of Serbia 2018, Belgrade 2018, p. 14: http://www.bgcentar.org.rs/bgcentar/eng-lat/wp-content/uploads/2014/01/Right-to-Asylum-2018.pdf</p> |

Statelessness Population Data – 2019

| | | | | | | | |
|-----|---|---|-----------------------------|--|---|--|--|
| POP | 2 | a | Stateless in detention data | Does the Government record and publish figures on stateless people held in immigration detention? If yes, please provide. | As above and see also norms in Detention section. | In 2016 and 2017 there were no stateless persons (or persons with unknown or undetermined nationality) in immigration detention in Serbia (i.e. in the Shelter for Foreigners). | Response from Border Police Directorate of Ministry of Interior to freedom of information request, 03/8/61 No. GZ 06-124/17 issued on 15 May 2017. |
| POP | 2 | b | | Does the Government record and publish figures on people released from immigration detention due to un-removability? If yes, please provide. | As above | In 2016, 205 unremovable persons were released from immigration detention (Shelter for Foreigners) and they were mainly from Afghanistan, Pakistan, Syria and some from Palestine, Morocco, Eritrea, Congo, Bangladesh, Western Sahara, Cuba, Vietnam. In 2017, 77 unremovable persons were released from immigration detention from Pakistan, Afghanistan, Syria, Morocco. In 2016, the average length of detention was 18 days and in 2017 it was 15 days. | Response from Border Police Directorate of Ministry of Interior (to freedom of information request) 03/8/6/2 no. 26-338/17, 31 May 2017. |

Statelessness Determination and Status

| Cat | Q | Sub | Subtheme | Question | International Norms & Good Practice | Answer | Source |
|-----|---|-----|----------------------------------|--|--|---|--|
| SDS | 1 | a | Definition of a stateless person | Is there a definition of a stateless person in national law? Do the definition and exclusion provisions align with the 1954 Convention? Please provide details. | UN Convention Relating to the Status of Stateless Persons, 1954 : Articles 1(1) & 1(2). | Yes. The Law on Foreigners contains the definition of a stateless person. The definition is not completely aligned with the 1954 Convention since it provides that a “Stateless person means a person who is not considered as a national by any country under its national legislation” instead of “under the operation of its law”, as in the 1954 Convention. However, the official translation of the Convention in Serbian language contains the same formulation as the Law on Foreigners - “under its national legislation”. | Law on Foreigners, Official Gazette of the Republic of Serbia, no.24/18 and 31/19, Art 3 (1.9): http://www.mup.gov.rs/wps/wcm/connect/004ebeee-f0a9-4116-9797-e24889136d03/law+on+foreigners+Official+Gazette+of+the+RS++no+24+2018.pdf?MOD=AJPERES&CVID=mpkHoAB |
| SDS | 1 | b | Existence of a dedicated SDP | Which of the following best describes the situation in your country? Choose only one and then proceed to question indicated. 1. There is a dedicated statelessness determination procedure (SDP) established in law, administrative guidance, or judicial procedure (proceed to Question 2a). | UNHCR (2014) : It is implicit in the 1954 Convention that States must identify stateless persons to provide them appropriate treatment to comply with their Convention commitments. UNHCR (2016) : Establishing a statelessness determination procedure is the most efficient means for States Parties to identify beneficiaries of the Convention. | Group 3 - There is a dedicated statelessness status, but no formal procedure exists for determining this. | |

| | | | | | | | |
|--|--|--|--|--|--|--|--|
| | | | | <p>2. There is no dedicated SDP but there are other administrative procedures through which statelessness can be identified (e.g. residence permit or naturalisation applications, refugee status determination, ad hoc procedures) (proceed to Question 10a).</p> <p>3. There is a dedicated Stateless Status but no formal procedure for determining this (proceed to Question 16a).</p> <p>4. None of the above. Are there other possibilities for stateless people to regularise their stay without their statelessness being determined (proceed to Question 17a)?</p> | | | |
|--|--|--|--|--|--|--|--|

| | | | | | | | |
|-----|----|---|---|--|----------|---|--|
| SDS | 16 | a | Stateless status without a clear identification mechanism | <p>Is there a Stateless Status even if no formal procedure exists for determining this? If yes, how are stateless people identified and what rights are attached to the status? [Section complete, proceed to DET]</p> | As above | <p>There is no prescribed formal procedure to identify stateless persons. According to data from UNHCR in Serbia, based on information from the Serbian Ministry of Interior from 2011, a total of 155 persons have been determined to have the status of stateless persons in Serbia in an ad hoc procedure carried out by the Ministry of Interior. According to unofficial data, all of these people were of Albanian origin. No recent cases of statelessness determination are known and the procedure for determination of status is unclear. Of those whose stateless status was determined, 146 were granted a permanent residence permit, and 9 a temporary residence permit. In accordance with the Law on Foreigners, all were issued with travel documents.</p> <p>In 2018, a new Law on Foreigners was adopted. The (new) Law on Foreigners contains the definition of a stateless person and prescribes that a travel document (valid for two years) for stateless persons be issued by a competent authority. The Law on Foreigners also prescribes that the 1954 Convention should be applied to stateless individuals, if this is more favourable for them. Some of the few laws that explicitly guarantee certain rights to stateless persons are the Labour Law that guarantees the right to work to stateless persons and the Law on Social Protection that prescribes that stateless persons can</p> | <p>Unpublished information given on multiple occasions by UNHCR representatives and the Ministry of Interior at conferences and other events.</p> <p>Law on Foreigners, Art. 3 (1.9); Art. 96; Art. 2(2)</p> <p>Law on social protection, Art. 41(2.8); Art 41(3.5)</p> <p>Law on Fundamentals of the Education System, Art. 3(5)</p> <p>Law on the Prohibition of Discrimination Art. 2(1.1-2)</p> <p>Art 4 and 31, Law on Free Legal Aid, Official Gazette of the Republic of Serbia, No. 87/18: https://www.paragraf.rs/propisi/zakon-o-besplatnoj-pravnoj-pomoci.html (SR)</p> <p>Labour law, Art. 29;</p> |
|-----|----|---|---|--|----------|---|--|

| | | | | | | |
|--|--|--|--|--|---|--|
| | | | | | <p>also be beneficiaries of social protection. Under the Law on Fundamentals of the Education System, stateless persons shall be entitled to education (primary and secondary) under the same conditions and in the same manner as prescribed for Serbian nationals. The Law on the Prohibition of Discrimination guarantees to stateless persons the right to initiate legal action for protection against discrimination. Facilitated naturalisation of stateless persons has not been envisaged. There is a risk that stateless persons would not be able to exercise these rights in practice, because of the lack of a formal statelessness determination procedure.</p> <p>The Law on Free Legal Aid came into force on 1 October 2019 (except for Articles 44-52, which will come into force after Serbia's accession to the EU). It recognises stateless persons as potential beneficiaries of free legal aid. According to the Law, stateless persons have the right to free legal aid under the same conditions as nationals of Serbia. The right to free legal aid is available to the persons who fulfil the conditions for obtaining social assistance or child allowance, or would fulfil the conditions for social assistance and child allowance if they paid for the legal aid from their own resources. Evidence on the fulfilment of these conditions should be obtained ex officio if there are official records available. However, in practice competent bodies</p> | |
|--|--|--|--|--|---|--|

| | | | | | | | |
|-----|----|---|--|---|--|---|---|
| | | | | | | might avoid their duty to obtain evidence ex officio. Also, stateless persons (or competent authorities, if they try to obtain records for stateless persons ex officio), may face difficulties in obtaining records when the applicant is a stateless person, as the entities that hold the required information usually demand an identification document to issue records and certificates. Furthermore, stateless persons could be denied the right to free legal aid if they are not able to prove their stateless status. Regardless of these conditions, free legal aid is available, among others, to children, asylum seekers, persons under subsidiary protection, internally displaced persons and persons not registered in birth registry books who have the right to birth registration through the non-contentious court procedure for determination of date and place of birth. | |
| SDS | 16 | b | | Do stateless people have access to nationality? If yes, please describe the procedure and requirements. | <p>UN Convention Relating to the Status of Stateless Persons, 1954: Article 32</p> <p>UNHCR (2016): It is recommended that States Parties facilitate, as far as possible, the naturalisation of stateless persons.</p> <p>Council of Europe Committee of Ministers (1999): Each State should facilitate the acquisition of its nationality by stateless persons lawfully and habitually resident on its territory.</p> | <p>The Law on Nationality does not prescribe a facilitated naturalisation procedure for stateless persons. Only general provisions on naturalisation may be relevant for them. Article 14 of the Law on Nationality prescribes that Serbian nationality may be acquired by a foreigner who has been granted permanent residence, is over 18 and has legal capacity, whose permanent residence has been registered on the territory of Serbia for at least three years prior to the submission of the application and who submits a statement confirming that they consider Serbia as their own state. In addition, Article 16 of the Law on</p> | <p>Articles 14, 16, 38 and 41, Law on Nationality of the Republic of Serbia, Official Gazette of the Republic of Serbia, no. 135/2004, 90/2007 and 24/2018: https://www.paragraf.rs/propisi/zakon_o_drzavljanstvu_republike_srbije.html (SR)</p> <p>Tariff no 39, Law on Republic Administrative Fees, Official Gazette of the Republic of Serbia, no.43/2003-9, 51/2003-14 (correction), 61/2005-60, 101/2005-28 (other law), 5/2009-7, 54/2009-24, 50/2011-7, 93/2012-</p> |

| | | | | | | |
|--|--|--|--|--|---|--|
| | | | | | <p>Nationality prescribes that a person born on the territory of the Republic of Serbia may acquire Serbian nationality if they resided permanently on the territory of the Republic of Serbia for at least two years without interruption prior to submitting the application and if they submit a written statement confirming that they consider Serbia their own state. The fee for naturalisation amounts to 19,260 RSD (160 EUR). Displaced persons pay a lower fee of 1,070 RSD (9 EUR). If family members (spouses, minor children and unemployed children up to 26 years of age) acquire nationality at the same time, only one fee is paid. The Ministry of Interior decides on applications for acquisition of nationality. The Ministry of Interior may reject an application even though all conditions prescribed by the law have been fulfilled, if it considers that according to the interests of the Republic of Serbia the application for acquisition or cessation of nationality should be rejected.</p> | <p>21, 65/2013-3 (other law), 83/2015-6, 112/2015-16, 113/2017-192, 3/2018-3 (correction), 95/2018-238, 38/2019-75: http://pravno-informacioni-sistem.rs/SIGlasnikPortal/eli/rep/sgrs/skupstina/zakon/2003/43/2/reg (SR)</p> |
|--|--|--|--|--|---|--|

Detention

| Cat | Q | Sub | Subtheme | Question | International Norms & Good Practice | Answer | Source |
|-----|---|-----|---------------------|--|---|---|---|
| DET | 1 | a | Detention screening | Are immigration detention powers provided for in law? Please provide the legal source(s). | <p>ICCPR Article 9(1)</p> <p>ECHR Article 5 (1)</p> | <p>Yes. As Immigration detention occurs in situations of illegal entry and/or in cases of deportation and extradition, it is mainly regulated by the Law on Foreigners, Law on Border Control and Law on Police.</p> | <p>Law on Foreigners, Official Gazette of the Republic of Serbia, no.24/18 and 31/19 , available in English at: http://www.mup.gov.rs/wps/wcm/connect/004ebee-f0a9-4116-9797-e24889136d03/law+on+foreigners+Of+icial+Gazette+of+the+RS++no+24+2018.pdf?MOD=AJPERES&CVID=mpkHoAB</p> <p>Law on Border Control, Official Gazette of the Republic of Serbia. no.24/18 of 26 march 2018: https://www.paragraf.rs/propisi/zakon-o-granicnoj-kontroli.html (SR) (on entry into force of the Law on Border Control, the Law on State Border Protection ceased to have effect)</p> <p>Law on Police, Official Gazette of the Republic of Serbia, No. 6/16, 24/18 and 87/18 https://www.paragraf.rs/propisi/zakon_o_policiji.html (SR)</p> |
| DET | 1 | b | | Does domestic law allow immigration detention for purposes other than those listed under ECHR 5(1)(f)? | <p>ECHR Article 5(1)(f)</p> | <p>Law on Foreigners prescribes that a foreigner may be detained in the premises of the competent authority, in order to establish his identity or the legality of his stay on the territory of the Republic of Serbia, or in order to be escorted to a border crossing point. Stay in the detention centre may be ordered with the purpose to prepare the return or execute forced removal, if provisions related to mandatory stay of a foreigner cannot apply efficiently. The Law contains an assumption that the provisions related to</p> | <p>Law on Foreigners, Articles 86 & 87</p> <p>Belgrade Centre for Human Rights, Human Rights in Serbia 2015, Law, Practice and International Human Rights Standards, Belgrade 2016, p. 111-112: http://www.bgcentar.org.rs/bgcentar/eng-lat/wp-content/uploads/2013/04/Human-Rights-in-Serbia-2015.pdf</p> <p>Belgrade Centre for Human Rights,</p> |

| | | | | | | | |
|--|--|--|--|--|--|---|--|
| | | | | | | <p>mandatory stay cannot be applied efficiently in cases when, among others, the foreigner does not possess a travel documents and if his/her identity cannot be established. Domestic law does not allow immigration detention for purposes other than those allowed under ECHR 5(1)(f), but there is data suggesting that in practice, a number of people were referred to the Shelter for Foreigners in 2015 and 2016, pending their testimony in criminal proceedings against people reasonably suspected of having committed the crime of illegal state border crossing and human smuggling or the crime of human trafficking. As testimony in criminal proceedings is not laid down as a ground for depriving foreigners of their liberty and their confinement in the Shelter for Foreigners, the need to establish their identity under the Law on Foreigners was quoted as the ground for depriving them of liberty. Testimony in criminal proceedings is not one of the grounds for detention in law in Serbia, so these people were deprived of liberty arbitrarily and in contravention of the safeguards under Article 5 ECHR. The period of their detention in the Shelter ranged from several days to several weeks, depending on the efficiency of public prosecutors and the time they needed to hear their testimonies.</p> | <p>Human Rights in Serbia 2016, Law, Practice and International Human Rights Standards, Belgrade 2017, p. 156: http://azil.rs/en/wp-content/uploads/2017/04/Human-Rights-in-Serbia-2016.pdf</p> |
|--|--|--|--|--|--|---|--|

Detention – 2019

| | | | | | | | |
|-----|---|---|--|---|--|---|--|
| DET | 1 | c | | <p>Does a proposed country of removal need to be identified before a person is detained for removal? Please describe the situation in law and in practice.</p> | <p>ICCPR Article 7: Repeated attempts to expel a person to a country that refuses to admit them could amount to inhuman or degrading treatment. Auad v Bulgaria ECtHR (2011): The only issue is whether the authorities were sufficiently diligent in their efforts to deport the applicant. EU Returns Directive: Any detention shall only be maintained as long as removal arrangements are in progress and executed with due diligence.</p> | <p>According the Border Police Directorate (Ministry of Interior), a country of origin or a proposed country of removal is identified before a person is detained for the purpose of removal. Nothing suggests that the situation is different in practice. A proposed country of removal is not always identified for persons whose stay is cancelled and who are ordered to leave the country. For example, the Police Department in Subotica issued a decision by which a foreigner was obliged to leave Serbia within 10 days, without any determination as to where he could go, and, in fact, there was no country that could admit him. In this case, the country of removal was not identified for the purpose of removal, but neither was he ever detained for the purpose of removal.</p> | <p>Response from Border Police Directorate of Ministry of Interior to freedom of information request, 03/8/61 No. GZ 06-124/17 issued on 15 May 2017.</p> <p>Ministry of Interior, Police Directorate, Police Department in Subotica, Decision no. 26-30-330/2014 from 26/03/2014, on file with author.</p> |
| DET | 1 | d | | <p>Is statelessness juridically relevant in decisions to detain? Please describe how (risk of) statelessness is identified and whether referral to an SDP is possible from detention.</p> | <p>Auad v Bulgaria ECtHR (2011) Mikolenko v. Estonia ECtHR (2009): Detention may only be justified as long as deportation proceedings are being conducted with due diligence. UNHCR (2014): Routine detention of individuals seeking protection on the grounds of statelessness is arbitrary. Equal Rights Trust (2012): States must identify stateless persons within their territory or subject to their jurisdiction as a first step towards ensuring the protection of their human rights. International Commission of Jurists (2014): The detention of stateless persons can never be justified when there is no active or realistic progress</p> | <p>The new Law on Foreigners does not contain a provision that would explicitly connect the status of a stateless person with the decision on detention. However, as stateless persons may have difficulties proving their identity or due to not possessing travel documents, some provisions may be relevant. The new Law on Foreigners prescribes that forced removal may be delayed if the foreigner's identity has not been established, through no fault of their own. The delay of forced removal shall be granted for a period of up to one year and may be extended (the Law does not limit the time for which the delay may be extended). The Rulebook on executing forced removal prescribes that a</p> | <p>Law on Foreigners, Arts. 84(1.1), 3(1.1), 85(1) & 87(2.2 & 4)</p> <p>Rulebook on detailed conditions and the manner of executing forced removal of foreigners from the Republic of Serbia, Official Gazette of the Republic of Serbia, no. 69/18 of 14.09.2018, Art. 2(1): http://www.mup.gov.rs/wps/wcm/connect/725117ee-4dff-44db-89e5-60ea79da03ee/lat_Pravilnik+o+bli%C5%BEim+uslovima+i+na%C4%8Dinu+sprovo%C4%91enja+prinudnog+udaljenja+stranca.pdf?MOD=AJPERES&CVID=mpkxS7H (SR)</p> |

| | | | | | | | |
|-----|---|---|--|--|------------------------------------|--|---|
| | | | | | towards transfer to another State. | forced removal may be executed only after the identity of the foreigner has been established. However, the Law prescribes that a foreigner avoiding or interfering with the preparations for return or forced removal may be one of the reasons for ordering stay in the detention centre. At the same time, the law prescribes that inability to establish the identity of the foreigner or not possessing a travel document constitute interference with the removal. The application of these provisions would effectively undo the positive changes on postponement of removal. There is no formal SDP procedure and so no referral to an SDP within the detention regime. | |
| DET | 1 | e | | Are stateless people detained in practice? | | In 2016 and 2017 stateless persons (and persons with undetermined or unknown nationality) were not detained in practice. According to the response of the Border Police Directorate of the Ministry of Interior, the persons mentioned in POP 2 b were released under Article 50(4) of the Law on Foreigners which prescribes: “A foreigner with a verified identity shall be released from the Shelter, if it is reasonably expected that s/he shall not be able to be expelled forcibly”. This provision no longer exists in the new Law on Foreigners. Since the Border Police Directorate answered that there were no stateless persons in detention in that period, these persons were apparently unremovable because of some other reasons, such as the non-refoulment | Response from Border Police Directorate of Ministry of Interior to freedom of information request, 03/8/61 No. GZ 06-124/17 from 15 May 2017 Group 484, Challenges of forced migration in Serbia: the state of human rights of asylum seekers and returnees based on the Readmission Agreement, Belgrade, July 2012, p. 11: http://grupa484.org.rs/wp-content/uploads/2015/09/Challenges%20of%20Forced%20Migrations%20in%20Serbia,%202012.pdf APC/Asylum Protection Center, Nadležnosti I Praksa U Azilnom Sistemu Srbije (Competence and |

Detention – 2019

| | | | | | | | |
|-----|---|---|--|--|--|--|---|
| | | | | | | principle, and not because of their statelessness. Available reports suggest that in practice persons from Afghanistan, for instance, are always considered to be unremovable and that deportation is not conducted for persons originating from countries without diplomatic mission in Serbia. | Practice in the Asylum System in Serbia), p. 22: http://www.apc-cza.org/images/publikacije/Annex%201-Responsibilities%20brochure.pdf (SR) |
| DET | 1 | f | | Does law (and/or policy) provide that immigration detention should be used only as a last resort, after all alternatives have been exhausted in each individual case? | UNHCR (2014) : Detention is a measure of last resort and can only be justified where other less invasive or coercive measures have been considered and found insufficient. EU Returns Directive : Article 15(1) | The new Law on Foreigners explicitly prescribes that the mandatory stay in the detention centre will be applied only if the provision related to mandatory stay in a particular place cannot be efficiently applied. | Law on Foreigners, Art. 93 & 87 (2) |
| DET | 1 | g | | Are individual vulnerability assessments carried out before a decision to detain (or soon after)? Please note whether statelessness is considered to be a factor increasing vulnerability. | ENS (2015) : Arbitrary and disproportionately lengthy detention can ensue when the particular vulnerabilities of stateless people are not addressed. EU Returns Directive : Article 16(3) EU Returns Handbook (2017) : Attention should be paid to the specific situation of stateless persons. Council of the European Union (2013) : European entities should assess the situation of LGBTI persons in detention. | The Law on Foreigners does not define stateless persons as members of a vulnerable group. The new law does not specify examples of persons with disabilities, but rather, within the article that prescribes principles in the return procedure, it generally states that the competent authority shall take into consideration the specific situation of vulnerable persons, family and health status of the person returning, as well as the best interest of minors. The new law also prescribes that, when undertaking police measures and actions against foreigners, the competent authority must act in accordance with the regulations governing the position of people with disabilities and international treaties. It | Law on Foreigners, Arts. 75, 84(1.3), & 87(5) |

| | | | | | | | |
|-----|---|---|---------------------------------------|--|---|--|-------------------------------------|
| | | | | | | also prescribes that during the return procedure, actions shall be in accordance with the family unity principle, and that an unaccompanied minor must be provided with adequate assistance from a children and young person’s social protection service. The new law also prescribes that forced removal may be delayed if serious difficulties emerge relating to the psychological, physical or health status of the foreigner, as well as that a foreigner who has health or other special needs shall be provided with other suitable accommodation. | |
| DET | 2 | a | Alternatives to immigration detention | Are alternatives to detention established in law and considered prior to any decision to detain? | <p>ICCPR Article 9</p> <p>FKAG v Australia HRC (2013): Any decision relating to detention must consider less invasive means of achieving the same ends.</p> <p>UN General Assembly (2009): Calls upon all States to adopt alternative measures to detention.</p> <p>UNHCR (2014): Detention can only be justified where other less invasive or coercive measures have been considered and found insufficient.</p> <p>Human Rights Council (2012) : The obligation to always consider alternatives before resorting to detention should be established by law.</p> <p>EU Returns Directive: Article 15(1)</p> <p>Equal Rights Trust (2012): States have an obligation to consider and apply appropriate and viable alternatives to immigration detention that are less</p> | <p>It is established in the new Law on Foreigners (Art. 93) that the competent authority may issue a decision imposing a travel restriction order requiring compulsory stay when there is risk that the foreigner will not be available to the competent authority to execute forced removal, and placing the person in the detention centre would not be a proportionate measure, or in the case that the foreigner has been issued a decision on delaying forced removal. A foreigner subject to compulsory stay is obliged to remain at a particular address and to regularly report to the nearest competent authority. A time limit of one year is prescribed by law and may be extended by the same period of time. The right to appeal is guaranteed. The new law does not contain provisions on conditions and manner of termination of compulsory stay and, therefore, does not provide for the</p> | Law on Foreigners, Arts. 93 & 81(4) |

Detention – 2019

| | | | | | | | |
|-----|---|---|-----------------------|--|--|---|---|
| | | | | | coercive and intrusive. International Detention Coalition (2015) : Immigration detention should be used only as a last resort in exceptional cases after all other options have been shown to be inadequate in the individual case. | possibility of a competent body annulling the decision in case the reasons for compulsory stay cease to exist. Therefore, a decision on ordering compulsory stay is not subject to periodic review. The new law also prescribes the possibility of temporarily seizing travel and other documents, travel tickets, as well as material possessions. | |
| DET | 2 | b | | Is there evidence that immigration detention is used in practice prior to all alternatives being considered? | As above. | No. | |
| DET | 3 | a | Procedural safeguards | Is there a maximum time period for immigration detention set in law? What is it? | UN Human Rights Council (2010) : A maximum period of detention must be established by law and upon expiry the detainee must be automatically released. UNHCR (2012) : To guard against arbitrariness, maximum periods of detention should be set in national law. EU Returns Directive : Article 15(5) Equal Rights Trust (2012) : Detention should always be for the shortest time possible. | The total duration of residence in the detention centre shall not exceed 180 days. | Law on Foreigners, Art. 88 |
| DET | 3 | b | | Does law/policy provide that individuals must be informed in writing of the reasons for their immigration | UN General Assembly (1988) : Anyone who is arrested shall be informed at the time of the reason for his arrest. EU Returns Directive : Detention shall be ordered in writing with reasons being given in fact and in law. Equal Rights Trust (2012) : Stateless | A stay in the Shelter (detention centre) is determined based on a written decree by the Ministry of Interior. The new Law on Foreigners explicitly stipulates that a foreigner who is ordered to stay in the detention centre, shall be as soon as possible, in writing, in a language they | Law on Foreigners, Art. 87(6) Belgrade Centre for Human Rights, Right to Asylum in the Republic of Serbia, 2014, p. 26: http://www.bgcentar.org.rs/bgcentar/eng-lat/wp- |

| | | | | | | | |
|-----|---|---|--|--|--|--|---|
| | | | | detention? | <p>detainees shall receive their order of detention in writing and in a language they understand.</p> <p>International Commission of Jurists (2014): The authorities shall ensure that sufficient information is available to detained persons in a language they understand on the nature of their detention and reasons for it.</p> | <p>understand, or can be rightfully assumed to understand, informed of the reasons for ordering stay. In practice, detainees have been found not to be aware of the reasons for their detention prior to the introduction of the new law. For example, during a visit to the Shelter for Foreigners of the National Preventive Mechanism against Torture, 10 Syrian nationals reported not knowing the reason for their referral to the Shelter (that they had been placed there pending forced removal to the countries from where they had entered Serbia illegally).</p> | <p>content/uploads/2015/04/Right-to-Asylum-in-the-Republic-of-Serbia-2014.pdf</p> |
| DET | 3 | c | | <p>Are detainees provided with information on their rights, contact details of legal advice and support providers, and guidance on how to access an SDP?</p> | <p>Equal Rights Trust (2012) : Detaining authorities are urged to provide stateless detainees with a handbook in a language and terms they understand, containing information on all their rights and entitlements, contact details of organisations which are mandated to protect them, NGOs and visiting groups and advice on how to challenge the legality of their detention and their treatment as detainees.</p> | <p>The Rulebook on house rules and rules of stay in the detention centre prescribes that the house rules and rules of stay are placed on the noticeboard in the detention centre and are available to all foreigners. They must be translated into English, French and Arabic and, if necessary, into other languages as well. On arrival in the centre, a foreigner is given the rules of stay in a language they understand or may be justifiably assumed to understand. If the person has additional language support needs the rules of stay will be communicated to them verbally in a language they understand, or with the assistance of an interpreter. The Rulebook also prescribes that, when arriving in the detention centre, a person must be acquainted with their right to contact a lawyer, members of their family and representatives of the relevant diplomatic and consular representation. It is also</p> | <p>Arts 2, 4, 16, 14, 21, 22 & 31 of the Rulebook on house rules and rules of stay in the detention centre (Official Gazette of the Republic of Serbia, no. 42/2018 as of 01.06.2018.):</p> <p>http://www.mup.gov.rs/wps/wcm/connect/d1be9d45-5e91-4f5e-a2e5-cf92649dc9cf/lat_Pravilnik+o+kucnom+redu+i+pravilima+boravka+u+prihvatalistu+za+strance.pdf?MOD=AJPERES&CVID=mpkzFF4 (SR)</p> |

| | | | | | | | |
|-----|---|---|--|--|---|---|----------------------------|
| | | | | | | prescribed that someone who believes that they are subject to torture or other cruel, inhuman or degrading treatment or punishment in the detention centre by police officers or other detainees, they may address the Ombudsperson or other relevant national, international or non-governmental organisations. The ombudsperson and other stated organisations must be enabled to visit the detention centre without impediments. The Rulebook also guarantees other rights, such as the right to primary healthcare and basic psychological support, to practice a religion, to private visits, and to make a complaint to the manager of the centre to draw attention to poor conditions. | |
| DET | 3 | d | | Are there regular periodic reviews of detention before a court or independent body, which can order release? | <p>Kim v Russia ECtHR (2014) : The purpose of Article 5(4) ECHR is to guarantee to persons who are detained the right to judicial supervision of the lawfulness of the measure.</p> <p>Equal Rights Trust (ERT) (2012) : To avoid arbitrariness, detention should be subject to automatic, regular and periodic review throughout the period of detention, before a judicial body independent of the detaining authorities.</p> | <p>Periodic reviews are not prescribed by law. The new Law on Foreigners does not prescribe that someone whose identity has been established will be released from the detention centre if it is expected that forced removal will not be possible. Therefore, the new law does not provide for periodic review of the decision on ordering stay in the detention centre. The law only prescribes that the total duration of residence in the detention centre shall not exceed 90 days, which may be extended for a maximum of an additional 90 days if the foreigner’s identity has still not been established or if the foreigner is deliberately interfering with forced removal.</p> | Law on Foreigners, Art. 88 |

| | | | | | | | |
|-----|---|---|--|--|--|---|---|
| DET | 3 | e | | <p>What remedies are available to challenge detention? Please any obstacles to accessing effective remedies in practice.</p> | <p>ICCPR Article 9(4) ECHR: Article 5(4) Kim v Russia ECtHR (2014) : The purpose of Article 5(4) ECHR is to guarantee to persons who are detained the right to judicial supervision of the lawfulness of the measure. Alimuradov v. Russia ECtHR (2019): The individual must have at their disposal a procedure for judicial review of the lawfulness of detention capable of leading to release.</p> | <p>The new Law on Foreigners does not permit an appeal against the decision to place someone in the detention centre or the decision to extend their stay. However, an administrative dispute may be initiated (once only), although it may not delay the enforcement of the decision. There is still no relevant practice.</p> | <p>Law on Foreigners, Art. 90 Art. 26 (1.7) Law on Administrative Disputes, Official Gazette of the Republic of Serbia, No. 97/08 of 27 October 2008: https://www.paragraf.rs/propisi/zakon_o_upravnim_sporovima.html (SR)</p> |
| DET | 3 | f | | <p>Are there guidelines in place governing the process of re-documentation and ascertaining entitlement to nationality for the purpose of removal?</p> | <p>Equal Rights Trust (2012) : The inability of a stateless person to cooperate with removal proceedings should not be treated as non-cooperation. ENS (2015) : The detaining state should have rules in place that govern the process of re-documentation and/or ascertaining entitlement to nationality.</p> | <p>The Rulebook on conditions and manner of conducting removal of a foreigner from the Republic of Serbia (2018) prescribes that, when conducting the removal, a foreigner must possess a valid travel document or other ID for crossing the state border, unless it has been prescribed otherwise by an international agreement. If a foreigner does not possess such document, police officers from the Shelter for Foreigners (detention centre) shall obtain a travel document from the consular section of the state whose national the foreigner is from, so that the foreigner could return to the country of origin. If the travel document cannot be obtained, a travel document for foreigners may be issued for the purpose of conducting forced removal, provided that the police officers of the competent body or the detention centre obtain consent from the country of origin of the foreigner being removed that they will be received in the country of origin with such</p> | <p>Art. 6, Rulebook on conditions and manner of conducting removal of a foreigner from the Republic of Serbia, Official Gazette of the Republic of Serbia, No. 69/18: http://www.pravno-informacioni-sistem.rs/SlGlasnikPortal/eli/rep/sgrs/ministarstva/pravilnik/2018/69/1/reg (SR)</p> |

Detention – 2019

| | | | | | | | |
|-----|---|---|------------------------|---|---|--|--|
| | | | | | | travel document. | |
| DET | 3 | g | | Is free legal aid available to challenge detention? Please describe any barriers to accessing legal aid in practice. | UNHCR (2014) : Judicial oversight of detention is always necessary and detained individuals need to have access to legal representation, including free counselling for those without means. EU Returns Directive : Article 13(3) | The Law on Free Legal Aid came into force on 1 October 2019 (except for Articles 44-52, which will come into force after Serbia's accession to the EU). The Law does not specifically prescribe the right to free legal aid in relation to detention. | Art 4, Law on Free Legal Aid, Official Gazette of the Republic of Serbia, No. 87/18: https://www.paragraf.rs/propisi/zakon-o-besplatnoj-pravnoj-pomoci.html (SR) |
| DET | 4 | a | Protections on release | Are people released from detention issued with identification documents (including confirmation of their stateless status) and protected from re-detention? | UN Convention Relating to the Status of Stateless Persons, 1954 : Article 27 UNHCR (2014) : Being undocumented cannot be used as a general justification for detention. ENS (2015) : State parties to the 1954 Convention have an obligation to provide stay rights to stateless people who have been released from detention. Equal Rights Trust (2012) : Released stateless detainees should be provided with appropriate documentation and stay rights suitable to their situation. | The new Law on Foreigners introduces the possibility of delaying the removal of individuals whose identity cannot be determined through no fault of their own. If removal is delayed, a temporary ID card may be issued entitling the holder to urgent medical assistance and access to primary education for minors. The new law also allows people whose removal has been delayed for at least a year to register for temporary stay on humanitarian grounds, irrespective of whether they meet the conditions otherwise required for temporary residence. | Law on Foreigners, Arts. 84(1.1, 4 & 6) & 61 |
| DET | 4 | b | | If the purpose of detention cannot be fulfilled and the person is released, what legal status and rights are provided to them in law? | Saïd Shamilovich Kadzoev v Direktsia Migratsia' pri Ministerstvo na vatreshnite raboti ECJ (2009) : After the maximum period of detention has expired, the person must be released immediately. A lack of valid documentation or inability to support themselves should not be a deterrent to release. Equal Rights Trust (2012) : Released stateless detainees should be provided with appropriate documentation and stay rights suitable to their situation. | The new Law on Foreigners prescribes that a foreigner whose forced removal has been delayed for at least one year may be granted temporary stay on humanitarian grounds. If the person does not have a valid travel document, they will be issued with an identity card for foreigners. They may then access rights and services under the same conditions as other foreigners, in accordance with separate laws and international treaties. A foreigner whose forced removal has been delayed, and to whom temporary stay on humanitarian | Law on Foreigners, Arts. 61(1.2), 102(1) & 84(1.1, 4 & 6) |

Detention – 2019

| | | | | | | | |
|-----|---|---|-----------------------------------|--|---|---|--|
| | | | | | | grounds has not been granted shall be issued a temporary identity card for foreigners and will have access to urgent medical assistance, and minors shall access primary education. | |
| DET | 4 | c | | If re-detention occurs, is the cumulative time spent in detention counted towards any maximum time limits? | Equal Rights Trust (2012) : When calculating the total time spent by an individual in detention, it is highly desirable that time spent in detention on previous occasions is taken into consideration. | No. | Response from Border Police Directorate of Ministry of Interior to freedom of information request, 03/8/61 No. GZ 06-124/17 from 15 May 2017. |
| DET | 5 | a | Return and readmission agreements | Is statelessness considered a juridically relevant fact in any bilateral readmission and/or return agreements? | UNHCR (2014) : Efforts to secure admission or readmission may be justified but these need to take place subsequent to a determination of statelessness. | Yes. According to the agreement between the European Community and the Republic of Serbia on the readmission of persons residing without authorisation, Serbia shall readmit a stateless person who holds, or at the time of entry held, a valid visa or residence permit issued by Serbia, or who has illegally and directly entered the territory of the Member States after having stayed on, or transited through, the territory of Serbia (except in two prescribed cases). Serbia shall also readmit nationals of the former Socialist Federal Republic of Yugoslavia who have acquired no other nationality and whose place of birth and place of permanent residence on 27 April 1992, was in the territory of Serbia. This issue has been defined in the same or very similar way in readmission agreements with other states, such as Norway, Switzerland, Russia, and Albania. | Law on ratification of the Agreement signed between the Republic of Serbia and European Community on readmission of persons residing without authorization, Official Gazette of the Republic of Serbia – International Agreements no. 103/2007, Art.3: http://demo.paragraf.rs/demo/combinet/Old/t/t2007_11/t11_0131.htm (SR) Law on Ratification of the Agreement between the Republic of Serbia and the Kingdom of Norway on readmission of persons residing without authorization, Official Gazette of the Republic of Serbia – International Agreements no. 19/2010, Art.3: http://www.pravno-informacioni-sistem.rs/SlGlasnikPortal/reg/viewAct/2ca3a182-845f-4f29-b803- |

| | | | | | | |
|--|--|--|--|--|--|--|
| | | | | | | <p>162983963e09 (SR)</p> <p>Law on Ratification of the Agreement between Republic of Serbia and the Swiss Confederacy on readmission of persons residing without authorization, Official Gazette of the Republic of Serbia – International Agreements no.19/2010, Art.3: http://www.pravno-informacioni-sistem.rs/SlGlasnikPortal/reg/viewAct/04a4e7eb-e0d4-4567-a267-ae65729c9746 (SR)</p> <p>Law on Ratification of the Agreement between the Government of the Republic of Serbia and the Council of Ministers of the Republic of Albania on readmission of persons residing without authorization, Official Gazette of the Republic of Serbia – International Agreements no. 7/2011, Art.3: http://www.pravno-informacioni-sistem.rs/SlGlasnikPortal/reg/viewAct/600f9486-ebab-4e6d-ada2-2c74417d40fa (SR)</p> <p>Law on Ratification of the Agreement between the Government of the Republic of Serbia and the Government of the Russian Federation on readmission, Official Gazette of the Republic of Serbia – International Agreements. 3/2015,</p> |
|--|--|--|--|--|--|--|

Detention – 2019

| | | | | | | | |
|-----|---|---|--|---|--|---|--|
| | | | | | | | Art.3: http://www.pravno-informacioni-sistem.rs/SlGlasnikPortal/reg/viewAct/8805aa44-e02b-43dd-9b52-9ac3096fb64f (SR) |
| DET | 5 | b | | Are you aware of cases of cases of stateless people being returned under such agreements? | | Yes, Praxis had a case of a stateless person who was returned to Serbia under a readmission agreement. Praxis often comes across the cases of returnees who are not registered in the birth registry and/or do not have their nationality determined. | Ministry of Interior, Police Directorate, Police Department in Subotica, Decision no. 26-30-330/2014 from 26/03/2014, on file with author. Praxis casework/practice. |

| Cat | Q | Sub | Subtheme | Question | International Norms & Good Practice | Answer | Source |
|-----|---|-----|-----------------------------|---|--|--|--|
| PRS | 1 | a | Stateless born on territory | Is there a provision in law for stateless children born on the territory to be granted nationality? [If yes, continue to PRS1b. If no, proceed to PRS1h] | <p>UN Convention on the Reduction of Statelessness, 1961: Article 1</p> <p>European Convention on Nationality, 1997: Article 2</p> <p>Convention on the Rights of the Child 1989: Article 7</p> <p>Committee on the Rights of Migrant Workers and Members of their Families & Committee on the Rights of the Child (2017): States should strengthen measures to grant nationality to children born in their territory in situations where they would otherwise be stateless.</p> <p>European Parliament (2018): The EU and its MS should ensure that childhood statelessness is adequately addressed in national laws in full compliance with Article 7 CRC.</p> | Yes. | Art. 13(1), Law on Nationality of the Republic of Serbia, Official Gazette of the Republic of Serbia, no. 135/2004, 90/2007 and 24/2018: https://www.paragraf.rs/propisi/zakon_o_drzavljanstvu_republike_srbije.html (SR) |
| PRS | 1 | b | | Is the provision for otherwise stateless children to acquire nationality automatic or non-automatic (i.e. by application)? | <p>UNHCR (2012): The 1961 Convention provides Contracting States with two alternatives for granting nationality to otherwise stateless children born in their territory: either automatic acquisition upon birth or upon application.</p> <p>ENS (2015): The 1961 Convention and the ECN oblige the conferral of nationality to otherwise stateless children born on the territory. The optimal method is to grant nationality automatically at birth.</p> | According to the Law on Nationality, children are considered to be nationals from birth and acquire nationality automatically. However, in practice, in order to acquire nationality in these cases, one should submit an appropriate request, and nationality is not acquired by operation of law but on the basis of a decision of the competent body. | Art. 13, Law on Nationality of the Republic of Serbia, Official Gazette of the Republic of Serbia, no. 135/2004, 90/2007 and 24/2018: https://www.paragraf.rs/propisi/zakon_o_drzavljanstvu_republike_srbije.html (SR) |
| | | | | | | | Praxis, Analysis of Practical Application of the Law on Non-Contentious Procedure – Determining the Date and Place of Birth, p. 24 (note 45): http://www.praxis.org.rs/images/praxis_downloads/Analysis_of_Practical_Application_of_the_Law_on_Non-Contentious_Procedure_- |

| | | | | | | | |
|-----|---|---|--|--|---|---|--|
| | | | | | | | Determining the Date and Place of Birth.pdf Prevention of statelessness at birth: adequate nationality law but inconsistent implementation, ENS blog by Milijana Trifkovic, Legal Analyst, Praxis, 30 July 2013: https://www.statelessness.eu/blog/prevention-statelessness-birth-%E2%80%93-adequate-nationality-law-inconsistent-implementation Decision of the Ministry of Interior 03/10 No. 204-2-248/2013 from 14 March 2013, on file with author. Letter of the Ministry of Interior sent to Praxis on 15 March 2013, 13/10 No. 204-159/13-R, on file with author. |
| PRS | 1 | c | | Is it a requirement that the parents are also stateless for the otherwise stateless child to acquire nationality? | UNHCR (2012) : The test is not an inquiry into whether a child's parents are stateless. ENS (2015) : Only allowing access to nationality for stateless children whose parents are stateless fails to account for the circumstance where the parents hold a nationality but are unable to pass this on. | No. Both parents must be either unknown, or stateless, or of unknown nationality or the child must be stateless. | Art. 13(1), Law on Nationality of the Republic of Serbia, Official Gazette of the Republic of Serbia, no. 135/2004, 90/2007 and 24/2018: https://www.paragraf.rs/propisi/zakon_o_drzavljanstvu_republike_srbije.html (SR) |
| PRS | 1 | d | | Are stateless children required to prove they cannot access another nationality to acquire the nationality of the country of birth? If | UNHCR (2012) : A Contracting State cannot avoid the obligations to grant its nationality to a person who would otherwise be stateless based on its own interpretation of another State's nationality laws. The burden of proof must be shared between the claimant and the authorities. Decision-makers | According to the Regulation on the manner of registration of the fact of nationality, a document should be provided proving that parents are of unknown nationality, stateless, or that the child is stateless for the child to acquire nationality by birth, but there are no detailed guidelines referring to the | Art. 10, Regulations on the Manner of Registration of the Fact of Nationality in the Birth Registry Book, Forms of Keeping Records on Decisions on Acquisition and Termination of Nationality and Form of Nationality Certificate, Official Gazette of the Republic of Serbia, no. 22/2005, |

| | | | | | | | |
|--|--|--|--|---|---|---|--|
| | | | | <p>yes, please describe how this is determined in practice.</p> | <p>must consider Articles 3 & 7 CRC and adopt an appropriate standard of proof. Special procedural considerations to address the acute challenges faced by children in communicating basic facts about their nationality should be respected.</p> | <p>procedure and necessary evidence. The Law on Foreigners prescribes that the Ministry of Interior is only authorised to issue a travel document to a stateless person, but it remains unclear how the status of stateless person is determined and what evidence a person should enclose for issuance of the travel document. Furthermore, it has not been prescribed how one can obtain a document proving that nationality is unknown, what the procedure of determination of unknown nationality entails, what evidence should be enclosed for that purpose.</p> <p>From Praxis' practice and according to data obtained from the Ministry of Interior, it can be concluded that in the procedure before this body (for those children who acquire nationality by birth in the territory of the state, but whose fact of nationality has not been registered in birth registry book) the conditions relating to necessary evidence are interpreted more flexibly. Thus, as a piece of evidence proving that the parents do not have nationality of the state they were born in or that they are of unknown nationality, a certificate proving that they are not registered in the nationality records of that state could be used. In case of a child, it would be sufficient to enclose a birth certificate and a certificate/evidence that the child has not been registered in nationality records.</p> | <p>84/2005, 121/2007, 69/2010, 55/2017 and 82/2018: http://www.pravno-informacioni-sistem.rs/SlGlasnikPortal/eli/rep/sgrs/ministarstva/pravilnik/2005/22/1/reg (SR)</p> <p>Information derived from casework, including the decisions of the Ministry of Interior in individual cases (decision of the Ministry of Interior, 03/10 No. 204-2-248/2013 from 14 March 2013, on file with author).</p> |
|--|--|--|--|---|---|---|--|

| | | | | | | |
|-----|---|---|---|---|---|---|
| PRS | 1 | e | Is a stateless child born on the territory required to fulfil a period of residence to be granted nationality? If yes, please specify length and if this must be legal residence. | <p>UN Convention on the Reduction of Statelessness, 1961: Article 1(2)</p> <p>UNHCR (2012): States may stipulate that an otherwise stateless individual born in its territory fulfils a period of 'habitual residence' (understood as stable, factual residence, not legal or formal residence) not exceeding five years preceding an application nor ten years in all.</p> <p>Convention on the Rights of the Child, 1989: Articles 3 & 7</p> <p>Committee on the Rights of the Child (2015): Recommends the State party ensure that all stateless children born in its territory, irrespective of residency status, have access to nationality without any conditions.</p> <p>European Convention on Nationality, 1997: Article 6(2)(b)</p> | There are no conditions related to residence for the child. | Art. 13, Law on Nationality of the Republic of Serbia, Official Gazette of the Republic of Serbia, no. 135/2004, 90/2007 and 24/2018: https://www.paragraf.rs/propisi/zakon_o_drzavljanstvu_republike_srbije.html (SR) |
| PRS | 1 | f | Are the parents of a stateless child required to fulfil a period of residence for the child to be granted nationality? If yes, please specify length and if this must be legal residence. | <p>Committee on the Rights of the Child (2011): The outcome of an application by the parents of a child born on the territory should not prejudice the right of the child to acquire the nationality of the State.</p> <p>ENS (2015): Demanding that the child or their parents reside lawfully on the territory is prohibited by the 1961 Convention.</p> | No. | Law on Nationality of the Republic of Serbia, Official Gazette of the Republic of Serbia, no. 135/2004, 90/2007 and 24/2018: https://www.paragraf.rs/propisi/zakon_o_drzavljanstvu_republike_srbije.html (SR) |
| PRS | 1 | g | What are the age limits (if any) for making an application for nationality for a stateless person | <p>UN Convention on the Reduction of Statelessness, 1961: Article 1(2)</p> <p>UNHCR (2012): Contracting States need to accept applications lodged at a time beginning not later than the age of 18 and ending not earlier than</p> | The age limit for making an application is 18 years. The deadline until which one should submit the request is not prescribed by the law – since the acquisition of nationality is automatic – but, in practice, the competent body | See PRS1b. |

| | | | | | | | |
|-----|---|---|------------|---|---|---|--|
| | | | | born on the territory? | the age of 21. ENS (2015) : Closing the window of opportunity to apply for a nationality has the effect of leaving it in the hands of parents to take the necessary steps to secure a nationality for their child. | derives it from the legal definition of “child”, resulting in the standpoint of the competent body that after 18 years of age otherwise stateless children born in Serbia can no longer acquire nationality under Article 13 of the Law on Nationality. | |
| PRS | 1 | h | | Are there specific provisions to protect the right to a nationality of children born to refugees? | UNHCR (2012) : Where the nationality of the parents can be acquired through a registration or other procedure, this will be impossible owing to the very nature of refugee status which precludes refugee parents from contacting their consular authorities. | No. | |
| PRS | 2 | a | Foundlings | Are foundlings granted nationality automatically by law? If not automatic, please describe the procedure. | UN Convention on the Reduction of Statelessness, 1961 : Article 2 European Convention on Nationality, 1997 : Article 6(1)(b) | Foundlings are automatically granted nationality by law. | Art. 13, Law on Nationality of the Republic of Serbia, Official Gazette of the Republic of Serbia, no. 135/2004, 90/2007 and 24/2018: https://www.paragraf.rs/propisi/zakon_o_drzavljanstvu_republike_srbije.html (SR) |
| PRS | 2 | b | | Is there an age limit (e.g. ‘new-born’ or ‘infant’) in law or practice specifying when a foundling would qualify for nationality? | UNHCR (2012) : At a minimum, the safeguard should apply to all young children who are not yet able to communicate information about the identity of their parents or their place of birth. | The age limit is 18 years-old. The competent body derives this from the legal definition of a “child”, i.e. person under 18 years-old. | Information derived from casework, including the decisions of the Ministry of Interior in individual cases (decision of the Ministry of Interior, 03/10 No. 204-2-248/2013 from 14 March 2013, on file with author). Letter of the Ministry of Interior sent to Praxis on 15 March 2013, 13/10 No. 204-159/13-R, on file with author. See PRS 1b and PRS 1g. |

| | | | | | | | |
|-----|---|---|--|--|--|---|---|
| PRS | 2 | c | | Can nationality be withdrawn from foundlings if this leads to statelessness? | <p>UNHCR (2012): Nationality acquired by foundlings may only be lost if it is proven that the child possesses another nationality.</p> | <p>No. It should be taken that foundlings are protected from statelessness if their parents are later identified. If their parents are later discovered and it is proven that they were foreign nationals, the the Law on Nationality only stipulates that a child can cease to be a national not that they can lose nationality automatically. A child can cease to be a national only at the request of the parents. The law does not explicitly state that a parent’s action cannot result in statelessness, as it does in the case of adoption, renunciation and release of adult nationals and loss of nationality acquired by fraud. However, having in mind the spirit of the law (which in all other cases of loss of nationality aims to prevent statelessness and in some cases of loss of nationality offers more protection than required by international standards) it should be taken that Article 28(1.6) applies to children as well, even though it is not explicitly stated. If parents request release where it may result in a child’s statelessness, there is an additional safeguard in Article 34, which prescribes that a person whose nationality of the Republic of Serbia was terminated by release or renunciation at the request of their parents, can be readmitted to nationality if they apply for readmission, if they are 18 years-old and not deprived of legal capacity, and if they submit a written statement.</p> | <p>Arts. 13, 28 & 34, Law on Nationality of the Republic of Serbia, Official Gazette of the Republic of Serbia, no. 135/2004, 90/2007 and 24/2018: https://www.paragraf.rs/propisi/zakon_o_drzavljanstvu_republike_srbije.html (SR)</p> |
|-----|---|---|--|--|--|---|---|

| | | | | | | | |
|-----|---|---|----------|---|--|---|---|
| PRS | 3 | a | Adoption | Where a child national is adopted by foreign parent(s), does the child lose their original nationality before the new nationality is acquired? | UN Convention on the Reduction of Statelessness, 1961 : Article 5 ENS (2015) : Children may be exposed to a (temporary) risk of statelessness during the adoption process due to the nationality law of the child's country of origin. | No. | Arts. 30 & 31, Law on Nationality of the Republic of Serbia, Official Gazette of the Republic of Serbia, no. 135/2004, 90/2007 and 24/2018: https://www.paragraf.rs/propisi/zakon_o_drzavljanstvu_republike_srbije.html (SR) |
| PRS | 3 | b | | Does a foreign child adopted by national parents acquire nationality? Please specify any age limits and/or risk of statelessness during the adoption process. | European Convention on Nationality, 1997 : Article 6(4)(d) Committee on the Rights of the Child (2015) : Ensure that the child is not stateless or discriminated against during the waiting period between arrival and formal adoption. | Yes. Nationality of the Republic of Serbia is acquired by descent also by an adopted child-foreigner, under the same conditions for acquiring nationality by descent. Domestic regulations do not condition adoption on the potential adoptee's loss of foreign nationality, and do not regulate acquisition of Serbian nationality prior to the potential adoption. Serbia is party to the Convention on Protection of Children and Cooperation in Respect of Intercountry Adoption, while recognition of a foreign decision on adoption from a country which is not party to the Convention is not complicated and burdened by formalities, so there is no risk of protracted uncertainty with regard to the status of the child (in case the child lost foreign nationality by being adopted). Intercountry adoption is not frequent in Serbia. On average, there are about 10 adoptions per year where the adoptee is a foreigner. Registration of the adopted child in the nationality records of Serbia is conducted upon request. If the child is under 18, the request is submitted by parents, while the adopted child over 18 | Art. 11, Law on Nationality of the Republic of Serbia, Official Gazette of the Republic of Serbia, no. 135/2004, 90/2007 and 24/2018: https://www.paragraf.rs/propisi/zakon_o_drzavljanstvu_republike_srbije.html (SR) The Hague Conventions, Protocols and Principles: https://www.hcch.net/en/instruments/conventions/status-table/?cid=69 Art. 94 of the Law on Resolving Conflict of Laws with Regulations of Other Countries, , "Official Gazette of the SFRY, no. 43/82 and 72/82, Official Gazette of SRY no. 46/96 and Official Gazette of the Republic of Serbia, no. 46/2006 : https://www.paragraf.rs/propisi/zakon_o_resavanju_sukoba_zakona_sa_opisima_drugih_zemalja.html (SR) Nevena Vučković-Šahović: Intercountry Adoption and Serbia, Legal records, Faculty of Law, Union University, 2011, page 135: |

| | | | | | | | |
|-----|---|---|---------------|---|---|--|---|
| | | | | | | submits the request in person, not later than 23 years of age. | http://www.pravnifakultet.rs/images/2012/zapisi-1-2011/Nevena_Vuckovic-Sahovic_MEDJUNARODNO_USVOJENJE_I_SRBIA.pdf (SR) |
| PRS | 4 | a | Ius sanguinis | Can children born to nationals abroad acquire nationality by descent (<i>ius sanguinis</i>) in general and/or if they would otherwise be stateless? | UN Convention on the Reduction of Statelessness, 1961 : Article 4 UNHCR (2012) : Where a child who would otherwise be stateless is born to parents of another Contracting State but does not acquire the nationality of the State of birth responsibility falls to the Contracting State of the parents to grant its nationality to the child. | Yes, children born outside the country to a parent who is Serbian can access nationality by descent (<i>ius sanguinis</i>). There are some conditions regarding registration, but these conditions are not discriminatory. A child born abroad shall acquire the nationality of Serbia by the force of the law (<i>ex lege</i>) if at least one of the parents is a Serbian national while the other parent is unknown or of unknown nationality or stateless. A child born abroad shall acquire Serbian nationality by descent if one of the parents is a national at the time of the child's birth and the other parent is a foreign national, and if the parent who is a Serbian national registers the child as a national of the Republic of Serbia before they turn 18 with the competent diplomatic or consular office of the Republic of Serbia and submits a request for registering the child into nationality records. An adult whose one parent is a national of the Republic of Serbia (and the other parent is a foreign national) may also acquire Serbian nationality, even if the parent who is a Serbian national failed to register the child with the diplomatic or consular office. The person who fulfils the conditions to acquire nationality on this ground, may submit a request for registration in the | Arts. 7(1)&(3), Art. 9(1) & Art. 10, Law on Nationality of the Republic of Serbia, Official Gazette of the Republic of Serbia, no. 135/2004, 90/2007 and 24/2018: https://www.paragraf.rs/propisi/zakon_o_drzavljanstvu_republike_srbije.html (SR) |

| | | | | | | | |
|-----|---|---|--------------------|---|--|---|---|
| | | | | | | nationality records of Serbia until the age of 23. | |
| PRS | 4 | b | | Are there any discriminatory conditions in law and/or practice for the acquisition of nationality by descent (e.g. differential treatment of children born out of wedlock, rights of father/mother/same-sex parents to confer nationality, etc.)? | <p>Genovese v. Malta ECtHR (2011): The state must ensure that the right to nationality is secured without discrimination.</p> <p>CEDAW Gen. rec. No. 32, 2014: Requires States parties to ensure that women and men have equal rights to confer their nationality to their children and that any obstacles to practical implementation of such laws are removed.</p> <p>UNHCR (2014): Action 4</p> | No. | Art. 7(3) and Art. 9(2), Law on Nationality of the Republic of Serbia, Official Gazette of the Republic of Serbia, no. 135/2004, 90/2007 and 24/2018: https://www.paragraf.rs/propisi/zakon_o_drzavljanstvu_republike_srbije.html (SR) |
| PRS | 5 | a | Birth registration | Does the law provide that all children are registered immediately upon birth regardless of the legal status and/or documentation of parents? | <p>Convention on the Rights of the Child, 1989: Article 7</p> <p>International Covenant on Civil and Political Rights, 1966: Article 24(2)</p> <p>Council of Europe (2009): Member states should register the birth of all children born on their territory even if they are born to a foreign parent with an irregular immigration status or the parents are unknown.</p> <p>UNHCR (2012): Article 7 CRC applies irrespective of the nationality, statelessness or residence status of the parents.</p> <p>UNHCR (2014): Action 7</p> <p>UN Sustainable Development Goal 16.9</p> | The Constitution of the Republic of Serbia guarantees to every child the right to a name and the right to be registered in the birth registries. The Family Law also stipulates that everybody has the right to a name and that the right to a name is acquired by birth. However, according to bylaws (Rulebook on the Procedure for the Issuance of Birth Notification and Form of Issuance of Birth Notification in a Health Care Institution), to register the birth and the name of their child immediately upon birth, parents need to possess birth certificates and ID cards, or, if they are foreign nationals, passports. Therefore, children whose parents are undocumented cannot be issued a birth certificate upon birth with their names determined. They need to undergo one of the following | Art. 64(2), Constitution of the Republic of Serbia, Official Gazette of the Republic of Serbia, no. 98/2006: https://www.ilo.org/dyn/natlex/docs/ELECTRONIC/74694/119555/F838981147/SRB74694%20Eng.pdf (SR) |
| | | | | | | | Art. 13, Family Law, Official Gazette of the Republic of Serbia, no. 18/2005, 72/2011 – other law and 6/2015: https://www.paragraf.rs/propisi/porodici_zakon.html (SR) |
| | | | | | | | Art. 5, Rulebook on the Procedure for the Issuance of Birth Notification and Form of Issuance of Birth Notification in a Health Care Institution, Official Gazette of the Republic of Serbia, nos. 5/2011, 9/2016, 16/2016, 36/2016 |

| | | | | | | |
|--|--|--|--|--|--|---|
| | | | | | <p>procedures: determination of personal name, subsequent birth registration, or determination of the date and place of birth. Each of these procedures often lasts several months, while in particularly complicated cases they may last a year or more. Therefore, the law/bylaws and practice do not ensure that children are registered immediately after birth if parents are undocumented.</p> <p>In mid-October 2016, the project entitled Baby, Welcome to the World was introduced, with the purpose to simplify birth registration. The simplified procedure is regulated by the Instruction for Implementing Administrative Procedures related to the child’s birth on the basis of “one-stop-shop” rule, which allows the registration into birth registry books also for the children whose mothers are undocumented. However, this Instruction is not a legally binding act (it serves only as guidance for competent bodies) and its provisions are in contradiction with the existing and legally binding regulations. According to the existing bylaws, to register the birth and the name of their child immediately upon birth, parents need to possess birth certificate and ID cards. Children cannot be registered immediately after birth if parents are undocumented. Children can be registered if parents are not legally residing in the country.</p> | <p>and 103/2018: http://pravno-informacioni-sistem.rs/SIGlasnikPortal/eli/rep/sgrs/ministarstva/pravilnik/2011/25/2/reg (SR)</p> <p>Points 10 & 24, Instruction on administering registry books and forms of registry books, Official Gazette of the Republic of Serbia, nos. 109/2009, 4/2010, 10/2010, 25/2011, 5/2013, 94/2013 and 93/2018) http://pravno-informacioni-sistem.rs/SIGlasnikPortal/eli/rep/sgrs/ministarstva/uputstvo/2009/109/1/reg (SR)</p> <p>Information on ‘Baby, Welcome to the World’ in 2016 Annual Report on Implementation of the Action Plan of the Public Administration Reform Strategy in the Republic of Serbia, Ministry of Public Administration and Local Self-Government, February 2017, p. 29: http://mduls.gov.rs/wp-content/uploads/IZVESTAJ-text-2016-171227-1.pdf</p> <p>Instruction for implementing administrative procedures related to the child’s birth on the basis of “one-stop-shop” rule: http://www.dragisamisovic.bg.ac.rs/news/doc/Uputstvo%20za%20sprovodjenje%20upravnih%20postupaka%20vezanih%20za%20rodjenje%20deteta%20</p> |
|--|--|--|--|--|--|---|

| | | | | | | | |
|-----|---|---|--|---|--|--|---|
| | | | | | | | 20po%20sistemu%20Sve%20na%20je dnom%20mestu.pdf (SR) |
| PRS | 5 | b | | Are all children issued with birth certificates upon registration? If no, please describe legal status of documentation issued. | UN Human Rights Council, Resolution A/HRC/RES/20/4 : Underscores the importance of effective birth registration and provision of documentary proof of birth irrespective of immigration status and that of parents or family members. Committee on the Rights of Migrant Workers and Members of their Families & Committee on the Rights of the Child (2017) : Take all necessary measures to ensure that all children are immediately registered at birth and issued birth certificates, irrespective of their migration status or that of their parents. | For newborns enrolled in the birth registry, the registrar sends a birth certificate by mail to their home address after the registration. Note that children of undocumented parents cannot be registered in the birth registry books immediately upon the birth (see PRS 5a). | Art 47 (2) Law on registry books, Official Gazette of the Republic of Serbia, no. 20/2009, 145/2014 and 47/2018: https://www.pravno-informacioni-sistem.rs/SlGlasnikPortal/eli/rep/sgrs/skupstina/zakon/2009/20/3/reg (SR) |
| PRS | 5 | c | | Is the child's nationality determined or recorded upon birth registration? If yes, please describe how and by whom (e.g. if the mother/father's nationality is recorded and/or automatically attributed to the child, if there's a formal procedure, if information on both parents is recorded etc.) | Convention on the Rights of the Child, 1989 : Articles 3 & 7 | For children who acquire Serbian nationality by descent, nationality is recorded in the birth registry books simultaneously with the birth registration. The registration is performed by a registrar, who is obliged to obtain proof of the parents' nationality ex officio, i.e. proof of fulfilment of the conditions for acquisition of nationality by the child. In cases when birth registration is performed subsequently, on the basis of a court decision determining the date and place of birth, in some municipalities the registrars do not register the nationality despite the fact that the conditions for acquiring nationality by descent have been met. When the parents are foreign nationals, in practice the registrars often record the | Art 46 Law on Nationality of the Republic of Serbia, Official Gazette of the Republic of Serbia, no. 135/2004, 90/2007 and 24/2018: https://www.paragraf.rs/propisi/zakon_o_drzavljanstvu_republike_srbije.html (SR) Arts. 2, 3, and 9 Regulations on the Manner of Registration of the Fact of Nationality in the Birth Registry Book, Forms of Keeping Records on Decisions on Acquisition and Termination of Nationality and Form of Nationality Certificate, Official Gazette of the Republic of Serbia, no. 22/2005, 84/2005, 121/2007, 69/2010, 55/2017 and 82/2018: |

| | | | | | | |
|--|--|--|--|--|--|---|
| | | | | | <p>nationality of the parents as the child's nationality. Moreover, when parents do not possess personal documents and proof of their nationality, or do not present such documents and evidence to the registrar, the child is often registered with the nationality of the State that the parents claim to come from. This may result in a child being registered with the nationality of another State even though the child has not acquired the nationality of that State and does not fulfil the conditions for acquiring the nationality of that State. On the other hand, the acquisition of Serbian nationality, by a child who would otherwise be stateless, may be denied or made more difficult. Parents may wrongly believe that the child possesses the nationality of a state and, consequently, fail to initiate adequate procedures for the child's acquisition of nationality in due time.</p> | <p>http://www.pravno-informacioni-sistem.rs/SlGlasnikPortal/eli/rep/sgrs/ministarstva/pravilnik/2005/22/1/reg</p> <p>Articles 9 and 103 Law on general administrative procedure, The Official Gazette of Republic of Serbia, no 18/2016 and 95/2018: https://www.paragraf.rs/propisi/zakon-o-opstem-upravnom-postupku.html (SR)</p> <p>Praxis casework/practice:</p> <p>Praxis: Determining the Date and Place of Birth, Right to Nationality and Permanent Residence Registration - Analysis of Remaining Obstacles, 2017, page 12: https://www.praxis.org.rs/images/praxis_downloads/UNHCR_izvestaj_2017.pdf</p> <p>Praxis: Review of the remaining obstacles in exercise of the right to birth registration, acquisition of nationality and permanent residence registration, 2018, page 6: https://www.praxis.org.rs/images/praxis_downloads/Review_of_the_remaining_obstacles.pdf</p> |
|--|--|--|--|--|--|---|

| | | | | | | | |
|-----|---|---|--|--|---|--|--|
| PRS | 5 | d | | <p>If a child's nationality is not determined or recorded upon birth registration, is there a legal framework to determine the child's nationality later? If yes, please describe the procedure, including the legal grounds, deadlines and competent authority.</p> | <p>Convention on the Rights of the Child, 1989: Articles 3 & 7</p> | <p>The Law on Nationality of the Republic of Serbia prescribes that the Ministry of Interior shall determine nationality for a person who acquired it, but was not registered in the birth registry or in the nationality records. It has been prescribed that the nationality shall be recorded on the basis of a decision of the Ministry of Interior, and that the procedure for determination of nationality shall be initiated upon a request from the party or upon a request of a body competent for conducting a procedure related to the party's exercise of rights or ex officio. In practice, as a rule, the procedures for determination of nationality are initiated upon the request of the party. Praxis is not aware of the procedures initiated upon the request of a body or ex officio. The Law does not prescribe a deadline for a procedure for determination of nationality to be initiated. However, in practice, in cases of acquisition of nationality by birth in Serbia, after 18 years of age the nationality may no longer be determined on that basis. (see PRS 1g).</p> | <p>Art 44 Law on Nationality of the Republic of Serbia, Official Gazette of the Republic of Serbia, no. 135/2004, 90/2007 and 24/2018: https://www.paragraf.rs/propisi/zakon_o_drzavljanstvu_republike_srbije.html (SR)</p> <p>Praxis casework/practice.</p> |
| PRS | 5 | e | | <p>Are there credible reports to suggest that children are prevented from registering in practice because of parents' legal status or other reasons (please specify)?</p> | <p>Committee on the Rights of Migrant Workers and Members of their Families & Committee on the Rights of the Child (2017): Urge States parties to take all necessary measures to ensure that all children are immediately registered at birth and issued birth certificates, irrespective of their migration status or that of their parents. Legal and practical obstacles</p> | <p>There are credible reports suggesting that children are prevented from registering in practice because of parents' lack of documentation.</p> | <ul style="list-style-type: none"> · Analysis of the Procedures for Determining the Date and Place of Birth and for the Exercise of Rights to Nationality and Registration of Permanent Residence in 2016, 2016 · Analysis of the Procedures for Determining the Date and Place of Birth and for the Exercise of Rights to Nationality and Registration of Permanent Residence in 2015, 2015 |

| | | | | | | | |
|-----|---|---|--|---|--|--|---|
| | | | | | to birth registration should be removed. | | <ul style="list-style-type: none"> · Analysis of the Late Birth Registration Procedures, 2015 · The Right to Nationality in the Republic of Serbia – a brief analysis of the remaining challenges, 2014 · Preventing Childhood Statelessness - Remaining Problems in Serbia, 2014 · The Right to Nationality in the Republic of Serbia – a brief analysis of the remaining challenges, 2014 · Persons at Risk of Statelessness in Serbia – Case Studies, 2011 · Persons at Risk of Statelessness in Serbia, 2010 · Analysis of Practical Application of the Law on Non-Contentious Procedure – Determining the Date and Place of Birth, 2013 · Determining the Date and Place of Birth, Right to Nationality and Permanent Residence Registration - Analysis of Remaining Obstacles, 2017 · Review of the remaining obstacles in exercise of the right to birth registration, acquisition of nationality and permanent residence registration, 2018 <p>All published by Praxis, all available at: http://praxis.org.rs/index.php/en/reports-documents/praxis-reports</p> |
| PRS | 5 | f | | Are there mandatory reporting requirements that | Committee on the Rights of Migrant Workers and Members of their Families & Committee on the Rights of the Child (2017) : Legal and practical | No. The Law on registry books prescribes a fine for parents who do not register the birth of their child and don't declare a personal name in a specified time (15 and | Art.48, 54 & 87, Law on Registry Books, The Official Gazette of Republic of Serbia, no. 20/2009, 145/2014 & 47/2018: |

| | | | | | | |
|-----|---|---|---|---|---|---|
| | | | would deter undocumented parents from coming forward to register their children (e.g. health or civil registry authorities required to report undocumented migrants)? | obstacles to birth registration should be removed, including by prohibiting data sharing between health providers or civil servants responsible for registration with immigration enforcement authorities; and not requiring parents to produce documentation regarding their migration status. | 30 days after the birth). However, according to the experience of Praxis, this provision does not apply in practice and it is not a factor that discourages parents from attempting to register their children. | https://www.paragraf.rs/propisi/zakon_o_maticnim_knjigama.html (SR) Praxis casework/practice. |
| PRS | 5 | g | Is there a statutory deadline for birth registration? If yes, please state the deadline and whether late birth registration is possible in law and practice. | Committee on the Rights of Migrant Workers and Members of their Families & Committee on the Rights of the Child (2017) : Measures should also be taken to facilitate late registration of birth and to avoid financial penalties for late registration. UN Human Rights Council, Resolution A/HRC/RES/20/4 : Calls upon States to ensure free birth registration, including free or low-fee late birth registration, for every child. | The prescribed deadline for registration of a child's birth is 15 days from the day of birth. If a child's birth has not been registered within 30 days, the registrar may register the child's fact of birth only on the basis of a decision by the competent administrative body, so it is necessary to initiate a procedure for the subsequent registration of the fact of birth. The Law on Non-Contentious Procedure prescribes a separate procedure that should enable registration of the fact of birth by persons who are not able to register in the birth registry book through the administrative procedure. | Articles 25 and 28, Law on Registry Books, The Official Gazette of Republic of Serbia, no. 20/2009, 145/2014 & 47/2018: https://www.paragraf.rs/propisi/zakon_o_maticnim_knjigama.html (SR) Articles 71a-71lj, Law on Non-Contentious Procedure, the Official Gazette of Socialist Republic of Serbia, no 25/82 & 48/88, The Official Gazette of Republic of Serbia, no. 46/95, 18/2005, 85/2012, 45/2013, 55/2014, 6/2015 & 106/2015: https://www.paragraf.rs/propisi/zakon_o_vanparnicnom_postupku.html (SR) |
| PRS | 5 | h | Are there additional requirements for late birth registration (e.g. fees, documents, court procedure)? Please describe the procedure including | As above | The administrative procedure for subsequent birth registration is conducted before the municipal or city administrative body in the place of birth of the individual that is being registered. The regulations governing the subsequent birth registration procedure are not sufficiently precise, while the proceeding of the | Praxis practice/casework - see reports in PRS 5e. Art. 25 of the Law on Registry Books, the Official Gazette of Republic of Serbia, no. 20/2009, 145/2014 & 47/2018: https://www.paragraf.rs/propisi/zakon_o_maticnim_knjigama.html |

| | | | | | | | |
|--|--|--|--|--|--|---|---|
| | | | | <p>the competent authority and procedural deadlines.</p> | | <p>administrative bodies in these procedures varies among municipalities. However, it is necessary that parents give statements to confirm that they are the parents. Statements should also be taken from two witnesses of childbirth. In case the mother cannot participate in the procedure or she is not registered in the birth registry herself, it is not possible to successfully complete the birth registration through the administrative procedure. Some administrative bodies even rejected requests for subsequent birth registration if there were no witnesses who could confirm that they were personally present during the childbirth. The Law on General Administrative Procedure stipulates that the competent bodies should obtain evidence ex officio, but it is advisable to submit evidence such as vaccination card, a school certificate or the IDP card. The decisions in these procedures should be brought within two months, but that deadline is almost always exceeded, sometimes multiple times. Persons who cannot prove the fact of their birth in an administrative procedure can initiate the non-contentious court procedure for determination of date and place of birth.</p> <p>Every court with the subject matter jurisdiction has the territorial jurisdiction in the procedure for determination of date and place of birth. The motion may be submitted by whoever has a legal interest, as well as by a social welfare centre. The</p> | <p>n o maticnim knjigama.html (SR)</p> <p>Articles 9 and 103 of the Law on General Administrative Procedure, the Official Gazette of Republic of Serbia, no 18/2016 and 95/2018: https://www.paragraf.rs/propisi/zakon-o-opstem-upravnom-postupku.html (SR)</p> <p>Articles 71a-71lj, Law on Non-Contentious Procedure, the Official Gazette of Socialist Republic of Serbia, no 25/82 & 48/88, the Official Gazette of Republic of Serbia, no. 46/95, 18/2005, 85/2012, 45/2013, 55/2014, 6/2015 & 106/2015: https://www.paragraf.rs/propisi/zakon_vanparnicnom_postupku.html (SR)</p> |
|--|--|--|--|--|--|---|---|

| | | | | | | | |
|-----|---|---|-----------|--|--|---|--|
| | | | | | | petitioner should ensure the presence of two adult witnesses who will give statements before court on the date and place of birth of that individual. It is appropriate that the petitioner encloses other evidence that can confirm the date and place of birth and, if the petitioner possesses the documents of the parents, it is important to enclose those pieces of evidence as well, because the court will be able to state the data about the parents in its decision, which is significant for the acquisition of nationality. The first hearing must be held within 30 days and the procedure must be completed within 90 days from submitting the motion, but most courts exceed these deadlines, sometimes significantly. | |
| PRS | 6 | a | Reduction | Does the government have any programmes in place to promote civil registration (including birth registration)? If yes, please provide details. | UNHCR (2014): Action 7 | <p>A programme aiming to promote civil registration was implemented between 2012 to 2016. The Government established a Technical Group in 2012 through a memorandum of understanding between the Ombudsperson, Ministry of Public Administration and Local Self Government and UNHCR. Activities included a campaign to raise awareness among members of the Roma minority about how to exercise their right to registration in the birth registry books and the provision of free legal assistance in subsequent registration procedures.</p> <p>In October 2019, the Ministry for Public Administration and Local Self-Government, the Ombudsperson and UNHCR signed a</p> | <p>Praxis, Technical Group Formed for the Purpose of Providing Assistance to Members of Roma Community Who are not Registered in Birth Registry Book and Do not Possess Personal Documents, 23 Nov 2012: http://praxis.org.rs/index.php/en/praxis-in-action/status-and-socioeconomic-rights/item/482-technical-group-formed-for-the-purpose-of-providing-assistance-to-members-of-roma-community-who-are-not-registered-in-birth-registry-book-and-do-not-possess-personal-documents/482-technical-group-formed-for-the-purpose-of-providing-assistance-to-members-of-roma-community-who-are-not-registered-</p> |

| | | | | | | | |
|-----|---|---|---|--|---|---|--|
| | | | | | | new Memorandum of Understanding which refers to further cooperation on resolving the problems faced by the Romani population in exercising the right to registration in the birth registry and other rights related to personal status, with special emphasis on new-born children. | in-birth-registry-book-and-do-not-possess-personal-documents Joint Statement of the signatories of the MoU: http://www.unhcr.rs/dokumenti/saopstenja-za-medije/zajednichko-saopshtenje.html (SR) |
| PRS | 6 | b | Are there particular sections of the population - such as minority groups - believed to be stateless/at risk of statelessness? Please provide details and source of information. | UN Convention on the Reduction of Statelessness, 1961 : Article 9 UNHCR (2014) : Action 4 UN Human Rights Council (2019) : States should take legislative, administrative and policy measures aimed at eliminating statelessness affecting minorities. | Yes, members of the Roma (including also Ashkali and Egyptians) national minority. | Ombudsperson, Report on the Position of “Legally Invisible Persons” in the Republic of Serbia, 2012, pp. 1 & 11: https://www.ombudsman.rs/attachm ents/2222_Izvestaj%20o%20polozaju%20%20pravno%20nevidljivih%20u%20RS.pdf (SR) UNHCR, Persons at risk of statelessness in Serbia, Progress report 2010-2015, 2016, p. 8: http://www.unhcr.rs/media/docs/UNHCR_Brosura_Apatridi_ENGLESKI.pdf Praxis practice/casework - see reports in PRS 5e. | |
| PRS | 6 | c | Has the Government implemented any other measures specifically aimed at reducing (risk of) statelessness? (e.g. identification, registration or naturalisation campaigns, removal | UN Convention on the Reduction of Statelessness, 1961 UNHCR (2014) : Actions 1 & 8 UNHCR (2015) : States parties to the 1954 Convention are required to help stateless persons become naturalised citizens. | The Law on Amendments to the Law on Nationality (2018) prescribed a (time-limited) possibility for facilitated acquisition of nationality for certain groups. Even though it was not directly addressed at reducing the risk of statelessness, it may in practice have had this effect on some individuals. It prescribed that a national of former SFRY or a national of another republic of the former SFRY, or a national of another state | Law on Amendments to the Law on Nationality, Official Gazette of Republic of Serbia, no. 24/2018: https://www.paragraf.rs/izmene_i_do pune/260318-zakon-o-dopunama-zakona-o-drzavljanstvu-republike-srbije.html (SR) Bill on Amendments to the Law on Nationality: (with explanation), pp.3-4, | |

| | | | | | | | |
|-----|---|---|---------------------------|--|---|--|---|
| | | | | of treaty reservations, reform of discriminatory laws, etc.) | | created on the territory of the former SFRY could be granted Serbian nationality if, on 31 December 2016 and on the day of submitting the request, they had permanent residence registered on the territory of the Republic of Serbia. The request for acquisition of nationality could be submitted within a year from the entry into force of this Law. The aim was to facilitate acquisition of nationality for people who had permanent residence in Serbia and ID cards issued by Serbia for many years. The group affected was mainly made up of elderly people who only realised that they did not have an ID card with indefinite validity, nor Serbian nationality, nor could they obtain a new biometric ID card due to lack of nationality, when they tried to replace their old ID cards with new biometric ones. The deadline for submitting a request for acquisition of nationality on this ground expired in April 2019. | http://www.parlament.gov.rs/upload/archive/files/lat/pdf/predlozi_zakona/3709-17%20-%20LAT.pdf (SR) |
| PRS | 7 | a | Withdrawal of nationality | Are there provisions on loss and/or deprivation of nationality established in law? Please describe and state whether there is a safeguard against statelessness in law and practice. | UN Convention on the Reduction of Statelessness, 1961 : Article 8 European Convention on Nationality, 1997 : Article 7(3) Universal Declaration of Human Rights : Article 15(2) | Yes. The Law on Nationality prescribes that nationality may be terminated in three ways: by release, renunciation and international treaties. Release is conditional on the applicant having a foreign nationality or possessing evidence that they shall be admitted to foreign nationality. If the person granted release from Serbian nationality does not acquire a foreign nationality within a year from the decision on release, and if the person would remain stateless, the body that issued the decision on release shall cancel | Arts. 27, 28(1.6), 32, 33(1) & 45 Law on Nationality of the Republic of Serbia, Official Gazette of the Republic of Serbia, no. 135/2004, 90/2007 and 24/2018: https://www.paragraf.rs/propisi/zakon_o_drzavljanstvu_republike_srbije.html (SR) Praxis casework. Praxis, Persons at risk of statelessness – case studies, pp. 23-25, available at: |

| | | | | | | |
|--|--|--|--|--|---|--|
| | | | | | <p>the decision on written request from the person affected. For renunciation of nationality, the applicant must possess a foreign nationality. The Ministry of Interior may cancel the decision on acquisition of nationality or cancel the recording in the register of citizens if it establishes that they acquired Serbian nationality or was registered in the nationality records contrary to the regulations on nationality, especially pursuant to a false or forged document or statement, based on inaccurate facts or other abuse in the procedure. However, a decision on acquisition of Serbian nationality cannot be cancelled if that person would be left without nationality. There is no available data on practice.</p> <p>In addition to loss of nationality on the basis of the Law on Nationality, Praxis is also aware of cases of “quasi-loss”, in which a person is said never to have had nationality, even though they assumed they were Serbian citizens and competent bodies shared that assumption and issued them with nationality certificates for years or even decades. Unlike cases of loss of nationality under the law, in cases of “quasi-loss”, the competent body failed to examine if the person would remain stateless. People who have held nationality certificates for years, find out that they may no longer get one until their nationality is determined. People affected have received certificates confirming their</p> | <p>http://www.praxis.org.rs/images/praxis_downloads/praxis-persons-at-risk-of-statelessness-in-serbia.pdf</p> |
|--|--|--|--|--|---|--|

| | | | | | | | |
|-----|---|---|--|--|---|---|---|
| | | | | | | nationality is not registered but that they held (former) SFRY nationality. Praxis has dealt with at least 30 such cases. | |
| PRS | 7 | b | | Who is the competent authority for withdrawal of nationality and what procedural safeguards are in place (legal aid, judicial oversight, appeal, time limit, subject to prior sentencing)? | UN Convention on the Reduction of Statelessness, 1961 : Article 8(4) European Convention on Nationality, 1997 : Article 11 | <p>The Ministry of Interior is the competent authority for the termination of nationality or cancellation of the decision on acquisition of nationality. The Law on Nationality prescribes that the procedure for applications to terminate nationality is considered urgent. According to the Law on General Administrative Procedure, applied in procedures for acquisition and termination of nationality, a decision on the procedure must be issued within 60 days. There is no available data on the duration of the procedure for termination of nationality. However, one of the main problems in the acquisition of nationality procedure (also an urgent procedure), is that it is very lengthy, and deadlines are significantly exceeded. The Law on General Administrative Procedure prescribes that the decision must be issued in writing and must contain the rationale and notice of legal remedies. An administrative dispute may be initiated before the Administrative Court against the first-instance decision of the Ministry of Interior. In Serbia, there is still no efficient system of free legal aid, but the new Law on Free Legal Aid was adopted in November 2018 and came into force on 1 October 2019, which will provide access to free legal aid. In cases of “quasi-loss” of nationality (see above), a registry office is the body that informs a person that they do not have Serbian</p> | <p>Art. 38 and 45, Law on Nationality of the Republic of Serbia, Official Gazette of the Republic of Serbia, no. 135/2004, 90/2007 and 24/2018: https://www.paragraf.rs/propisi/zakon_o_drzavljanstvu_republike_srbije.html (SR)</p> <p>Arts. 145, 140, 141, 143, Law on General Administrative Procedure, Official Gazette of the Republic of Serbia, no. 18/2016: https://www.paragraf.rs/propisi/zakon_o_opstem_upravnom_postupku-2016.html (SR)</p> <p>Praxis practice/casework - see reports in PRS 5e.</p> <p>Law on Free Legal Aid, Official Gazette of the Republic of Serbia, No. 87/18 : http://www.civilnodrustvo.gov.rs/upload/documents/Razno/2018/Zakon%20o%20besplatnoj%20pravnoj%20pomoc%20C4%87i.pdf (SR)</p> <p>Praxis, Persons at risk of statelessness – case studies, pp. 23-25, available at: http://www.praxis.org.rs/images/praxis_downloads/praxis-persons-at-risk-of-statelessness-in-serbia.pdf</p> |

Prevention and Reduction – 2019

| | | | | | | | |
|-----|---|---|--|--|--|--|--|
| | | | | | | nationality and must initiate the procedure for determination of nationality. An individual decision has never been passed and the persons were not given the possibility of exercising the right to nationality in a regular appeals procedure. | |
| PRS | 7 | c | | Are withdrawal provisions applied in practice? | | There is no data on practice available. | Legal database: www.propisi.net |

Jurisprudence and Training

| Cat | Q | Sub | Subtheme | Question | International Norms & Good Practice | Answer | Source |
|-----|---|-----|---------------------|---|---|---|--|
| LIT | 1 | a | Published judgments | Number of published judgements adjudicating statelessness (broken down by level of jurisdiction). Please list. | | There are no statelessness related judgements. | Legal database: www.propisi.net |
| LIT | 1 | b | | Number of published judgements mentioning statelessness (broken down by level of jurisdiction). Please list. | | / | |
| LIT | 2 | a | Legal training | Is there training for judges and lawyers on statelessness? If yes, please provide details (e.g. provider, frequency). | <p>UNHCR (2016): Officials who may be in contact with stateless persons need to be trained to identify potential applicants for stateless status and refer them to appropriate channels.</p> <p>UNHCR (2010): It is recommended that States provide specialised training on nationality laws and practices, international standards and statelessness to officials responsible for making statelessness determinations.</p> | Two cycles of training seminars for judges and judicial associates were held in 2013-2014 on the implementation of the new provision of the Law on Non-Contentious Procedure, organised by UNHCR and Praxis. The training covered only risk of statelessness. Since 2014, the Ministry of State Administration and Local Self-Government, the Ombudsperson and UNHCR Serbia, have held a series of training sessions for police officers, registrars, deputy registrars and staff of the social welfare centers, on registration in the register of births and issuing documents to persons who are not registered and who do not have identity | <p>Praxis, 26 May 2014, Completed Second Cycle of Seminars for Judges and Judicial Associates about Implementation of the Law on Non-Contentious Procedure: http://praxis.rs/index.php/en/education-training/item/766-completed-second-cycle-of-seminars-for-judges-and-judicial-associates-about-implementation-of-the-law-on-non-contentious-procedure</p> <p>Praxis, 29 March 2013, Seminar for Judges and Judicial Associates Held in Nis on the Implementation of the Law on Non-Contentious Procedure –</p> |

| | | | | | | | |
|-----|---|---|------------|--|--|--|---|
| | | | | | | documents. | Determination of Time and Place of Birth: http://praxis.rs/index.php/en/education-training/item/550-seminar-for-judges-and-judicial-associates-held-in-nis-on-the-implementation-of-the-law-on-non-contentious-procedure-%E2%80%93-determination-of-time-and-place-of-birth Office for Human and Minority Rights, First Report on Implementation of Action Plan for the Realization of Rights of National Minorities, pp. 8-9: http://www.ljudskaprava.gov.rs/sites/default/files/dokument_file/report_no.1-2017.pdf |
| LIT | 3 | a | Pro Bono | Are there specialised lawyers or organisations providing free advice to stateless people or those at risk of statelessness? If yes, please describe. | UNHCR (2014) : Applicants must have access to legal counsel. | Praxis provides free legal aid, information and counselling to persons at risk of statelessness. Free legal aid encompasses representation in various procedures related to birth and subsequent birth registration, determination of and admission into the nationality. | Praxis: www.praxis.org.rs |
| LIT | 4 | a | Literature | Is there domestic academic literature on statelessness? Please list and provide references and hyperlinks (where available). | | There is very limited academic literature on statelessness (less than ten scholarly articles). There is one significant author in this field (Vida Cok, with three articles on statelessness) and one article by Mirko Živković, from the Faculty of Law, University of Niš. | SCIIndeks (online platform of scientific journals, works and academic literature): https://scindeks.ceon.rs/Default.aspx (SR) |