


P R A X I S



**Praxis**  
**Institute on Statelessness and Inclusion**  
**European Network on Statelessness**  
**and**  
**European Roma Rights Centre**

Joint Submission to the Human Rights Council at  
the 29<sup>th</sup> session of the Universal Periodic Review

(Third cycle, 15 - 26 January 2018)

**Serbia**

29 June 2017

# **Praxis, Institute on Statelessness, European Network on Statelessness and European Roma Rights Centre**

## **Joint Submission to the Human Rights Council at the 29<sup>th</sup> Session of the Universal Periodic Review**

### **Serbia**

#### **Introduction**

1. Praxis, the Institute on Statelessness and Inclusion, the European Network on Statelessness and the European Roma Rights Centre make this joint submission to the Universal Periodic Review (UPR) in relation to statelessness, access to nationality and human rights in Serbia.
2. Praxis<sup>1</sup> is a national non-governmental organisation established in 2004 in Belgrade that protects human rights by providing legal protection and advocating for elimination of systemic obstacles in access to rights. Praxis acts in the area of status and socioeconomic rights, anti-discrimination, gender equality, migration and child rights. Praxis has spent ten years working to solve and prevent the issue of statelessness in Serbia.
3. The Institute on Statelessness and Inclusion (ISI)<sup>2</sup> is an independent non-profit organisation committed to an integrated, human rights based response to the injustice of statelessness and exclusion through a combination of research, education, partnership, and advocacy. Established in August 2014, it is the first and only global centre committed to promoting the human rights of stateless persons and ending statelessness. Over the past two years, the Institute has made over 15 country-specific UPR submissions on the human rights of stateless persons, and also compiled summaries of the key human rights challenges related to statelessness in all countries under the 23<sup>rd</sup> to the 28<sup>th</sup> UPR Sessions.<sup>3</sup>
4. The European Network on Statelessness (ENS)<sup>4</sup> is a civil society alliance of NGOs, lawyers, academics, and other independent experts committed to addressing statelessness in Europe. Based in London, it currently has over 100 members (including 55 organisations) in 40 European countries. ENS organises its work around three pillars – law and policy, communications and capacity-building. The Network provides expert advice and support to a range of stakeholders, including governments.
5. The European Roma Rights Centre (ERRC)<sup>5</sup> is a Roma-led international public interest law organisation, which monitors the human rights of Roma in Europe and provides legal defence in cases of human rights violations.
6. This joint submission focuses on children’s right to a nationality and birth registration; the problem of destroyed, missing or unavailable registry books; and, the identification and protection of stateless persons from arbitrary detention in Serbia. It draws on the combined expertise of the submitting organisations both in Serbia and internationally.

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<sup>1</sup> For more information about Praxis, please see the website <http://www.praxis.org.rs>.

<sup>2</sup> For more information about ISI, please see the website <http://www.institutesi.org/>.

<sup>3</sup> For more on the Institute’s UPR advocacy, see <http://www.institutesi.org/ourwork/humanrights.php>.

<sup>4</sup> For more information about ENS, please see the website <http://www.statelessness.eu/>.

<sup>5</sup> For more information about ERRC, please see the website <http://www.errc.org/>.

## The Universal Periodic Review of Serbia under the First and Second Cycle (2008 and 2013)

7. Serbia was subject to the UPR under the first cycle in 2008 and under the second cycle in 2013. During the first cycle of review, Austria recommended that Serbia should “strengthen measures to ensure registration of all Roma in Serbia.”<sup>6</sup> Serbia accepted the recommendation and pointed to the draft law on the procedure of recognition of legal personality, whose purpose was recognition of legal personality in a simple and effective procedure.
8. In 2013, under the second cycle, three recommendations<sup>7</sup> were made to Serbia regarding statelessness and birth registration. Mexico recommended that Serbia should “(c)arry out necessary measures, including legislative amendments, to ensure that all persons born in Serbia have access to birth registration regardless of the status of their parents.”<sup>8</sup> Brazil recommended taking “appropriate measures to ensure that basic civil and political rights of Roma are being assured and that birth registration is available and accessible for all children without discrimination.”<sup>9</sup> Austria recommended “facilitating registration in the birth registry for Roma, allowing them to register using a provisional address”.<sup>10</sup> All the mentioned recommendations enjoy the support of Serbia, which contended that they are “already implemented or in the process of implementation.”<sup>11</sup>

### Serbia’s International Obligations

9. Serbia is a party to all core international human rights instruments containing provisions related to statelessness and nationality, including the International Covenant on Civil and Political Rights (ICCPR, 1966) and the Convention on the Rights of the Child (CRC, 1989). In addition to guarantees of the right to nationality, both the ICCPR and CRC contain provisions that oblige Serbia to ensure the *timely* birth registration of *every* child *immediately* after birth. Serbia ratified both the 1954 Convention on the Status of Stateless Persons and the 1961 Convention on the Reduction of Statelessness. Furthermore, Serbia is a state party to the Convention on the Elimination of All Forms of Racial Discrimination (CERD, 1965), the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW, 1979) and the Convention on the Rights of Persons with Disabilities (CRPD, 2006). However, it has not ratified, nor signed the European Convention on Nationality (ECN, 1997).
10. Serbia has additional international and regional obligations to protect the liberty and security of all persons and to protect against arbitrary and unlawful detention. These obligations derive from ICCPR (Article 9) and the European Convention on Human Rights (ECHR, Article 5).

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<sup>6</sup> UN General Assembly, *Report of the Working Group on the Universal Periodic Review: Serbia*, A/HRC/10/78, 8 January 2009, para. 22.

<sup>7</sup> Report of the Working Group on the Universal Periodic Review, Serbia, A/HRC/23/15, Human Rights Council, 22 March 2013, <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G13/125/18/PDF/G1312518.pdf?OpenElement>.

<sup>8</sup> *Ibid*, para. 132.8.

<sup>9</sup> *Ibid*, para. 132.93.

<sup>10</sup> *Ibid*, para. 132.96.

<sup>11</sup> *Ibid*, para. 132.

## Statelessness in Serbia

11. The groups most at risk of statelessness in Serbia are those who are not registered in the birth registry (legally invisible persons), persons of undetermined nationality, and persons who were registered in the registry books that were lost or remain unavailable to the authorities of Serbia. The great majority of these persons belong to the Roma community, which is one of the most vulnerable minorities in Serbia, exposed to discriminatory treatment in almost every area of life.<sup>12</sup>
12. According to research conducted by the United Nations High Commissioner for Refugees (UNHCR) in 2015, 1% of the Roma living in “Roma” settlements (of around 700 people) are not registered in birth registry books.<sup>13</sup> The same research also revealed that 8% of children under the age of four in “Roma” settlements are not registered in birth registry books.<sup>14</sup> According to 2014 data, 5% of Roma children from informal settlements under the age of five are not registered in birth registry books.<sup>15</sup> This information points to the fact that a considerable number of children are still not registered immediately after birth.
13. In addition to such legally invisible persons, some people are at risk of statelessness because they are not registered as Serbian citizens despite meeting all necessary legal requirements. These people must then initiate the procedure for determination of citizenship, with success depending on the evidence they present.<sup>16</sup> Another group of people who face a risk of statelessness are those who were registered in the registry books in Kosovo, which were either destroyed or lost during the 1999 conflict, or are considered unavailable by the authorities of the Republic of Serbia.<sup>17</sup> There is no official, reliable, disaggregated data on this group. However, the scale of the problem is also evidenced by the number of persons at risk of statelessness identified by Praxis: in 2016 and during the first five months of 2017 Praxis, as a legal aid provider, identified more than 400 new cases of persons at risk of statelessness. This means persons for whom it was necessary to initiate procedures for the registration of birth, personal name or citizenship.<sup>18</sup>

## The Right of Every Child to Birth Registration

14. Article 7(1) of the CRC and Article 24(3) of the ICCPR provide that every child shall be registered immediately after birth and shall have a name. The Constitution of the Republic of Serbia guarantees to everyone the right to legal personality and to every child the right to a name and the right to be registered in the birth registries.

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<sup>12</sup> European Commission, Serbia 2016 Report, Communication on EU Enlargement Policy, COM(2016)715, Brussels, 9.11.2016, available at: [https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/pdf/key\\_documents/2016/20161109\\_report\\_serbia.pdf](https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/pdf/key_documents/2016/20161109_report_serbia.pdf), p. 52.

<sup>13</sup> UNHCR, Persons at Risk of Statelessness in Serbia, Progress Report 2010-2015, Belgrade, June 2016, available at: <http://www.refworld.org/docid/57bd436b4.html>, p. 19.

<sup>14</sup> UNHCR, *Lica u opasnosti od apatridije – Ocena napretka 2010-2015*, Belgrade, June 2016, available at: [http://www.unhcr.rs/media/docs/UNHCR\\_Brosura\\_Apatridi\\_SRPSKI.pdf](http://www.unhcr.rs/media/docs/UNHCR_Brosura_Apatridi_SRPSKI.pdf), p. 21.

<sup>15</sup> Statistical Office of the Republic of Serbia and UNICEF, *Serbia Multiple Cluster Survey and Serbia Roma Settlements Indicator Cluster Survey, 2014, Final Reports*, Belgrade, December 2014, p. 200, available at: [https://www.unicef.org/serbia/Serbia2014MICS\\_NationalandRomaSettlements\\_Eng\\_2015FINAL.pdf](https://www.unicef.org/serbia/Serbia2014MICS_NationalandRomaSettlements_Eng_2015FINAL.pdf)

<sup>16</sup> For more details see Praxis, *Preventing Childhood Statelessness – Remaining Problems in Serbia*, May 2015, available at: [https://www.praxis.org.rs/images/praxis\\_downloads/Preventing\\_Childhood\\_Statelessness\\_-\\_Remaining\\_Problems\\_in\\_Serbia.pdf](https://www.praxis.org.rs/images/praxis_downloads/Preventing_Childhood_Statelessness_-_Remaining_Problems_in_Serbia.pdf).

<sup>17</sup> For more details, see paragraphs 25-27.

<sup>18</sup> From 1 January 2016 until 31 March 2017 Praxis identified 421 persons for whom it was necessary to initiate the following procedures: re-registration in registry books (23 persons), determination of citizenship (78 person), registration of the fact of citizenship (64 persons), determination of personal name (97 persons), late birth registration (40 persons) and determination of date and place of birth (119 person).

It is also pertinent to mention here that Goal 16.9 of the Sustainable Development Goals aims to “by 2030, provide legal identity for all, including birth registration”.<sup>19</sup> As mentioned in the UN Secretary General’s Report, Goal 16.9 “will not be fully met unless Articles 7 and 8 of the Convention on the Rights of the Child are universally respected and fulfilled and childhood statelessness has been eradicated.”<sup>20</sup> In August 2012, Serbia adopted the Law on Amendments to the Law on Non-Contentious Procedure,<sup>21</sup> which established a new court procedure for the determination of date and place of birth. The procedure is intended for persons who cannot be registered in the birth registry book through an administrative procedure. However, there are still unresolved issues regarding timely birth registration and it is necessary to alleviate conditions for the birth registration of children whose parents do not possess documents.

15. Article 23(2) of Serbia’s Law on Registries states that the Registrar is obliged to register data in the registry without delay, which is in line with Article 7 CRC and Article 24(2) of the ICCPR. However, Article 23(3) of the Law on Registries states: “Exceptionally, registration may be deferred in order to verify or ascertain the missing data to be entered in the register”. The ERRC and Praxis, with support from ENS, lodged a constitutional initiative with the Constitutional Court in Serbia in February 2016 targeting provisions of the Law on Registries which allow registrars to delay birth registration. The ERRC and Praxis relied primarily on Article 24(2) of the ICCPR, and the requirement that births must be registered *immediately*. However, in September 2016, the Constitutional Court rejected the initiative. This judgment does not appear to be in accordance with Article 7(1) of the CRC or Article 24(2) of the ICCPR.
16. In May 2017 the Constitutional Court rejected Praxis’ appeal lodged in 2015 on behalf of a child whose birth could not be registered immediately after birth because his mother was undocumented.<sup>22</sup> The reason for the rejection was the Court’s view that the question was no longer material due to the fact that the baby had been subsequently registered seven months after initially lodging the appeal. The Court failed to acknowledge that there had nonetheless been a breach of the applicant’s right at the time, and it is beyond doubt that birth registration performed more than seven months after a child’s birth cannot satisfy the standard “immediately”, i.e. within days or weeks after births. In spite its competence to issue decisions which relate to all persons in the same legal situation, the Court failed to consider the fact that the practice which caused the violation of the applicant’s rights continues to affect many other children whose parents are undocumented.
17. In its most recent review of Serbia, the Committee on the Rights of the Child pointed out the following:

*“The Committee notes as positive amendments to the Law on Non-Contentious Procedure that have corrected loopholes relevant for “legally invisible people” by establishing a court procedure for determining the date and place of birth of unregistered persons. It further welcomes the development of Guidelines for Implementing Administrative Procedures related to the birth of the child on the basis of all in one place in cooperation with the Ombudsman and UNHCR. The Committee is concerned that despite these amendments approximately 8,500 persons are not registered at birth, with the vast majority*

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<sup>19</sup> UN General Assembly, *Transforming our world: the 2030 Agenda for Sustainable Development*, 21 October 2015, A/RES/70/1.

<sup>20</sup> UN Human Rights Council, *Impact of the arbitrary deprivation of nationality on the enjoyment of the rights of children concerned, and existing laws and practices on accessibility for children to acquire nationality, inter alia, of the country in which they are born, if they would otherwise be stateless*, 16 December 2015, A/HRC/31/29, para 33.

<sup>21</sup> *Official Gazette of the Republic of Serbia*, no. 8/2012.

<sup>22</sup> See European Network on Statelessness, An update on statelessness in Europe, <http://mailchi.mp/statelessness/ens-newsletter-june-2017-news-and-updates-on-nationality-and-statelessness-from-across-europe>.

*declaring themselves as Roma. The Committee is concerned that these people have limited access to basic rights such as health care, education and social protection.”<sup>23</sup>*

Indeed, despite these positive developments and the aforementioned guarantees of the right to birth registration, data on the number of legally invisible persons and unregistered children confirms that the right to timely birth registration consistently appears not to be fully implemented in Serbia.

18. In October 2016, the Serbian Ministry of Health and the Ministry of Public Administration and Local Self-Government introduced a project named ‘Baby, Welcome to the World’, whose purpose is to simplify birth registration. The simplified procedure is regulated by the ‘Instruction for Implementing Administrative Procedures related to the birth of the child on the basis of all in one place rule’, which allows the registration also of children whose mothers<sup>24</sup> are undocumented.<sup>25</sup> However, this Instruction is not a legally binding act (it serves only as guidance for competent bodies) and its provisions are in contradiction to the existing and legally binding regulations. According to the existing bylaws—namely Article 5 of the Rulebook on the procedure for the issuance of birth notification and form of the issuance of birth notification in a health care institution<sup>26</sup> and Points 10 and 24 of the Instruction on administering registry books and forms of registry books<sup>27</sup>—in order 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 foreigners, passports. Therefore, Serbia still has not created a legal framework suitable to ensure that every child is registered immediately after birth. As a consequence, children of undocumented parents are left without birth registration for at least a couple of months. Further consequences are a higher risk of statelessness and denial of access to rights and entitlements such as health insurance and social protection during a particularly vulnerable period.
19. Children whose parents are undocumented cannot be issued with a birth certificate upon birth with their names determined. They need to undergo one of the following procedures: determination of personal name, subsequent birth registration or determination of the date and place of birth.<sup>28</sup> Each of these procedures often lasts several months, while in particularly complicated cases they may last more than a year. The child’s birth should be registered within several days or weeks after birth, not months or years.<sup>29</sup> The Serbian Government, therefore, still needs to take further action to ensure that every child is registered immediately upon birth.
20. The lack of immediate registration may create the risk that some children will not be registered at all, which increases the risk of statelessness. Even if children eventually have their births registered (and subsequently have a recognised name and secure recognition of their citizenship), they will nevertheless spend a period of

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<sup>23</sup> Committee on the Rights of the Child, *Concluding observation on the combined second and third periodic reports of Serbia*, 3 February 2017, CRC/C/SRB/CO/2-3, available at:

[http://tbinternet.ohchr.org/Treaties/CRC/Shared%20Documents/SRB/CRC\\_C\\_SRB\\_CO\\_2-3\\_26579\\_E.pdf](http://tbinternet.ohchr.org/Treaties/CRC/Shared%20Documents/SRB/CRC_C_SRB_CO_2-3_26579_E.pdf), para. 30.

<sup>24</sup> The fact that father does not possess documents does not represent an obstacle for the registration of child in birth registry book. If the mother is a Serbian citizen and possesses all necessary documents, it is sufficient for child’s birth registration.

<sup>25</sup> These changes, together with the amendments to the Law on Non-Contentious Procedure, were welcomed by the CRC, but the Committee also expressed concern regarding the number of persons who are not registered at birth, despite these amendments.

<sup>26</sup> *Official Gazette of the Republic of Serbia*, nos. 5/2011, 9/2016, 16/2016 and 36/2016).

<sup>27</sup> *Official Gazette of the Republic of Serbia*, nos. 109/2009, 4/2010, 10/2010, 25/2011, 5/2013 and 94/2013.

<sup>28</sup> For more details on these procedures, see Praxis, *Preventing Childhood Statelessness – Remaining Problems in Serbia*, May 2015, available at: [https://www.praxis.org.rs/images/praxis\\_downloads/Preventing\\_Childhood\\_Statelessness\\_-\\_Remaining\\_Problems\\_in\\_Serbia.pdf](https://www.praxis.org.rs/images/praxis_downloads/Preventing_Childhood_Statelessness_-_Remaining_Problems_in_Serbia.pdf), p. 4.

<sup>29</sup> See, for e.g., African Committee of Experts on the Rights and Welfare of the Child, *General Comment on Article 6 of the African Charter on the Rights and Welfare of the Child: „Right to Birth Registration, name and nationality“*, ACERWC/GC/02(2014), 7-16 April 2014, available at: <http://www.acerwc.org/general-comments/#>, para. 79.



time without birth registration and the legal protection that comes with it. The fact that there are still children who cannot obtain birth and citizenship certificates at birth is not just contrary to the need to prevent statelessness, but leads to the violation of a series of other rights of children.

21. The requirement that the parents of the child have official documentation in order to register the birth of their child, leads to discrimination of Roma children. Undocumented persons in Serbia are mainly members of the Roma ethnic minority<sup>30</sup> and thus difficulties related to birth registration almost exclusively occur among Roma children. The right to a personal name and timely birth registration is guaranteed to every child, immediately after birth, irrespective of the child's or his or her parent's status. However, children of Roma ethnicity are disadvantaged when compared with other children whose parents possess documents and who do not face problems in exercising the right to birth registration. The fact that timely birth registration is made conditional on the possession of documents of the parents constitutes indirect and institutional discrimination against the Roma. This is further indicated by data about birth registration rates: "the births of 99% of children under five years in Serbia have been registered. There are no significant variations in birth registration across different background characteristics apart from ethnicity where Roma have the lowest birth registration rate (94%)."<sup>31</sup>

## The Right of Every Child to Acquire a Nationality

22. The manner in which the acquisition of Serbian citizenship is regulated is, on the face of it, in accordance with international standards, including the 1961 Convention on the Reduction of Statelessness. In addition to rules prescribing that citizenship is through descent (*jus sanguinis*) of a Serbian parent, there is also provision for 'otherwise stateless' children to acquire citizenship by virtue of having been born on the territory (*jus soli*).<sup>32</sup> However, the problem is the lack of clear guidelines regarding the procedure for acquisition of citizenship on the basis of the *jus soli* principle and the fact that the procedure established in practice introduces new conditions, which are not in line with the Law on Citizenship and the 1961 Convention.
23. According to Article 13 of the Law on Citizenship, Serbian citizenship shall be acquired by a child born or found<sup>33</sup> in the Serbian territory if his/her parents are unknown, stateless, of unknown citizenship, or if the child would otherwise be stateless. Citizenship should be acquired at birth, automatically, by operation of the law. The Serbian Constitution also prescribes that a child born in Serbia shall have the right to Serbian citizenship if the conditions have not been met for him/her to acquire the citizenship of another state.<sup>34</sup> For a child who acquires the citizenship of the Republic of Serbia by being born on its territory, the fact of his/her citizenship shall be registered in the birth registries based on the document proving that the child's parents

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<sup>30</sup> Members of the Roma national minority are most represented among persons without documents and those whose births have never been registered. Protector of Citizens of the Republic of Serbia, *Report on the position of „Legally Invisible“ Persons in the Republic of Serbia*, Belgrade, 2012, p. 11, available at:

[http://www.ombudsman.rs/attachments/2222\\_Izvestaj%20o%20polozaju%20%20pravno%20nevidljivih%20u%20RS.pdf](http://www.ombudsman.rs/attachments/2222_Izvestaj%20o%20polozaju%20%20pravno%20nevidljivih%20u%20RS.pdf).

<sup>31</sup> Statistical Office of the Republic of Serbia and UNICEF, *Serbia Multiple Cluster Survey and Serbia Roma Settlements Indicator Cluster Survey, 2014, Final Reports*, Belgrade, December 2014, available at:

[https://www.unicef.org/serbia/Serbia2014MICS\\_NationalandRomaSettlements\\_Eng\\_2015FINAL.pdf](https://www.unicef.org/serbia/Serbia2014MICS_NationalandRomaSettlements_Eng_2015FINAL.pdf), xxiv.

<sup>32</sup> Article 13 of the Law on Citizenship, *Official Gazette of the Republic of Serbia*, nos. 135/2004 and 90/2007.

<sup>33</sup> The fact of birth of a foundling is registered in the birth registry in the territory where the child was found. The registration is performed on the basis of the decision of the competent guardianship body which contains, *inter alia*, the data on citizenship of the child. See Article 50 of the Law on Registry Books, *Official Gazette of the Republic of Serbia*, No. 20/2009 and 145/2014.

<sup>34</sup> See Article 38, paragraph 3 of the Constitution of the Republic of Serbia, *Official Gazette of the Republic of Serbia*, No. 98/2006.

are stateless or of unknown citizenship or that a child is stateless.<sup>35</sup> There are no further provisions or guidelines on what is considered to be a document by which parents prove that they are stateless or of unknown citizenship, or that a child is stateless. Prescribing that registration of citizenship should be conducted based on such a document, where the content or a procedure in which it should be issued is unknown and unregulated, causes only confusion in accessing the right to nationality for otherwise stateless children. Therefore, although these children have the right to citizenship according to the *jus soli* principle, there is a threat that they may be deprived of this right due to the difficulties in proving that their parents are stateless or of unknown citizenship. In addition, both imprecise regulations and the imposition of additional conditions significantly undermine the prescribed safeguards against statelessness.

24. An additional problem arises from the practice of excluding persons over the age of 18 from acquiring citizenship on the basis of the *jus soli* principle, which is contrary to the Law on Citizenship and Serbia's obligations under the 1961 Convention. It is possible to acquire Serbian citizenship on the basis of birth on its territory only up to 18 years of age, whilst persons aged between 18 and 21 are left without protection. According to the 1961 Convention, the timeframe for submitting the request cannot end before a person has turned 21. The purpose of this provision is to ensure that otherwise stateless children will have a chance to submit an application after becoming adults. This is important for preventing the risk of statelessness in cases of otherwise stateless persons without birth registration, or who spend their childhood with an unresolved citizenship issue. According to current practice in Serbia, if no one submits an appropriate request for acquisition of citizenship on their behalf before these persons reach 18 years of age, they are deprived of the possibility to do it themselves after coming of age.
25. The injustice of this practice is illustrated by the case of one of Praxis' clients, Mejrema, who spent her childhood without documents because her mother was stateless and therefore could not register her birth. Mejrema was registered only after her mother's death, but she was not registered as a Serbian citizen, despite meeting all necessary legal requirements (she was born in Serbia, of unknown father and stateless mother). Mejrema had never had a legal guardian who could submit a citizenship claim on her behalf. When her mother was alive, Mejrema could not submit a citizenship claim because she was not registered in the birth registry. When she was finally registered and collected all the necessary evidence, the competent body concluded that Article 13 could no longer be applied in her case, since she was 18 years and two months old when she submitted the citizenship claim.
26. Difficulties related to the acquisition of citizenship may also arise in the cases of children whose birth registration only includes information about the mother and not the father, where the mother is stateless or her residence is unknown. If the father is a Serbian citizen, the child has grounds to acquire Serbian citizenship by descent. However, in order for a child to inherit the father's citizenship, he must acknowledge paternity with the mother's consent, which is not possible if the mother is stateless, undocumented or if her residence is unknown. In such cases, the social welfare centre should initiate a procedure for the appointment of a temporary guardian to consent to the acknowledgement of paternity. However, in practice, social welfare centres refuse to take statements acknowledging paternity if the mother is absent, or undocumented. Therefore, even children whose fathers are Serbian citizens can have difficulties in acquiring citizenship.
27. Without proof of paternity, children of stateless or undocumented mothers born on Serbian territory have the right to Serbian citizenship based on Article 13 and the *jus soli* principle. However, the lack of prescribed

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<sup>35</sup>Article 10 of the Rules on the registration of citizenship in the registry book, forms for keeping records of decisions on acquisition and termination of citizenship and form for a citizenship certificate, *Official Gazette of the Republic of Serbia*, nos. 22/2005, 84/2005, 121/2007, 69/2010 and 55/2017.



clear guidelines on the acquisition of citizenship in such cases,<sup>36</sup> combined with the lack of documents of the mother or inability to ensure the mother's participation in the procedure, results in many children spending their childhood without citizenship. All those who fail to submit a citizenship claim before the deadline of 18 years<sup>37</sup> remain out of the reach of the provision of Article 13. In such cases, their only chance to acquire citizenship becomes again dependent on the acknowledgment of paternity. There is a possibility to initiate a court procedure for the determination of paternity, but the DNA analysis, which is often requested in these procedures, is very expensive (approximately €500).

## Destroyed, missing or unavailable registries

28. Another cause leading to a risk of statelessness in Serbia is that during the 1999 Kosovo conflict, the registry books for some places in Kosovo were destroyed, lost, or considered unavailable by the state bodies in Serbia.<sup>38</sup> Seventeen years have passed since the registry books became unavailable, and yet they have still not been reconstructed. This is despite the Law on Registry Books requiring that destroyed books should be reconstructed *ex officio* and without delay and that citizens should only be obliged to provide information known to them.<sup>39</sup> Notwithstanding this Law, citizens are forced to initiate the procedure for registration in reconstructed registry books of their own accord and to obtain and submit a long list of evidence.
29. The re-registration into citizenship registry books can be particularly difficult, requiring a citizenship certificate issued before 1999 or a birth certificate recording citizenship of Serbia. Failing this, information on citizenship must be found in the records of the Ministry of Interior. If this evidence is not available, no other documents will be accepted as suitable to establish previous registration in destroyed or unavailable registries. Applicants must initiate the procedure for determination of citizenship<sup>40</sup>, which requires even more evidence than the re-registration procedure, including parents' documents in addition to the applicant's. If the case involves an individual whose parents were also registered in the unavailable registry book, there is no possibility for success in the procedure for determination of citizenship.
30. The case of one of Praxis' clients, Azemina, illustrates how difficult this procedure can be. Praxis assisted Azemina to initiate the procedure in February 2010, and she was finally re-registered into the registry books only six years later, in April 2016. The process involved a total of four appeals with four negative decisions, three appeals against the failure of the competent body to make a decision within the prescribed time limit, two complaints lodged with the Ombudsman, one complaint to the head of the city administration, and dozens of interventions. All these procedures lasted longer than six years. Before Azemina finally managed to be registered in the reconstructed registries, she had been denied access to basic human rights for more than 15 years. The problem of unavailable registries is not only a factor in increasing the risk of statelessness, but it also leads to the violation of a series of other human rights.

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<sup>36</sup> See paragraph 22.

<sup>37</sup> See paras 23-24.

<sup>38</sup> The Kosovo conflict was an armed conflict (1998–99) between ethnic Albanians on the one hand and ethnic Serbs and the government of Yugoslavia (the rump of the former federal state, comprising the republics of Serbia and Montenegro) on the other. The conflict was resolved with the intervention of the North Atlantic Treaty Organization (NATO). See <https://www.britannica.com/event/Kosovo-conflict>.

<sup>39</sup> Article 43 of the Law on Registry Books, *Official Gazette of the Republic of Serbia*, nos. 20/2009 and 145/2014.

<sup>40</sup> According to the Article 44 of the Law on Citizenship, for persons who acquired Serbian citizenship and whose fact of citizenship has not been entered in registry books, the Ministry of Interior shall determine citizenship of that person.

## The Lack of a Statelessness Determination Procedure and Risk of Arbitrary Detention

31. Serbia does not have a formal procedure for the determination of statelessness, even though this is of key importance for individuals to access their rights. Without the determination of statelessness, stateless persons can be denied issuance of travel documents, which prevents them from registering permanent residence or accessing other rights. Furthermore, the failure to recognise stateless persons can lead to their discriminatory treatment.
32. The lack of a procedure to identify and recognise statelessness will have a particularly strong human rights impact if Serbia adopts the current version of its Draft Law on Foreigners.<sup>41</sup> Under the Draft Law, the maximum immigration detention period is prolonged from 180 days<sup>42</sup> to 12 months.<sup>43</sup> The Draft Law stipulates that the initial period of detention (six months) can be prolonged for an additional six months if the foreigner's identity has not been established and if the foreigner deliberately hinders forced expulsion.<sup>44</sup> These reasons are stipulated in current law, however, the new Draft Law specifically states that the inability to establish the foreigner's identity or the lack of a travel document are examples of the individual trying to hinder their forced removal.<sup>45</sup> This provision is clearly discriminatory towards stateless persons.
33. In its *Handbook on the Protection of Stateless Persons*, UNHCR establishes that being undocumented or not being in possession of the necessary documents cannot serve as a justification for detention. According to UNHCR, the detention of individuals seeking protection on the grounds of statelessness is arbitrary since the very nature of statelessness severely restricts access to basic identity and travel documents that citizens normally possess.<sup>46</sup> However, under the Draft Law on Foreigners, a person's inability to cooperate in removal procedures is equated with non-cooperation, which may result in stateless persons being punished simply for not having documents. The lack of a statelessness determination procedure to facilitate the identification of statelessness prior to and/or during detention, puts stateless people and those at risk of statelessness at significant risk of being disproportionately impacted on by the Draft Law and subjects them to the risk of arbitrary detention.<sup>47</sup>

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<sup>41</sup> Draft Law on Foreigners is available at: [http://www.paragraf.rs/nacrti\\_i\\_predlozi/181016-nacrt\\_zakona\\_o\\_strancima.html](http://www.paragraf.rs/nacrti_i_predlozi/181016-nacrt_zakona_o_strancima.html).

<sup>42</sup> Article 50(3) Law on Foreigners (*Official Gazette of the Republic of Serbia, no. 97/2008*),.

<sup>43</sup> Article 88(4) Draft Law on Foreigners.

<sup>44</sup> Article 88(2) Draft Law on Foreigners.

<sup>45</sup> Article 87(4) Draft Law on Foreigners.

<sup>46</sup> UN High Commissioner for Refugees (UNHCR), *Handbook on Protection of Stateless Persons*, 2014, available at: <http://www.refworld.org/docid/53b676aa4.html>, para 112. See also European Network on Statelessness, *Protecting Stateless Persons from Arbitrary Detention – a Regional Toolkit for Practicioners*, 2015, available at:

[http://www.statelessness.eu/sites/www.statelessness.eu/files/attachments/resources/ENS\\_LockeInLimbo\\_Detention\\_Agenda\\_online.pdf](http://www.statelessness.eu/sites/www.statelessness.eu/files/attachments/resources/ENS_LockeInLimbo_Detention_Agenda_online.pdf), p. 16-17.

<sup>47</sup> European Network on Statelessness (2017) *Protecting Stateless Persons from Arbitrary Detention: an agenda for change*, available at:

[http://www.statelessness.eu/sites/www.statelessness.eu/files/attachments/resources/ENS\\_LockeInLimbo\\_Detention\\_Agenda\\_online.pdf](http://www.statelessness.eu/sites/www.statelessness.eu/files/attachments/resources/ENS_LockeInLimbo_Detention_Agenda_online.pdf).

## Recommendations

34. Based on this submission, the co-submitting organisations propose the following recommendations:
- I. Carry out necessary measures, including legislative amendments, to ensure that *all* children born in Serbia have access to *timely* birth registration *immediately* after birth without discrimination and regardless of the legal or documentation status of their parents.
  - II. Ensure the correct interpretation and implementation of Article 13 of the Law on Citizenship (regulating the right to Serbian citizenship on the basis of the *jus soli* principle) in line with the 1961 Convention on the Reduction of Statelessness and the Convention on the Rights of the Child. Specifically, ensure that young people aged between 18-21 years who would otherwise be stateless, can access their right to acquire Serbian citizenship.
  - III. Facilitate timely and inexpensive access to the determination of paternity for children whose mothers are undocumented, stateless, or whose place of residence is unknown. If neither the mother nor the child can consent to the acknowledgement of paternity, the child's appointed guardian should provide consent.
  - IV. Reconstruct destroyed, missing or unavailable registries and alleviate the unreasonably strict standards regarding the evidence required for re-registration in citizenship registries.
  - V. Collect reliable, disaggregated data on stateless persons and persons at risk of statelessness in Serbia and make this data publicly available.
  - VI. Introduce a fair and effective statelessness determination procedure in line with international standards, and ensure that it is accessible to all persons in Serbia regardless of their legal status.
  - VII. Ensure that stateless persons are protected from arbitrary detention in Serbia, including by improving the identification of statelessness during decisions to detain, ongoing reviews of detention, and vulnerability assessments.
  - VIII. Consider amending the new Draft Law on Foreigners to ensure that it contains robust mechanisms to protect against the arbitrary detention of stateless persons and those at risk of statelessness in line with international legal standards.