



CASE
STUDIES

PERSONS AT RISK OF

STATELESSNESS
IN SERBIA

P R A X I S



ABOUT PRAXIS

Praxis is a national, nongovernmental and nonprofit organization established in Belgrade in 2004. It aims to promote, protect and improve human rights, and combat discrimination, intolerance and racism. It advocates for civic society values, the development of democracy, the rule of law, and for the reduction of poverty, marginalization and social exclusion – in short, for improvement of the quality of life.

Praxis achieves its goals by providing free legal aid and through advocacy, and by raising awareness of the problems faced by marginalized and socially excluded communities attempting to integrate. Its work covers the fields of nationality, personal documents, housing, education, health care, social protection and employment, as well as the area of sexual and gender based violence.

By providing legal aid to the socially most vulnerable communities, to national minorities (Roma, Ashkali and Egyptian), displaced persons and people who have returned on the basis of readmission agreements, Praxis fights against discrimination, and for respect for human rights and the removal of systemic obstacles to access to rights.

Praxis achieves its goals through its research, analysis and advocacy for systemic solutions to problems, and the elimination of obstacles to access to rights, through awareness-raising, education, publishing and expert support to reforms, and through networking and cooperation.

Praxis is a member of the European Network on Statelessness, a network of nongovernmental organizations, academic initiatives, and individual experts committed to the cause of addressing statelessness in Europe.

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This report was prepared by the non-governmental organisation Praxis, within the project directed at reduction and prevention of statelessness in Serbia, funded by the United Nations High Commissioner for Refugees (UNHCR).

The views presented in this report are exclusively those of the author and do not necessarily present official standpoints of the UNHCR Representation in Serbia.



Belgrade, December 2011

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INTRODUCTION

More than 60 years ago, the Universal Declaration of Human Rights established the fundamental human rights – those considered inalienable and inherent to all human beings, regardless of their personal characteristics. The right to citizenship is one of these inalienable rights.

The 50th anniversary of the adoption of the Convention on the Reduction of Statelessness - the most important international instrument aimed at preventing statelessness - was marked in 2011. The United Nations High Commissioner for Refugees (UNHCR) marked the anniversary in the presence of the representatives of almost 150 states at the Ministerial Conference held in Geneva, 7 – 8 December. Six new states, including the Republic of Serbia, acceded to the Convention; over 20 states announced their accession, while many member states committed to putting in place or promoting national mechanisms for the identification of stateless persons or reforming the national legislation in order to respond to the issues of statelessness.

However, in spite of aspirations to prevent statelessness and notwithstanding the proclamation of inalienable rights, these rights have for decades remained out of reach of millions of excluded individuals and groups. The conflicting laws, discriminatory regulations of certain countries, state successions and poor administrative practices are some causes resulting in stateless persons – persons who are not recognised as citizens by laws of any state. Depriving these persons of the possibility to exercise the right to citizenship prevents them from accessing other numerous rights guaranteed by the Declaration.

In Serbia also, due to the unresolved issue of citizenship, thousands of individuals are deprived of exercising their fundamental human rights. Unlike *de iure* stateless persons – those not considered citizens by any state under the operation of their laws, the majority of persons who do not manage to resolve the issue of citizenship in Serbia do have legal basis for the acquisition of Serbian citizenship. However, the fact that many of them have for years been unsuccessful in proving their identity or citizenship and that in some families this problem is transgenerational, represents a serious challenge and leaves these persons in a state of uncertainty that is

sometimes almost equal to the absence of citizenship. Therefore, in its 2010 publication entitled *Persons at Risk of Statelessness in Serbia*, Praxis sought to present the situation of the persons facing the unresolved citizenship issue and stress the necessity of an urgent solution to the problem of those who cannot prove their identity and citizenship on the basis of the existing laws.

Whereas the previous analysis gave an overview of the relevant legal framework and the basic terms related to statelessness and citizenship, the objective of this case study is to provide a more detailed insight into the implementation of regulations and exercise of the right to citizenship in practice. The cases have been selected to show why, despite the general compliance of the Law on Citizenship of the Republic of Serbia¹ with the Convention on the Reduction of Statelessness, there are continuous violations of the right to citizenship of many persons and why certain persons face so many difficulties in proving and establishing their citizenship. The selected cases will also serve as an overview of the most common situations that lead to statelessness, while the effectiveness of certain provisions aimed at prevention of statelessness will be examined. Furthermore, the presentation of new cases should ensure a direct insight into what the unresolved issues of citizenship and identity mean in a state where possession of personal documents is a requirement for accessing almost all the rights and once again remind why it is necessary to start resolving the problem that leaves many people exposed to the risk of remaining without citizenship. The selected cases were again categorised into four groups, according to the origin of the problems they face and/or depending on the procedures they should initiate in order to acquire citizenship. The described procedures they are going through should contribute to a better understanding of the reasons due to which some individuals have not been able to obtain documents confirming their status for years, and they should also point out to the measures that the state should undertake in order to resolve these problems.

¹ The Law on Citizenship of the Republic of Serbia, *Official Gazette of the Republic of Serbia*, no. 135/2004 and 90/2007

Although legally invisible persons have been living in Serbia for generations, they neither exist in its registry books or before the law nor is there official evidence on their identity because the fact of their birth was not registered into birth registry books. Legally invisible persons do not have recognized names, they cannot register the birth of their children, conclude a marriage and recognize paternity... For as long as they are not registered in birth registry books, they have no access to the rights guaranteed to every person since their very existence has not been recognized before the law. They do not enjoy the protection of any state, for they are *not visible* in any law. Exactly for the absence of protection provided by citizenship, invisibility before the law has many similarities with statelessness, and failure to register into birth registry books may sometimes become a direct cause of statelessness.³ Still, the problems of legally invisible persons cannot be considered identical to the problems of stateless persons because the reasons for the absence of this protection differ. Stateless persons (most often) do not fulfil legally prescribed conditions for the acquisition of citizenship of any state due to the combined effect of legal, administrative or political causes. On the contrary, the legally invisible persons may have ties with a state that make them eligible for the acquisition of its citizenship on the basis of origin and/or birth in its territory. Their claim of having certain citizenship may be legally grounded but most often very hard to prove.

Similarly, the legally invisible persons in Serbia would undoubtedly acquire Serbian citizenship on the basis of facts, but the citizenship-related regulations still cannot apply to them because their birth has not been registered anywhere. Without a birth certificate, neither their place of birth and origin has been established nor any tie qualifying them for

² See Praxis' publications: "Legally Invisible Persons in Serbia – Still Without a Solution", 2010, "Legally Invisible Persons in Serbia – the State Must Take Over the Responsibility", 2009 (hereinafter: Legally Invisible Persons) and "Legally Invisible Persons in Seven Stories – Why Should the Law on the Procedure for Recognition of Persons before the Law Be Adopted " 2008 (hereinafter: Legally Invisible Persons in Seven Stories), as well as "Persons at Risk of Statelessness in Serbia", 2010, pp. 9–11.

³ See L. V. Waas, "Nationality Matters, Statelessness under International Law", Intersentia, 2008, pp. 151–187 (hereinafter: V. Waas). See also: Brad K. Blitz and Maureen Lynch, "Statelessness and the Benefits of Citizenship: A Comparative Study, Oxford Brookes University, UK, 2009", page 11

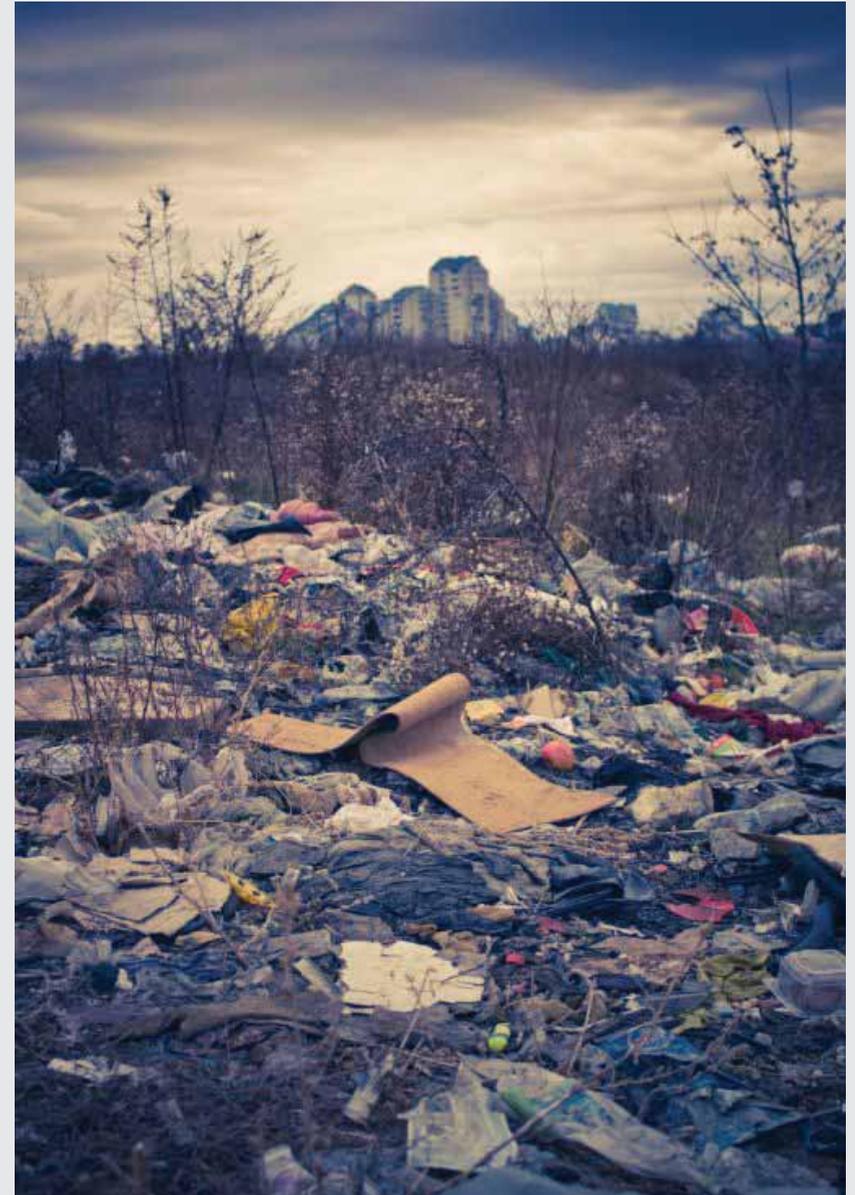
the acquisition of citizenship. The obstacles that arise in the procedures of subsequent registration into birth registry books and while trying to prove the facts related to the place of birth and parents, leave many legally invisible persons at risk of remaining undocumented for years or without citizenship they would be entitled to if doubts about their identity were removed by timely registration in birth registry books.

Hajrija

Hajrija's request for subsequent registration into birth registry books was rejected due to an unconfirmed doubt that the child had been born in another state.

Namely, the competent body asked for the evidence that Hajrija had neither been registered in the birth registry book in Podgorica, Montenegro (where her mother had been issued an identity card 10 years before), nor in Kosovska Mitrovica (where her mother was born). Praxis obtained and submitted the requested certificates. However, the competent body did not consider them sufficient, but requested, through the Ministry of Foreign Affairs, the verification of whether the birth of the child had been registered in Podgorica, or **in some other town in Montenegro**, and also submitted a request to verify whether the child had been registered in Kosovska Mitrovica **or in some other town in Kosovo**.

Five months following the request for these verifications, the competent body rejected Hajrija's request for subsequent registration of birth. The decision was negative because it was not confirmed that the child had not been born in the territory of Montenegro, and therefore the competent body continued to believe "that there existed a reasonable doubt about the accuracy of information related to the establishment of the exact place of birth". The statements of the parents and two witnesses were not taken into account at all. It did not suffice that the submitted certificates stated that the child had not been registered on the basis of former permanent residence, or the maternal place of birth. Instead, the body requested the verification of the registration of the fact of birth in the entire territory



of Kosovo and the entire territory of Montenegro. It did not receive the requested verification and therefore, it rejected the request. An inevitable question emerges as to how far one can go with these verifications and whether the legally invisible persons should submit evidence of not being registered from all the neighbouring countries in order to eliminate even the slightest doubt about the place of their birth.

More than a year later, after the first rejection of the request, complaint lodging and collection of evidence from different parts of the country, and from the foreign country, Hajrija managed to be registered into the birth registry book and acquire citizenship. However, registration into birth registry books and exercise of the right to citizenship remain elusive for many others due to the obstacles in proving their place of birth.

Fljurim

The explanation of the conclusions on rejecting Fljurim's request for subsequent registration into birth registry books, states that "he is a person of age, with no regulated citizenship of the Republic of Serbia, that the woman stated as the mother does not hold the citizenship of the Republic of Serbia but of the Republic of Macedonia,⁴ and that the person stated as his father (holding the citizenship of the Republic of Serbia) has not submitted any evidence of the recognition of paternity by the time Fljurim turned 23." It was noted that "given the doubt that the submitter of the request was born in another state, there is an evident intention to obtain the citizenship of the Republic of Serbia at the same time."

For over three years, Fljurim has not been able to get registered into birth registry books due to the unconfirmed doubt of the competent body about his place of birth and for arbitrary assumptions about Fljurim's ulterior intentions to acquire citizenship by false statement on his place of birth. In this case, the place of birth is irrelevant to the acquisition of citizenship since

⁴ Fljurim's mother was born in Macedonia, but she subsequently obtained the Serbian citizenship through naturalisation. Therefore, this statement in the explanation of conclusions was not true.

the very fact that someone was born in Serbia does not automatically result in the acquisition of Serbian citizenship.⁵ But as long as Fljurim does not prove where he was born, he will not be able to register into birth registry books and consequently, he will not be able to acquire the citizenship of any state. The situation is further aggravated when the authorities, such as the administration body in this case, abuse their powers, completely surpass the framework of submitted requests⁶ and prevent the legally invisible persons to acquire Serbian citizenship by preventing them to register into birth registry books.⁷

These examples already show how the failure to register the fact of birth prevents an individual from acquiring citizenship he/she would otherwise be entitled to. Both Hajrija and Fljurim have acquired Serbian citizenship at birth, on the basis of their origin and irrespective of their place of birth. Both of Hajrija's parents have had Serbian citizenship since their birth. Fljurim's father has been the citizen of Serbia since his birth, and the mother acquired it through naturalisation. Notwithstanding, due to the obstacles related to proving the place of birth, Fljurim's attempts to register into birth registry books have been unsuccessful and therefore he has remained without citizenship.

The obstacles are always more numerous for subsequent registration of persons born at home since there are no official records of their birth, which is the case in both of the above-given examples. If these persons have also ties to some other states,⁸ subsequent birth registration procedures and

⁵ The main way of acquiring citizenship of the Republic of Serbia is by origin, or citizenship of parents (*ius sanguinis*). A child born in the territory of Serbia can acquire citizenship only if his/her parents are unknown, of unknown citizenship or without citizenship, which was not the case here.

⁶ Even the framework of administrative procedure that has nothing to do with the establishing of concerned parties' ulterior intentions, premeditation, etc.

⁷ In this case, by rejecting requests for subsequent registration of birth, the competent body has shown openly that it did so also to prevent mass submission of such requests from persons of Roma ethnicity. The court procedure determined that the body had treated the Roma in the procedures of subsequent registration in a discriminatory manner. For more information see: Persons at Risk of Statelessness in Serbia, Case Sanije, pp. 11–12

⁸ Hajrija's case shows that the tie does not even have to be the birth of parents in another state or the citizenship of another state. The parents could only reside, have temporary/permanent residence in that state during a certain period of time.

doubts regarding their potential places of birth may last indefinitely, and all due to the fact that the children did not obtain a birth certificate at birth and because there is no simple and precisely defined procedure allowing their subsequent registration into birth registry books.

The children born in hospitals are in a somewhat better position as at least some data about their birth are recorded and the procedure of their registration is somewhat simplified.⁹ Their existence is already recorded in birth registry books – there is an entry about the date and place of their birth and the mother’s name, at least. However, the problems that lead to complicated and lengthy procedures may emerge even with respect to the children born in health care institutions, which incurs significant costs or prevents children from obtaining birth certificates or citizenship for years. These situations are particularly frequent in cases of the children whose mothers do not have ID cards. A child may remain without a name and citizenship if the mother is undocumented, even if he/she was born in a hospital and evidence exists on the place and date of birth, and even if the father has all the necessary documents.¹⁰

Redzep

Redzep was born in a hospital in Belgrade. His father had all the necessary documents and Serbian citizenship. The mother had a birth certificate, but for absence of determined citizenship did not have an ID card and therefore

⁹ If a child is born in a hospital, the hospital should send to a competent registrar the information about the date of birth of a child and about the mother. Such notification should contain at least the information about the mother of the child, the sex of the child, his/her place and date of birth. The persons authorised to give a personal name to the child, by virtue of the regulations on the personal name, must notify the competent registrar about the child’s personal name no later than 30 days after his/her birth. If the parents are married, the information about the father will be entered on the basis of the submitted marriage certificate. If the parents are not married, the information about the father will be entered upon his statement on the recognition of paternity.

¹⁰ See in particular, the case Leontina from the Praxis’ publication *Legally Invisible Persons in Seven Stories*, pp. 22–24. Even though the child was born in the hospital and the father had all the necessary documentation, the futile efforts for the child to obtain the birth certificate lasted for three years because the mother was legally invisible.



was not allowed to give a personal name to her baby within the legally prescribed timeframe, and to agree on the recognition of paternity. The parents addressed Praxis for help when the boy was one year old. A request to determine a personal name and take a statement on the recognition of paternity was submitted to the Social Welfare Centre. It was suggested that the mother be identified with the assistance of two witnesses. Two months later, the Social Welfare Centre invited the parents to give the aforementioned statements. However, for incomprehensible reasons, the mother was allowed only to give the child a personal name but not to agree on the recognition of paternity. It was explained that the mother without an ID card was not eligible to give such consent.

On the basis of the decision of the Social Welfare Centre, the registry office entered the name to the child and he was able to obtain the birth certificate but not the citizenship certificate. The data about citizenship were not entered because the competent authority considered there was no basis for that – the citizenship of the mother had not been determined and the father – a citizen of Serbia – was prevented from recognizing paternity. Therefore, Redzep could only get a citizenship certificate when his mother managed to have her own citizenship determined.

This case reveals the frequent cause of invisibility before the law: preventing the mothers who do not have ID cards to register birth of their children,

but it also points to another negative practice aggravating the exercise of the right to citizenship. Namely, biological fathers who are of age, have legal capacity and possess all the necessary documents are prevented from recognizing paternity. The truth is that discriminatory regulations preventing women from transferring citizenship to their children do exist in certain countries.¹¹ However, this is not the case in Serbia, and according to its regulations, both parents have equal rights of transferring their citizenship to their children – both to children born in the country of their parents' citizenship and outside of it. In practice, it happens that the father cannot transfer his citizenship to his children, but not due to certain discriminatory regulations (no such provisions exist in the Law on Citizenship of the Republic of Serbia) but because the competent bodies prevent them from recognizing paternity. Of course, this happens only in cases where the mothers are undocumented and these are precisely the cases where it would be crucial to allow recognition of paternity in order for the children to be able to acquire paternal citizenship. Numerous cases of children who inherited an uncertain citizenship-related status from their mothers could be resolved through the elimination of this negative practice which is not based on any regulation.¹²

¹¹ Most often, the regulations of some states make it impossible for women to transfer their citizenship to children in cases when mothers are married to foreign citizens or stateless persons. In Kuwait, for instance, the mother cannot transfer her citizenship to her children if the father is stateless or a foreign citizen. See: Open Society Justice Institute with Refugees International, "Statelessness, Discrimination and Repression in Kuwait", May 2011, pp. 9–10. Also, the provisions stipulating unequal opportunities for men and women with respect to transfer of citizenship to their children exist in national citizenship regulations in Morocco, Jordan, Algiers... For more information see, for instance: UN Division for the Advancement of Women, "Women, Nationality and Citizenship", June 2003, p. 9.

¹² This treatment is justified by an explanation that "the mother who has no identity card is not eligible to agree on the recognition of paternity". However, this acting is unlawful. Namely, if the regulation governing the way of registration of the fact of birth says nothing about the situations where the mother of the child is undocumented, a solution can be found in other regulations providing for the method of identification of persons without personal documents – on the basis of the statement of two witnesses who have personal documents. Such a way of identification of persons is envisaged by the Law on Non-Contentious Proceedings (*Official Gazette of the Republic of Serbia*, no. 25/82 and 48/88) and the Law on Certification of Signatures, Manuscripts and Handwritings (*Official Gazette of the Republic of Serbia*, no. 39/1993). The undocumented women who need to register the fact of birth of their children or agree on the recognition of paternity could be identified in the same way.

Also, when registering the children born in hospitals into birth registry books, considerable problems may arise from inaccurate or incomplete registrations of birth that the hospitals send to the bodies in charge of registering the fact of birth. As regards the children born in hospitals, one would reasonably expect fewer problems related to proving the identity of children's parents or mothers at least, but this is not always true in practice. Finally, grave problems may be associated also with the violation of children's right to know who their parents are. It even happened in these cases that a child, although legally in possession of citizenship, still did not have access to any of the rights.

Mirijeta

Mirijeta was born in the hospital in Pec, Kosovo. Her parents did not give her a personal name due to the lack of information – at the time of her birth her mother was 18, but did not have an ID card, did not know whom to contact to give the child a name or how to obtain an ID card.

Mirijeta's parents addressed Praxis for help in obtaining documents for the child this year. However, all Mirijeta got was a birth certificate without a name, surname,¹³ registered data about citizenship, and without a single information about her parents. The birth certificate states only the sex, date and place of birth of the child. The hospital failed to send the registry office the data about the name of the mother at least.

In cases when a child is born in a hospital and his/her name was not determined within a prescribed legal timeframe, the parents should address a Social Welfare Centre to subsequently determine the name. Before the same authority, the father should give a statement on the recognition of paternity, and the mother should agree on it. However, in this case, it was not sufficient for Mirijeta's parents to address the Social Welfare Centre because they do not have any evidence that the child born in Pec on the stated date is truly

¹³ Birth certificates without the registered data about name are only suitable for "official use" (e.g. in the procedure of determination of a personal name) and this certificate does not allow a child to access the rights.

their child. They do not have a hospital discharge record because they did not have time to collect the documents when they were leaving Kosovo so they cannot use this document to prove that Mirijeta is their child. In order for her to obtain documents, Mirijeta will now have to undergo the procedure of determination of a personal name, determination of maternity and paternity and, most probably, determination of citizenship and these procedures tend to last long and involve high costs that Mirijeta's parents are not able to afford by themselves. Furthermore, in cases such as Mirijeta's there is often the "the first step issue" – whether a child first needs to have a personal name determined or whether the child's parents should be determined first and who is, in fact, authorised to request the determination of the name. Sometimes, the answer as to which body is to take the first step is awaited for years, and most often the body that the undocumented person is addressing considers this step should be taken by some other body.¹⁴

Faton

Faton was born in a maternity hospital in Belgrade. Already at birth he had health problems and spent the first three months of his life in hospital. Therefore, it was necessary for him to obtain the documents urgently and register for health insurance. However, the problem was that his mother did not possess a single document and for that reason, not even his mother's name was entered into birth registry books.¹⁵ The mother did not manage

¹⁴ See the case *Sevdija* from the publication *Persons at Risk of Statelessness in Serbia*, where each body *Sevdija* had contacted considered she had to resolve one of the previous issues first. The administration body in charge of registration deemed that the personal name, maternity and paternity had to be determined first. The body in charge of establishing a personal name believed that first the fact of birth had to be registered and maternity and paternity determined first. The court where the lawsuit for determination of maternity and paternity was filed with (both in the first and the second instances) stated that the lawsuit could not be filed before the plaintiff was given the personal name. Each body *Sevdija* addressed advised her that a previous issue, not within that body's mandate, was to be resolved first.

¹⁵ Even in cases where mothers have no documents at all, almost all hospitals record in the notification of birth at least the name stated by the mother. On the basis of this hospital notification of birth, the date and place of birth and the identity of the mother are registered into birth registry books. Owing to that, there is no doubt as to who is the child's legal representative and the mother may submit a request to determine the name of the child when

to determine his name before the competent registrar because not only did she not have the required documents, but there was no evidence that she was indeed the mother of the child whose name she was trying to determine.

The mother then addressed the Social Welfare Centre. This body deprived her of parental care¹⁶ and put Faton under temporary custodianship of the Centre in order to determine his personal name.¹⁷ Having named the child and having obtained a health booklet for him, a decision was passed on the termination of temporary custodianship since "his mother reassumed her parental rights."¹⁸ However, there is still no official evidence on who Faton's mother really is – the child's documents still hold no information about the parents. Faton now has a birth certificate and citizenship,¹⁹ but these documents mean little to a three-year old child whose interests no one can represent before competent authorities. In the absence of evidence that it is their child, Faton's parents cannot verify his health booklet, submit a request for child's allowance or represent him in any procedure... They are not even authorised to request the issuance of the child's citizenship certificate at the competent registry office.

The refusal to register at least the name of a woman who gave birth to the child in birth registry books is incomprehensible and inadmissible. The action of competent bodies in this case is one of the most extreme indicators that the authorities, addressed by undocumented persons, truly consider these persons nonexistent.

Due to the fact that Faton's mother did not have any documents, the child's right to respect of identity and knowledge about his origins is put

she herself obtains the documents and even before that in some cases – if she is allowed to confirm her identity with the help of witnesses.

¹⁶ See Article 81, Family Law (*Official Gazette of the Republic of Serbia*, no. 18/05).

¹⁷ Even with the greatest efforts, one cannot find an answer to the question as to how the Social Welfare Centre managed, in this case, to deprive the child with no registered data about the parents of parental care.

¹⁸ See Article 145, para 2, Family Law

¹⁹ Since Faton did not have the data about his parents registered into birth registry books, it is assumed that the registrar had acted according to the provision of the Law on Citizenship of the Republic of Serbia referring to foundlings and entered his citizenship accordingly.

into question. Although Faton's right to citizenship has not been violated formally, he still remains without protection for there is no one who would request protection on his behalf and represent his interests.

An additional circumstance would be questionable in this case – child's deprivation of parental care for the purpose of obtaining a birth certificate. Faton did certainly need his birth certificate urgently, but the deprivation of parental rights should by no means be practice for the future cases where the parents are undocumented, because such an action constitutes a form of violation of the right to preservation of identity. In this case, the child was returned to "his primary family", but legally, the child continues neither to have a legal representative nor any evidence on who "the child's primary family is". For the duration of temporary custodianship, the Centre did not initiate the procedure of determination of maternity and paternity but left it to his poor and illiterate parents who will certainly not be able to do it by themselves and who cannot bear the costs of DNA analysis that will, almost certainly, be required in this case.

The children who have the right to Serbian citizenship by origin and/or birth in the territory of the Republic of Serbia, the fact of citizenship should be registered into birth registry books at the same time when registering the fact of their birth. No special request should be submitted, and no decision on establishing the fulfilment of requirements for citizenship needs to be issued. Still, many children remain "with undetermined citizenship" because the fact of their Serbian citizenship was not registered together with the registration of the fact of their birth. These persons may obtain citizenship certificates only after the competent authorities determine, by issuing a decision, that they have acquired the citizenship of Serbia in line with the regulations effective at the moment of birth.

Unlike the legally invisible, the persons with undetermined citizenship have a birth certificate and are not forced to prove who their parents are and where they were born. Their right to citizenship usually cannot be questioned. If they possess the citizenship certificates of their parents or at least one of them, they will manage to obtain official evidence on their own citizenship. However, these persons can also face significant obstacles.²⁰

The problem shared by all the persons with undetermined citizenship is the length of procedures. Even though a competent body should just apply the Law on Citizenship of the Republic of Serbia taking into account the incontestable facts on origin and place of birth of submitters of requests, the decision on determining citizenship is often awaited for a year, even longer in some cases.

The persons who do not have evidence of their parents having been Serbian citizens are facing particular problems, most frequently because their facts of birth and citizenship have been registered into registry books that were destroyed or have been missing.

The situation is particularly difficult for the elderly whose parents died a long time ago and who do not know accurate data about them. In such cases, only the attempts to obtain the needed evidence can last very long

²⁰ For more details on the problems in the procedures of determination of citizenship see *Persons at Risk of Statelessness in Serbia*, pp. 13–15

due to the fact that the place of registration of the parents is unknown. If impossible to find these documents, such persons will face grave problems in proving their origin and the right to citizenship. These persons may try to prove their origin on the basis of documents of their siblings, if available. If they do not have any siblings or if no such documents are available, they will probably never manage to determine citizenship.

Finally, problems may be a result of mistakes made at the time of data registration into registry books.

Nadira

Nadira was born in Serbia in 1939. She was registered into birth registry books and has had registered permanent residence in the territory of Serbia since the beginning of 1950ies. However, she has never been registered into citizenship registry books. Up to 1990ies, she was able to obtain an ID card without submitting her citizenship certificate. Following the dissolution of SFRY and upon the expiry of her ID card, she was not able to obtain a new identification document without providing her citizenship certificate. In order to get this document, her citizenship had to be determined first.

It took five months to obtain the documents for her parents and her birth certificate, the marriage certificate and the certificate on the absence of registration in citizenship registry books. However, the surnames of her parents differed in each of the documents (birth certificate, citizenship certificate, death certificate). An even greater problem is that one surname was recorded as her parents' surname and her maiden surname in all of Nadira's documents and a completely different surname in her parents' documents. Nadira could not reconcile the data on her surname with those of her parents' surname because she could not prove that these persons were truly her parents – her maiden surname and her parents' surname are not even similar.²¹ She tried to initiate a citizenship determination

²¹ Her documents do not contain any data about her parents (such as date and place of birth) in addition to their names and surnames. Therefore, the relationship between Nadira and her parents cannot be established on the basis of these documents.

procedure with such documents, but did not even manage to submit a request. She was told she could obtain Serbian citizenship only on the basis of naturalisation (admission), since she had registered permanent residence in Serbia and was married to a Serbian citizen.

Nadira was born in Serbia, of parents who were citizens of Serbia, but due to an inexplicable mistake in the registry books that happened more than half a century ago, she is neither able to prove her origin nor to explain why the persons she claims to be her parents have a totally different surname. After 72 years of living in Serbia, the only way for her to obtain evidence of her citizenship is to undergo the procedure stipulated for foreigners. Nadira also has a younger brother, whose Serbian citizenship and the exact parental surname has been registered into citizenship registry books. Because of the difference in surname, Nadira cannot even use her brother's documents as evidence of her origin. The mistakes in registry books administration resulted in a situation that is very difficult to explain – the brother is considered a Serbian citizen and the sister a foreigner, although born to the same parents, in the same state and in the period when the same regulations applied.

Nadira's is not a single case. Due to the omissions in administering registry books and registering the facts of birth and citizenship, many persons still live with undetermined citizenship. These omissions happen most often with children whose parents are of questionable citizenship or whom the competent body wrongly considers to be the citizens of another state. Nevertheless, even the children whose right to Serbian citizenship is not questionable, but who are subsequently registered in birth registry books, often remain without registered data on citizenship. Also, certain persons who have obtained citizenship certificates without any problems during their whole lives are sometimes forced to initiate citizenship determination procedures.

Saban and Faton

Saban was born in Kosovo in 1986 to the parents who are citizens of Serbia. The fact of his birth was registered within the legally prescribed deadline.

He was issued an ID card in 2008. Until January 2011, he used to obtain the certificate on the citizenship of the Republic of Serbia. He still possesses his old citizenship certificates, the last one of which was issued in March 2010. However, in January 2011, he was informed he would no longer be able to obtain the certificate on Serbian citizenship as long as his citizenship is not determined. He was issued a certificate stating that “the fact of the citizenship of the Republic of Serbia was not registered but the fact of RSFY citizenship!”²²

Faton was also born in a marriage of Serbian citizens. He was registered into birth registry books in due time and for 25 years he was obtaining Serbian citizenship certificates. However, in June this year, just like Saban, he received the information that he had to initiate a citizenship determination procedure and, instead of the citizenship certificate of the Republic of Serbia, he was issued a certificate stating that “the fact of the citizenship of the Republic of Serbia was not registered but the fact of RSFY citizenship”.

Until this year Faton and Saban have been considered Serbian citizens and had access to all the rights pertaining to the citizens, but now, all of a sudden, they can no longer obtain citizenship certificates because it turned out that they *had* some other *citizenship* – that of a state that ceased to exist almost two decades ago.²³ No reason was given to them as to why all of a sudden they are required to determine whose citizens they are, and they

²² RSFY is SFRY in Albanian

²³ As regards the citizenship of former SFRY, one should not forget the fact that no one could have a federal (SFRY) citizenship without being a citizen of one of the republics. The Law on Yugoslav Citizenship was passed in 1996 proclaiming the continuity of SFRY citizenship, whereas FRY citizens had to have at the same time (minimum one) republic citizenship (for further information see: Dusko Dimitrijevic, Regulation of Citizenship in the Territory of the Former SFRY Belgrade, August 2008). Therefore, it is clear that Faton and Saban had to have citizenship of one of the republics, as well as that each one of them having been born in Serbia, of parents who are Serbian citizens, and all with permanent residence in Serbia registered into birth registry books, could have had only Serbian citizenship. Citizenship had not ceased to any of them in legally prescribed ways nor had they acquired citizenship of another republic of the former SFRY. Following the dissolution of SFRY, it was defined which persons would, automatically, be considered citizens of then FRY (today the Republic of Serbia), and they did not have to submit any special requests to confirm that nor did they have to initiate procedures for the determination of citizenship. Nevertheless, the competent authority today instructs Saban and Faton to submit requests for determination of citizenship prior to requesting again the issuance of Serbian citizenship certificates.



were not explained how it can be that they are the citizens of SFRY 19 years after its dissolution and still do not have citizenship of any state that was the member of the former SFRY. Above all, they are not given the possibility of exercising the right to citizenship in a regular appeals procedure and they were left without any decision and instruction on legal remedy; the body simply informed Faton and Saban that it would no longer issue them citizenship certificates in the future and that they were not considered citizens of Serbia. An individual decision that they could appeal against has never been passed, nor delivered to them. Faton tried to respond to the unlawful action of the competent authorities by lodging a complaint to the Ministry of Interior. However, he got no response and it is almost certain he will not be getting it since an effective legal remedy in the procedures related to citizenship registry books has not existed for years.²⁴

Egzon

Egzon was born in Kosovo in 1995. He spent almost his entire childhood as a legally invisible person. In order to initiate the procedure of Egzon's

²⁴ More on this in the part about destroyed citizenship registry books – Part III

subsequent registration in birth registry book, the problem of his mother's documents had to be resolved first.

Egzon's mother left Kosovo for Serbia as an internally displaced person with an expired, torn ID card wherein most of the data were not discernible. The birth registry books for the town of her birth were destroyed. She was trying for years to register into reconstructed birth registry books. Only in 2009 with the help of Praxis, did she finally manage to get a positive decision on re-registration into birth registry books, and then she obtained an ID card.

Having obtained mother's documents, the procedure of subsequent registration of Egzon's birth was initiated. The decision allowing his subsequent registration into birth registry books was passed in April 2010, but without a determined personal name and data on citizenship.

In August 2010, the guardianship body passed a decision on determining the personal name, and so Egzon could finally obtain his birth certificate. However, due to an omission of the body that passed the decision on subsequent birth registration, Egzon is still unable to obtain the citizenship certificate though born in Serbia, to the mother who holds citizenship of the Republic of Serbia (the data on the father were not registered because he had not a single document). A request for the registration of the fact of citizenship was submitted to the administration body that passed the decision on subsequent birth registration and is in charge of administering birth registry books where the fact of Egzon's birth was registered.²⁵ It was emphasised that the child was born in the territory of the Republic of Serbia, to a mother who is a citizen of the Republic of Serbia and an unknown father, and thereby he obtained the citizenship of the Republic of Serbia by virtue of law. It was pointed out that the body that allowed the registration of the fact of birth should have ordered also the registration of data on citizenship

²⁵ The request was submitted on the basis of Article 26, Law on Registry Books (*Official Gazette of the Republic of Serbia*, no. 20/09) envisaging that the data that could not be registered will be registered subsequently on the basis of the decision issued by the body administering the registry books. The chances that the procedure would be successfully completed were very small, but nevertheless an attempt was made to submit the request in order to avoid the initiation of citizenship determination procedure because this type of procedure lasts ever longer.



at the same time and accordingly, a request was made to subsequently order the registration of that fact into birth registry books. However, the body proclaimed itself not competent to register the fact of citizenship and Egzon was forced to initiate also a citizenship determination procedure after the procedure of subsequent registration of the fact of birth and the procedure of personal name determination. This procedure is ongoing and Egzon still remains without his citizenship certificate.

It is certain that Egzon will be issued his citizenship certificate because his mother is a citizen of Serbia. Still, many things remain unacceptable – the period required for the issuance of these documents and in particular, the fact that among the individuals who eventually obtain all required documents, there is an alarming number of those who spend all their childhood without identity and any protection.

Egzon has been earning money to help feed his family by collecting secondary raw material since he was 11. According to him, the lack of citizenship affected him the worst when his sister, brother and mother spent a summer with their relatives in Bosnia, while he had to stay with his undocumented father (legally invisible person) because he could not leave Serbia. "The tickets were bought with the money I earned by selling scrap paper, but I could not travel because I do not have citizenship", Egzon said.

The impossibility to leave the state is but one of the many consequences of the lack of citizenship – the one that was readily visible for Egzon. But the consequences of the lack of citizenship and documents are always manifold. Egzon's case points to another important issue – his uncertainty with respect to citizenship would have lasted considerably shorter if only the competent body had applied the current regulations correctly and registered the fact of citizenship simultaneously with the registration of the fact of birth.

Mejrema and Bajramsa

The case of Mejrema and Bajramsa was mentioned in the 2010 publication about the persons at risk of statelessness,²⁶ but at that time they were still legally invisible persons.

Mejrema and Bajramsa's father was not married to their mother, but to another woman, and he died 12 years ago without recognizing paternity. Their mother died as a legally invisible person, without a single document. This caused problems when her body had to be taken from the hospital for funeral. Still, on the basis of the statements of family members, the fact of her death was registered in death registry books. On the basis of their mother's death certificate and the statements given by birth witnesses and their paternal brothers, Mejrema and Bajramsa managed to register into birth registry books in August 2011, but remain with undetermined citizenship.

Both sisters were minors at the time of passing the decision on granting subsequent birth registration – Mejrema was 17, Bajramsa 15. Both of them were born in Serbia. The data about the father could not be registered into birth registry books as they were born out of wedlock, and he had never recognized paternity. Therefore, only data about the mother were registered and she died undocumented whereas the first official record of her existence was registered only after her death. Nevertheless, even in such a situation, the body in charge of registration of the fact of birth and citizenship did not consider Mejrema and Bajramsa's mother a person of unknown citizenship and did not consider her daughters to have fulfilled the conditions for the

²⁶ See *Persons at Risk of Statelessness in Serbia, Zelfija Case*, pp. 10–11

acquisition of citizenship in accordance with the Article 13 of the Law on Citizenship of the Republic of Serbia – as children born in Serbia to the parents of unknown citizenship.²⁷ Evidently, the competent authority did not consider their mother a citizen of Serbia since it would have registered Mejrema and Bajramsa as citizens of Serbia only on the basis of the other article – the one referring to origin.

Since the body that registered Mejrema and Bajramsa into birth registry books did not think they had met the requirements to be considered Serbian citizens, they are now forced to try to exercise the right to citizenship in a citizenship determination procedure. However, the outcome of this procedure is very hard to anticipate.

It is almost certain that Mejrema and Bajramsa cannot prove their mother was a Serbian citizen because she did not even manage to prove her own identity and citizenship while she was alive. But another option remains contestable – it is not certain that their mother can be considered a person of unknown citizenship, and that Mejrema and Bajramsa will acquire citizenship on the basis of the provision of the Law on Citizenship of the Republic of Serbia stipulating that the children born in the territory of Serbia to the parents of unknown citizenship will be given Serbian citizenship.

The regulations do not provide guidelines to show when someone is considered to be of unknown citizenship in accordance with the Article 13 of the Law on Citizenship of the Republic of Serbia. The Rulebook on Registration of the Fact of Citizenship²⁸ in Birth Registry Books states that in such cases the registration of citizenship is to be done on the basis of a

²⁷ Article 13, Law on Citizenship of the Republic of Serbia reads: "A child born or found in the territory of the Republic of Serbia (a foundling) shall acquire the citizenship of the Republic of Serbia by birth if both his or her parents are unknown, or of unknown citizenship, or stateless, or if the child is stateless. A child who has acquired the citizenship of the Republic of Serbia pursuant to paragraph 1 of this Article shall be considered a citizen of the Republic of Serbia from the moment of his or her birth".

²⁸ Rulebook on registration of the fact of citizenship in birth registry books, the forms for keeping records of decisions on acquisition and termination of citizenship and the form of citizenship certificates (hereinafter: Rulebook on registration of the fact of citizenship), *Official Gazette of the Republic of Serbia*, no. 22/2005, 84/2005 and 121/2007.

document proving that the parents are of unknown citizenship. However, there is no instruction on how to obtain the document proving unknown citizenship, what the procedure of determination of unknown citizenship consists of, who issues such a document, what kind of evidence is to be submitted, possible limits to the discretionary right of the competent body in deciding on whether someone's citizenship is unknown...²⁹

Since there is no chance that they will be able to obtain the document proving their mother was of unknown citizenship, Mejrema and Bajramsa will manage to obtain citizenship only if the Ministry of Interior takes a different stand from that of the body that registered them into birth registry books and if it considers that their mother has truly been of unknown citizenship even without the aforementioned document. No doubt that this stand of the Ministry would be the only proper solution to these cases because it is inconceivable to force children to prove the citizenship of their deceased parents who were never allowed by the state to prove their identity and citizenship during their lifetime. This stand would be justified also because there is nothing to indicate that the two of them could have ties to any other state and that they would ever acquire another citizenship.

The issue that further complicates this procedure, but also makes it particularly important, is that the competent ministry will, for the first time, have to take a stand on the citizenship of persons who are not succeeding in registering themselves in birth registry books. For, before Mejrema's and Bajramsa's citizenship is determined (or before it is determined that they do not meet the requirements for Serbian citizenship), the competent body will have to give an answer on the citizenship of their mother who died as a legally invisible person and with respect to whom it was not determined whether she had a basis for the acquisition of citizenship of any state.

²⁹ Article 10 of the Rulebook on registration of the fact of citizenship in birth registry books, the forms for keeping records of decisions on acquisition and termination of citizenship and the form of citizenship certificates says only that for a child who acquires the citizenship of the Republic of Serbia by birth on its territory, the record about the document proving that the parents' citizenship is unknown is to be entered in the column "Subsequent Registrations and Notes".

So far, we have mentioned two administrative procedures whose outcome determines the possibility of exercising the right to citizenship – subsequent birth registration for the persons who have not been registered into birth registry books and determination of citizenship for the persons who have not been registered in citizenship registry books. Another procedure that many persons need to complete in order to be registered as citizens is the registration into reconstructed birth registry books. That procedure must be undergone by persons who were registered into the registry books that were destroyed, gone missing or left in Kosovo during the armed conflict in 1999. These persons acquired citizenship by birth and the registry books contained an entry on their citizenship of Serbia. They have never, in the course of their lives, lost citizenship in any of the legally prescribed ways such as discharge or renunciation. However, the record on their citizenship has been lost with destroyed registry books, and therefore these persons now live with the same deprivation of rights as those who have never acquired citizenship of any state.

As regards these persons, their situation becomes particularly disturbing when we are aware of the fact that the state was the party that has not managed to preserve the registry books, or to reconstruct them later. In addition, the increasingly challenging requirements are put before these persons in the procedures that they try to undergo in order to acquire citizenship.³⁰ The most severe criticism should be addressed to the state which in this situation has not even done the minimum – to ensure an efficient legal remedy.

Dostana, Mehmed and Esma

Dostana was registered in the citizenship registry books but these disappeared in Kosovo in 1999. Therefore, she had to initiate the procedure of registration into the reconstructed citizenship registry books. The request was submitted in September 2008. The first instance body did not pass a decision within the legal framework defined, so a complaint was lodged

³⁰ See *Persons at Risk of Statelessness in Serbia*, pp. 17–18

to the Ministry of Public Administration and Local Self-Government³¹ for silence of administration. Shortly thereafter, she was informed that her complaint had been forwarded to the Ministry of Interior (Mol), as the body in charged of deciding on citizenship-related issues.

However, with respect to the complaint for silence of administration, Mol failed to pass a decision within a legally prescribed timeframe, and not even in an extended period of seven days following the client's submission of a request to decide on the complaint.³² Dostana was forced to lodge a complaint for silence of administration to the Administrative Court.

Only a year and a half later, the Court passed a judgment ordering the second instance body to decide on the complaint within the 30-day timeframe.

Dostana did not receive the decision of the second instance body, but she did receive the decision of the first instance body refusing her request and referring her to a citizenship determination procedure.

More than three years have elapsed since the initiation of the procedure until the decision on refusing the request, and this is the only first instance decision in the procedure. However, the body passed a decision on the basis of the completely same evidence and facts that existed more than two years ago.

Thus the client lost three years – the period she had to wait only to get a negative decision. She did not appeal against the decision finally refusing her request as she is aware she would have to undergo the complaints procedure before the same bodies and with the same period of decision-making. Instead, she will try to establish the fact that she is the citizen of Serbia (citizenship determination procedure) in a totally different procedure before another body.

³¹ The present name is the Ministry for Human and Minority Rights, Public Administration and Local Self-Government. At the time of the initiation of this procedure and lodging a complaint, the name of this authority was the Ministry of Public Administration and Local Self-Government. For the purpose of simplification, the former name will be used in the text (i.e. its abbreviation: MPALSG).

³² The submission of this request is a condition for lodging a complaint with the court in case of double silence of administration.

Like Dostana, **Mehmed** submitted a request for re-registration in the citizenship registry books and then waited in vain for the decision upon complaint for more than three years. As in the case of Dostana, after double silence of administration, an administrative dispute was initiated and the Ministry of Interior was sued for failure to decide upon complaint. The situation was identical to that of Dostana. The same body was sued for the same reason – a failure to pass a decision upon complaint even after an intervention (request to decide upon complaint). However, in Mehmed's case, the court rejected the complaint as it found Mol not to be competent but MPALSG.

In addition to Dostana's and Mehmed's case in which Mol was sued, and the court decided Mol to be competent in one case, and MPALSG in the other, in the case of *Esma* MPALSG was sued. As opposed to Dostana and Mehmed, **Esma** sued MPALSG as it was the body that neither responded to the complaint nor forwarded the complaint to the Mol. The court adopted the claim, found the MPALSG to be competent and ordered it to decide on the complaint within 30 days. However, MPALSG then passed a decision



declaring itself not to be competent to decide upon the complaint. It was possible to initiate an administrative dispute against this decision, but Esma gave up on it because she knew how long the procedures lasted before the Administrative Court. She will also try to initiate a citizenship determination procedure, although the outcome is uncertain because she does not have a single document of her parents. Her parents deceased more than 50 years ago and were also registered in the registry books that were destroyed.

These three cases confirm there is no effective legal remedy in the procedures related to the registration into the reconstructed citizenship registry books. They confirm that the consequences of the lack of an effective legal remedy will not be eliminated even after the referral to courts because the courts continue to raise doubts about the competence of the second instance body – in two identical cases when Mol was sued, the court found that in one case body was indeed competent (*Dostana case*), and the second time that it was not (*Mehmed case*). In *Esma's case*, when another ministry – MPALSG - was sued, the court found this body to be competent to decide upon complaint, but the Ministry declared itself not competent.

The Government did not contribute to the resolution of the issue of competence either. Namely, in the period until the end of 2009, Mol and MPALSG declared themselves not competent to decide upon complaints related to citizenship registry books,³³ and the clients could only submit a motion to the Government to resolve the negative conflict of competencies.

Sevdija

Sevdija submitted a request for re-registration into the citizenship registry books in July 2008. Since the first instance body did not pass a decision in the legally prescribed timeframe, she lodged a complaint for silence of administration. The body that the complaint was lodged to (Ministry of Public Administration and Local Self-Government) sent the information shortly after that the complaint had been forwarded to the Ministry of

³³ The only change that took place after this period is that Mol does not proclaim itself not competent any longer. Instead, it does not respond at all to the complaints related to citizenship registry books and does not pass decisions upon complaints.

Interior explaining that this Ministry was competent to decide upon complaint. However, the Ministry of Interior passed a decision declaring itself not competent.

Since both bodies declared themselves not to be competent to decide upon the complaint, in March 2009 Sevdija submitted a request to the Government of the Republic of Serbia³⁴ to resolve the negative conflict of competencies between the Ministry of Public Administration and Local Self-Government and the Ministry of Interior.

Two and a half years have elapsed since the day of submission of the request, but the conflict of competencies has not been resolved to date, although Sevdija sent to the Cabinet of the Prime Minister three complaints about its failure to decide on the conflict of competencies. The Cabinet of the Prime Minister acted upon these complaints by forwarding them to other various bodies for their action (Republic Secretariat for Legislation, General Secretariat of the Government). Even the submission of rush notes to these bodies have not been successful and no answer to these have been received.

The procedure has been ongoing since July 2008. The decision upon complaint has been pending since December 2008. The procedure for resolving the conflict of competencies before the Government has been ongoing since March 2009. A total of five complaints and rush notes were sent with a view to passing the decision on the conflict of competencies, but in vain.

In all of these four cases, the persons of concern have unsuccessfully been trying to prove citizenship for three years, in a situation where they were deprived of evidence only by the state's fault. Lengthy procedures, without an efficient legal remedy, without care of the Government about the uncoordinated work of the ministries, impossibility to access any right reserved to citizens, impossibility of obtaining identification documents

³⁴ According to para 1, Article 58, Law on Public Administration (*Official Gazette of the Republic of Serbia*, no. 79/2005, 101/2007 and 95/2010), the conflict of competences among the bodies of the state administration is resolved by the Government. See also Article 28, Law on General Administrative Procedure (*Official Gazette of the Federal Republic of Yugoslavia*, no. 33/1997 and *Official Gazette of the Republic of Serbia*, no. 31/2001 i 30/2010).

prove substantially that the right to citizenship is seriously violated and indicate that these persons, despite having acquired citizenship of a certain state by birth, have been living for more than 10 years without a possibility to access any right that the citizens are entitled to.

After the dissolution of SFRY, many persons did not acquire citizenship of the state which they thought they belonged to, and some individuals still have no citizenship determined. Thus, many people have remained without the citizenship of Serbia although they had the strongest ties to this republic. The Law on Citizenship of the Republic of Serbia stipulates the simplified acquisition of citizenship for the former inhabitants of SFRY – by registering then into citizenship registry records³⁵ – and it was a very useful attempt to correct these injustices. The ties that were taken into account in stipulating the requirements for such simplified procedure of acquisition of Serbian citizenship cannot be challenged. The requirement was the nine-year long connection with the territory of Serbia, which, in the majority of cases, may be an indicator of a relevant and close tie to a state. However, we may challenge the method envisaged for proving these ties – only with the registration of permanent residence. There was no possibility to prove residence in Serbia in any other way, for instance on the basis of the fact that some persons had their children born in Serbia, school attendance, statements of witnesses... Consequently, some of the most vulnerable inhabitants of Serbia could not acquire its citizenship in a simplified procedure. This happened to persons originating from other republics who, due to poverty, had no legal basis to register permanent residence in Serbia though they had lived in it for years and Roma, who due to a nomadic or semi-nomadic lifestyle did not have permanent residence.³⁶

Migrations and dissolution of the common state did not only result in many individuals acquiring the citizenship of the republic they did not have the closest ties to. In such cases, it is at least indisputable that these persons have citizenship of some state, although the concerned individuals do not consider it “effective” and “useful” with reason. However, migrations within the borders of the former state and ties with several states had other, graver consequences. Namely, to date many persons have not managed to resolve the issue of

³⁵ See Article 52, Law on Citizenship of the Republic of Serbia

³⁶ The large number of such persons among the Roma population is best evidenced by the fact that even the legislator recognized this characteristic as one of the specific features of the Roma population. Namely, the laws related to health care provide for Roma who due to their traditional lifestyle have no temporary/permanent residence, and provides for special conditions for these persons to exercise their rights. However, in all other sectors, these specific features of Roma are totally neglected, including the acquisition of citizenship.

their citizenship and for some of them it is even difficult to presume whose citizenship they would acquire in the end, and how much time will elapse until that moment and whether they will acquire citizenship of any state at all.

The last year's publication discussed in depth the situation of persons who, following the dissolution of SFRY, did not acquire citizenship of the republic in which they lived. Therefore, special attention will be paid here to the persons who have ties (sometimes only presumed ties) with at least two former SFRY republics and who have not acquired citizenship of any as yet. A special note will be taken of the situation of their children. In addition, the selected cases should show the extent to which the ties with different republics interlink for some persons and what effect these situations have had on the lives of individuals after the dissolution of former SFRY.

Milica

Milica was born in Serbia, to a father, a citizen of Bosnia and Herzegovina and a mother, a citizen of Croatia. She was registered into birth registry books in Belgrade with the citizenship of Bosnia and Herzegovina entered in the column "citizenship". However, the fact that Milica is their citizen has never been recorded in the registry books in BiH and with the competent BiH bodies. Milica erroneously believed she had BiH citizenship. Only in 2010 did she learn she had no citizenship when she became pregnant and when she needed an identity card to register the birth of her baby.

As with the above discussed cases and some of the ones to follow, one can observe that the bodies registering the fact of birth of a child do not readily register Serbian citizenship, even when it is incontestable that the child meets the requirements for Serbian citizenship. However, in this case, the body that registered the fact of Milica's birth readily declared her the citizen of another state, although the bodies of one state should not be giving individuals the citizenship of other states. More than this incomprehensible act of the body that "bestowed" BiH citizenship on Milica, of graver concern is the fact that she now has no citizenship. Since one parent is a BiH citizen, she

could acquire BiH citizenship though born in another state.³⁷ The condition is to be registered with the competent body before turning 23, which is still possible, and to have permanent residence in the territory of BiH, which is not the case. Even if she tried to register a "fictitious" place of residence in BiH, it is not clear how she would be able to do it for her family has no property in Bosnia, and Milica could not just state any address in Bosnia as her own. What is more, she was born and lives in Serbia, has a common law marriage here and it would be important for her to acquire Serbian citizenship. Currently, she cannot even acquire Serbian citizenship because her parents failed to register her "official" address in Serbia.³⁸ An additional problem is that Milica has no identification document on the basis of which to request registration of residence in Serbia, and she is now of age and must have such a document. Milica will, most probably, first have to obtain a BiH citizenship certificate and Bosnian identification documents and only then try to resolve her status in Serbia. No doubt these procedures will be lengthy but starting from the fact that her parents have all the necessary documents, Milica should by no means remain without citizenship of any of the two states. Still, her case confirms to which extent the circumstances of life irrelevant before the dissolution of SFRY, have assumed a determining effect on the lives of individuals after its dissolution. The fact that someone was born in one state, to a mother – citizen of another state and a father – citizen of a third state was of no practical relevance before the dissolution of SFRY. However, the case of Milica shows that such ties may certainly cause complications in lives of individuals in present times.

Djevrija and Predrag

Predrag and Djevrija were born in a hospital in Serbia. Their mother Sabaheta is a legally invisible person who does not know a single piece of information about herself or her origin, except for the approximate year of birth and

³⁷ See Article 6, para 1, item 4, Law on Citizenship of Bosnia and Herzegovina, *Official Gazette of the BiH*, no. 13/99.

³⁸ Due to the lack of official address, Milica cannot request admission to Serbian citizenship even under Article 16 providing for the admission to citizenship of the children born in Serbia who resided in the territory of Serbia for at least two consecutive years prior to applying for citizenship thereof.



her mother's name.³⁹ Due to the lack of documents, she could not give her children personal names within the legally prescribed deadline. Since the births of Predrag and Djevrija were already registered, it was only necessary to specify their personal names and enter the data on their father. Praxis addressed the competent Social Welfare Centre and explained the situation of the children, asking the Centre to invite the parents to specify their personal names and recognise paternity. The Social Welfare Centre took the statement from the mother on the children's names and brought a decision on determining the personal names of Predrag and Djevrija. Two witnesses with ID cards confirmed her identity so that she could give this statement. However, the Centre refused to identify the mother in this same way so that she could agree on the recognition of paternity. Thus, the children got names and birth certificates, but were left with no citizenship. They could not get citizenship by their father, who is the citizen of Serbia, because the

³⁹ For additional information about the case of the mother see *Legally Invisible Persons in Serbia, Sabaheta*, pp. 16

recognition of paternity was not allowed. They did not acquire citizenship from their mother because their mother has no citizenship and is still a legally invisible person. They did not get the citizenship of the Republic of Serbia on the basis of the provision on granting the citizenship to children born in the territory of the Republic of Serbia who would otherwise be without citizenship. Namely, it is not even known whether their mother Sabaheta was born in Kosovo or Montenegro, because she lived as a child with her late grandfather in both Kosovo and Montenegro.

The mother had a certificate on not being registered in registry books in Montenegro in the place where she once lived, as well as a letter of the Social Welfare Centre Niksic stating that she had not been registered. However, the registrar who registered Predrag and Djevrija in birth registry books did not consider that their mother was of unknown citizenship, which would enable the children to acquire Serbian citizenship on the basis of Article 13 of the Law on Citizenship of the Republic of Serbia.

The negative practice of preventing the recognition of paternity has already been mentioned in the first Part. In this case too, Predrag's and Djevrija's citizenship would be incontestable had the father been allowed to recognise paternity, which was not allowed because there were no documents for the mother. Also, this case reopens the issue raised previously in the case of Mejrema and Bajramsa, i.e. the interpretation of the legal term "parents' citizenship unknown". Although there is no procedure under which Sabaheta could be entered in birth registry books and her citizenship determined and it is unclear which country she should address for that purpose, the competent authority did not consider her a person of unknown citizenship either and, as a consequence, did not consider that her children can acquire the citizenship of Serbia.⁴⁰

⁴⁰ Sabaheta is now about 24 and neither the Montenegrin nor Serbian regulations provide for the registration of persons of age abandoned by their parents and holding no documents for parents, who do not even know where and when they were born. The only evidence of her existence is the letter of the Social Welfare Centre Niksic sent to the Social Welfare Centre Zrenjanin stating that (at that point in time) she was a minor, not registered into birth registry books and without a single living and known relative. It remains unclear which procedure should Sabaheta initiate to resolve her status, nor which state is to be addressed to resolve her problem.

The lack of guidelines for the interpretation of “unknown citizenship” is problematic not only because it leaves unlimited space for discretionary conduct of competent authorities. The absence of guidelines for this issue is the reason why the children’s “citizenship” column is easily left empty, and despite the fact that there are thousands of them in Serbia without identity and with undetermined or disputable citizenship, so far Praxis has never encountered a case in which a child acquired the citizenship of Serbia under the *ius soli* principle because his/her parents were considered to be of unknown citizenship.

Although it is truly incomprehensible that Predrag and Djevrija’s mother Sabaheta could not have been considered a person with unknown citizenship, within the meaning of Article 13 of the Law on Citizenship of the Republic of Serbia, there is a more correct and reliable way to determine the children’s citizenship in this case – by enabling the recognition of paternity. However, in cases in which children have no possibility of acquiring any citizenship through either of their parents, determining the meaning of the term “unknown citizenship”⁴¹ can turn out to have a decisive influence on the child’s future status.

Behara, Ajsa and Rahman

Behara was born in Macedonia. Since 1980ies she has been living in Serbia where she established a common-law marriage with a citizen of Serbia, to which a daughter Ajsa was born in 1995. Behara was registered in birth registry books and Praxis succeeded in obtaining her birth certificate from Macedonia, but the registration of her citizenship has not been found anywhere. The only thing she managed to get from a registrar in Macedonia was verbal information that she has not been registered in the Macedonian citizenship registry books. Although she has been living in Serbia for already 30 years, she has not acquired its citizenship. She was unable to get it under

⁴¹ The lack of citizenship cannot be interpreted as unknown citizenship, because the right to citizenship is guaranteed separately for the children whose parents are stateless. Therefore, these could neither be the persons of disputable citizenship, nor *de iure* stateless persons, but persons who are *somewhere in between*.

more favourable conditions⁴² because she did not meet the requirements for the registration of permanent residence for nine years as a result of her poverty and life in informal settlements. She does not even meet the requirements for the admission to the citizenship of the Republic of Serbia (again because of her life in informal settlement and the fact that she has never married her common-law husband, who died in the meantime, and there is no other possible way of getting a permission to settle permanently and then requesting an admission to citizenship upon the expiry of the prescribed period).

Behara’s daughter **Ajsa** was born in Kosovo in 1995. She grew up as a legally invisible person. At the age of 15, she gave birth to a son **Rahman** in Belgrade, whom she could not register in birth registry books as she did not have any documents. The procedure of subsequent registration of his birth is still ongoing.

In early 2010, Praxis managed to subsequently register Ajsa in birth registry books but she still does not have citizenship.

Ajsa could not acquire the citizenship of Serbia on the basis of her father’s citizenship, because he passed away without having recognised paternity. She is unable to acquire the citizenship of Macedonia through her mother because her mother did not have her Macedonian citizenship determined either. The Law on Citizenship of the Republic of Serbia, in the abovementioned Article 13, stipulates that children born in the Republic of Serbia are entitled to citizenship of the Republic of Serbia if their parents are without citizenship or of unknown citizenship. Still, Ajsa’s citizenship has not been registered on these grounds either.

It is questionable which citizenship Ajsa’s son Rahman will acquire, if he manages at all to be registered in birth registry books. Irrespective of the fact that he was born in Serbia, Rahman could get the citizenship of Macedonia if it were determined that his mother is a citizen of Macedonia,

⁴² See Article 52 Law on Citizenship of the Republic of Serbia governing the acquisition of citizenship (for the persons from the former SFRY republics) through the registration into citizenship registry books.

which has not been determined as yet. On the other hand, he could acquire the citizenship of the Republic of Serbia based on Article 13 of the Law on Citizenship of the Republic of Serbia if it were determined that his mother Ajsa is of unknown citizenship, but a possibility of her acquiring the Macedonian citizenship has not been ruled out yet – if her mother were to succeed in acquiring the Macedonian citizenship, she would get it too. The precise answer to the question which citizenship will Rahman get could be given only after the citizenship of his mother Ajsa is determined, and that will be possible after the citizenship of her mother Behara has been determined. On the other hand, in order to determine Behara's citizenship, it is necessary to discover and prove her parents' citizenship. But they passed away over 20 years ago and only their names and surname are known. A final answer to the question "which country should Rahman be considered a citizen of" lies somewhere among the four generations of persons with no determined citizenship, connections with the two countries, endless difficulties with proving the citizenship of Rahman's grandmother Behara, whose undetermined citizenship triggered a whole series and a broad space for discretionary decisions of competent authorities. The only certain thing is the fact that these procedures would last for years. Moreover, for almost two decades Behara has been unsuccessful in obtaining even a certificate on not being registered in citizenship registry books in Macedonia.⁴³

This example already shows the difficulties faced by the persons left without citizenship of the country they lived in, after the disintegration of SFRY, and especially those who still do not know whether they are citizens of any country at all. The hardships their children encounter are evident, as well as why they inherit their problems from one generation to another.

In the above described case, Ajsa and Rahman would have to go through complicated, time-consuming and extremely uncertain procedures for

⁴³ When a request was submitted for the issuance of that document, Praxis was first told that Behara's passport or an ID and the citizens' personal identification number had to be supplied – documents that a person without citizenship, naturally, cannot have. Another attempt of obtaining a certificate on the absence of registration in the Macedonian citizenship registry books followed. The reasons why it was impossible to supply any of the requested documents for Behara were explained, but then she was requested to supply her parents' documents along with the request. Behara does not have their documents either.

their citizenship to be determined (three generations back) in order to possibly acquire the citizenship of a state in which they were not born, in which they do not live and with which they have no effective connections whatsoever. This is also confirmed by the fact that Ajsa does not even know the Macedonian language.

Precisely with the aim of avoiding such outcomes, it would be of paramount importance to resort to a more flexible interpretation of the term "parents' unknown citizenship" whenever possible and whenever a different interpretation would result in a child having to wait for years only to find out whether it might perhaps acquire another citizenship. Also, it is necessary to be guided by the child's best interest when deciding about the future of children who found themselves in such situations. It would be unreasonable to condemn children to attempts to acquire citizenship of some other state, when it is certain that years would pass before that could happen and when uncertain procedures for a number of persons from the child's family would have to be pursued for years before the child would meet the requirement to be granted the citizenship of another country. In addition, the verification of whether parents would get the citizenship of some other state should not last indefinitely. All this speaks in favour of the fact that it would be justified to treat the children born in Serbia, who found themselves in a situation in which Rahman and Ajsa are, equally to the children whose parents are of unknown citizenship, as regards the eligibility requirements for acquiring the citizenship of Serbia based on Article 13.⁴⁴

Another way in which they might acquire RS citizenship would be the application of Article 16 of Law on Citizenship of the Republic of Serbia.⁴⁵

⁴⁴ The recommendations contained in the Final Acts to the Convention of 1954 and 1961 have a similar approach as they recommend the state parties to, whenever possible, equalise *de facto* and *de iure* stateless persons. The recommendation of equal treatment of *de iure* and *de facto* stateless persons is given with a view to allowing *de facto* stateless persons as well to acquire (effective) citizenship of any state.

⁴⁵ Article 16 of the Law on Citizenship of the Republic of Serbia reads: "A person born in the territory of the Republic of Serbia can be accepted as citizen of the Republic of Serbia if until submitting of application for admission for at least two years he/she has been residing uninterruptedly in the territory of the Republic of Serbia and if he/she submits a written statement that he/she considers the Republic of Serbia his/her own state"...

However, this Article requires that the citizenship applicants have an uninterrupted registered residence of minimum 2 years, and Rahman and Ajsa cannot fulfil this condition either.⁴⁶ In order to enable the children like Rahman and Ajsa to resolve their status based on this Article, they should be allowed to prove their continuous two-year residence in other ways too, not just with the registration of permanent/temporary residence. With the disintegration of SFRY many persons were left without RS citizenship because they were denied a possibility to prove their long-year attachment to its territory other than with the certificate of residence. Serbia should prevent their children, who were born in its territory, from being left without Serbian citizenship for these same reasons.⁴⁷ It would be hard to find a third possibility for these persons but current practice certainly cannot be considered acceptable since it consists of leaving the citizenship column empty easily and leaving these persons on their own in attempts to obtain evidence and pursue procedures in other states. And when poor and ignorant Roma find themselves in such situation, it is sure that without any help most of them will fail in this.

⁴⁶ It is absurd that persons such as Rahman and Ajsa, though born in Serbia and objectively, due to undetermined citizenship and lack of travel documents, cannot leave Serbia, and could not meet the requirements for the registration of residence in Serbia. They have neither a basis nor documents required for being granted residence (see Law on Foreigners for more details on the requirements for granting temporary residence and obtaining a permit for permanent settlement, *Official Gazette of the Republic of Serbia* no. 97/2008).

⁴⁷ The State should neglect this requirement for a very simple reason – there is no other humane solution to their situation. They could not be even expelled, as they would not be accepted in Macedonia since none of them have the Macedonian citizenship and it is uncertain whether they would ever be able to determine it. Also, without the approval of permanent residence and renunciation of other citizenship, in line with Article 18 of the Law on Citizenship of the Republic of Serbia, the citizenship of Serbia may be granted to immigrants from Serbia or the former SFRY, irrespective of the fact that these persons had not had genuine ties to Serbia for decades (see for instance: Varadi, Bordas, Knezevic, Pavic, *International Private Law*, Belgrade 2007, p. 267). This reinforces the justification for eliminating the aforementioned requirement for persons who certainly have close ties with Serbia, who were born and grow up in Serbia and hold no other citizenship.

Milutin, Dario, Srecko

After living for many years in different countries of Western Europe, Ljilja and her husband were returned to Serbia in early 2011 as returnees upon readmission. They have three children – Dario, born in Italy, Milutin, born in France and Srecko born in Serbia, a couple of months after his parents returned to Serbia.

Mother Ljilja grew up in Italy with no documents whatsoever. She thinks her parents sold her when she was a baby, because she begged for years for the people who brought her to Italy.

Although Ljilja did not have a single document, she managed to register her child born in Italy in birth registry books. The data about the mother were registered based on her statement. Based on that birth certificate, the child was registered in the registry books in Serbia.⁴⁸ The father, who has documents, was allowed to recognise paternity and the child acquired the citizenship of Serbia on these grounds.

Ljilja was allowed to register the birth of the child that was born several months after their arrival to Serbia, although she did not have any documents that are usually required when registering a birth. Data about the mother were entered on the basis of statements. Even paternity recognition was allowed so that the child also acquired the citizenship.

The third child, born in France, still has no documents and they are waiting for the answer from the Embassy of Serbia in France whether his birth has been registered in France.

Even before the children got their birth and citizenship certificates in Serbia, they were registered for health insurance. Even the mother, who is without any documents, got a health booklet since she was pregnant when she came to Serbia. These procedures were completed in a very short time.

⁴⁸ See Article 76 of the Law on Registry Books referring to the registration into registry books on the basis of a document issued by a foreign authority.

Unfortunately, such examples are rare in Serbia. In most of such cases, the children whose mothers are legally invisible persons cannot get a name, let alone citizenship. Health insurance is inaccessible for them, same as all other rights, and the fathers are unable to recognise paternity. However, only such actions of the competent authorities can be in line with the Convention on the Rights of the Child and the principle of the child's best interests. Above all, such treatment by the competent authorities was the only way in which the children could get their documents. Had they waited, as in most other cases, for the mother to obtain documents first, Ljilja's children would have most probably spent their childhood without identity and documents.

Apart from pointing to the direction in which the regulations and practice should move as regards the registration of children in registry books and their access to all rights, this example shows why the problem of legally invisible persons should not be neglected and how the failure to enter the fact of birth can bring individuals at risk of being left without any citizenship. If the regulations on the procedure of subsequent registration in birth registry books do not change, it is almost certain that this will happen to Ljilja. The only thing she knows about herself is that she was born around 1988. It is assumed that she is from Cacak and that her parents are also from Cacak. She has no evidence on the date and place of birth, she does not know whether there are any witnesses to her birth and she does not know anyone who could confirm her assumption that she was born in Cacak. In addition, Ljilja does not know who her parents are or whether they are still alive. Because of all this, it is quite certain that she will not succeed in being registered in birth registry books, particularly since the existing legislation does not provide an answer to the question whether the registration in birth registry books can be made without entering data on parents in cases other than those involving foundlings or children without parental care. It is unclear in which way the competent authority will determine her place of birth, when Ljilja is the only one who has some (only indirect) information on her origin and the only thing corroborating the truth of her claim on the origin is the language she speaks. Currently, the law does not offer solutions for the situation in which she has found herself.

6. Conclusion

The described examples clearly illustrate the implication of unresolved identity and citizenship issue and demonstrate the roots of challenges faced by many people who are trying to exercise their right to citizenship, even when it is indisputable which state should enable them to exercise that right.

Most difficulties result from the fact that the procedures one has to pursue in order to exercise the right to citizenship are complicated and time-consuming. This particularly refers to legally invisible persons and the absence of precisely regulated procedure for subsequent birth registration. If we also take into account the fact that there is a number of families affected by the interwoven issues of undetermined citizenships, destroyed registry books, invisibility before the law, migrations and links to more than one republic, it becomes clear what obstacles such persons have to overcome in order to prove their citizenship.

In addition to complicated and lengthy procedures, the problem is further deepened by the specificity of the very group at risk of statelessness – it mostly consists of the members of an extremely vulnerable group – the Roma. This particularly refers to legally invisible persons who are, almost without exception, of Roma ethnicity; the members of that minority group account for the greatest number of those who have never succeeded in acquiring the RS citizenship after the disintegration of SFRY because they could not register their place of residence.

Due to the extreme vulnerability of Roma, the persons belonging to this group face difficulties in meeting the requirements imposed equally on all individuals, irrespective of the need of certain communities for special protection. Therefore, the Roma often fail to acquire citizenship even in simple, clear-cut cases in which there is all necessary evidence sufficient to prove that a person has acquired the right to citizenship. If these persons are Roma who do not have the required evidence, if it is questionable which citizenship they have or if they are refused, it is almost certain that those who lived for decades on the margins cannot go alone through these procedures that should lead them to citizenship.

An aggravating circumstance is the fact that all stated problems and all these persons have been neglected for too long so that today it often happens that instead of determining one person's identity or citizenship, some families face the necessity of establishing the identity of several individuals through several generations.

Another indicator of disregarding the issue of undocumented persons is the discrepancy between the requirements for the registration of newborns and the reality reflected in the fact that thousands of persons have no documents required for registering their children into birth registry books.⁴⁹

Finally, it is also disregarded that the existing regulations do not allow a number of individuals to be registered in birth registry books, because they are not able to provide any evidence of their origin and birth place but their testimonies, which are not considered sufficient for approving subsequent birth registration. No different is the situation with the persons who had been entered in the birth registry books that were destroyed and have no evidence left on the previous registration. These persons are also denied a possibility to enjoy their right. They can neither register the birth of their children, nor transfer them their citizenship. Even after years of engaging in proceedings many do not succeed in obtaining once again the documents which they were left without through the state's fault. By maintaining such situation and prolonging the deprivation of right of such persons, the state has been persistently violating its own regulations which stipulate the obligation of immediate reconstruction of destroyed birth registry books.⁵⁰

The disregard of these problems is contrary to the international obligations

⁴⁹ According to the UNHCR 2011 survey, it is estimated that 24,000 of Roma do not have identity cards, 6,000 of them do not have a single document (for more details see "Persons at Risk of Statelessness", Gazela Pudar, UNHCR, 2011). According to the existing regulations, the parents who possess neither an identity card, birth certificate nor a citizenship certificate cannot register the birth of their child. This information answers the question as to why the problems of undocumented persons are multiplied and why the number of Roma children who cannot obtain documents at birth and exercise their right to citizenship is on the increase.

⁵⁰ See Article 44 of the Law on Registry Books and items 80 and 89 of the Instruction on Administration and Forms of Registry Books (*Official Gazette of the Republic of Serbia*, no. 109/2009, 4 / 2010 - corr. and 10/2010, 25/2011).



that the state has undertaken, primarily Article 7 of the Convention on the Rights of the Child, which obligates the states to register the child immediately after birth. If the only way to achieve this in Serbia means the abandoning of strict requirements regarding documents necessary for birth registration, then such a solution has to be accepted. If the state demonstrates a true political will to solve these problems and simplify the birth registration mechanism, this will, at the same time, ensure the respect of the right to citizenship of these children. Timely registration of children in birth registry books will eliminate doubts regarding the state of birth and origin, which is the first and requisite precondition for exercising the right to citizenship.

Also, as regards those families that have lacked documents for generations, the only way to enable their registration in birth registry books, in the absence of any other evidence, is to accept verbal or written testimonies. It is impermissible to leave such persons with no solution and they have to be enabled to, at least, get a birth certificate and temporary ID documents based on which they could regulate their status as regards legal residence and, in time, the issue of citizenship.



6. Conclusion

As regards the persons from the former SFRY republics (especially children) who undoubtedly meet the requirements for the citizenship of another state, the measures should be undertaken to enable them to exercise their right to citizenship. Legal-political considerations would require taking into account the choice of such persons to remain living in the Republic of Serbia after the disintegration of the joint state and the state, respecting such circumstances, should undertake additional measures to render their naturalisation easier. This particularly refers to those individuals who have small chances to acquire some other citizenship. It would be very useful to introduce different amounts of fees and charge them according to the social status of persons requesting the admission into citizenship.

Considering a number of persons “in limbo” between citizenship and statelessness, it is clear how important it would be to provide guidelines for the interpretation of the term “parents’ unknown citizenship”. This would ensure the application of an extremely useful provision aimed at preventing statelessness at birth, which the competent authorities, unfortunately, have completely disregarded so far. The provision of such guidelines would be in line with the recently assumed obligations from the Convention of the Reduction of Statelessness and an expression of the commitment to its goal.

The undertaking of the aforementioned measures is necessary also in order to prevent the occurrence of statelessness since in some cases it is very hard to draw a line between the absence of the right to citizenship and the impossibility to prove the right to citizenship. When it comes to the possibility of enjoying the right, there is no difference between these cases. Those who certainly are not considered citizens under the laws of any country and those living in uncertainty of ever being able to obtain citizenship are equally deprived of their right. It is precisely this consequence – deprivation of right – that does not allow further disregard of the described problems. The deprivation of right is even more disconcerting than the fact that these persons live while denied an essential part of their identity and with a feeling of not belonging anywhere.