**Praxis**
and
**European Network on Statelessness**

Joint Submission to the Human Rights Council
at the 43rd Session of the
Universal Periodic Review (4th cycle)

# Serbia

11 October 2022

Praxis and the European Network on Statelessness (ENS) welcome the opportunity to make this joint submission to the Universal Periodic Review (UPR), on the right to a nationality and human rights challenges pertaining to statelessness in Serbia.

**Praxis** is a national non-governmental organization established in 2004 in Belgrade that protects human rights by providing legal protection and advocating for elimination of systemic obstacles in access to rights. Praxis acts in the area of civil registration and statelessness, socioeconomic rights, antidiscrimination, gender equality, migration, child rights and public administration reform. Since its establishment, Praxis has been providing free legal aid to persons at risk of statelessness, i.e. persons who are not registered in the birth books, who did not acquire citizenship or whose citizenship has not been confirmed or determined, or who do not have personal documents. So far, Praxis has provided free legal aid to more than 12.000 persons at risk of statelessness in almost 17.000 administrative and court proceedings.[1]

The **European Network on Statelessness** (ENS)[2] is a civil society alliance of NGOs, lawyers, academics, and other independent experts committed to addressing statelessness in Europe. Based in London, it currently has over 170 members in 41 European countries. ENS organises its work around three pillars – law and policy development, awareness-raising, and capacity-building. ENS provides expert advice and support to a range of stakeholders, including governments. This submission partially draws on information and analysis from ENS's Statelessness Index, which covers Serbia.[3]

## Introduction

1. This joint submission focuses on the rights to birth registration, nationality, residence registration and access to free legal aid. The submission specifically refers to the exercise of these rights for the members of the Roma national minority.
2. The Roma is the most discriminated against ethnic minority and one of the most discriminated against social groups in Serbia[4]. Among the members of the Roma ethnic minority, persons who do not possess personal documents stand out as being in a particularly difficult position. These are primarily persons who are not registered in birth registry books and stateless persons, but also the persons who cannot register their permanent residence in the place they live or who, for other reasons, cannot obtain identity documents, health booklet or other personal documents. They are all either deprived of access to most rights or the possibility to enjoy these rights is significantly narrowed down.

[1] Praxis is the main submitting organisation. For more information, see: https://www.praxis.org.rs.
[2] For more information, see https://www.statelessness.eu.
[3] ENS, Statelessness Index: Serbia, https://index.statelessness.eu/country/serbia.
[4] See annual reports of the Commissioner for Protection of Equality, available at: http://ravnopravnost.gov.rs/en/reports/

**Issue 1 – The right to immediate birth registration**

Serbia's international obligations and previous UPR recommendations

3. Serbia is a party to the Convention on the Rights of the Child (CRC, 1989) and the International Covenant on Civil and Political Rights (ICCPR, 1966). Article 7 of the CRC and Article 24, paragraph 2 of the ICCPR guarantee the right to birth registration and to a personal name for every child*, immediately after birth*. According to UNICEF, the legal standard 'immediately after birth' "implies a defined period of days rather than months".[5]
4. Within the Third Cycle of the Universal Periodic Review (29th session in 2018), Serbia received the recommendation to "***Ensure that all children born in Serbia have access to timely birth registration immediately after birth, without discrimination and regardless of the legal or documentation status of their parents***".[6] Serbia has supported that recommendation.
5. Serbia received similar recommendations during previous UPR cycles. Within the First Cycle of the UPR (3rd session in 2008), Serbia received a recommendation "*to strengthen measures to ensure registration of all Roma in Serbia*",[7] while within the Second Cycle of the UPR (15th session in 2013) the following recommendations were made: "*Carry out necessary measures, including legislative amendments, to ensure that all persons born in Serbia have access to birth registration regardless of the status of their parents*"[8] and "*Take appropriate measures to ensure that the basic civil and political rights of Roma are being assured and that birth registration is available and accessible for all children without discrimination*."[9] Serbia accepted these recommendations.
6. Despite support for the recommendation that all children born in Serbia should be registered immediately after birth, this recommendation has **not yet been implemented** and many children born in Serbia continue to be unable to be registered at birth.
7. Various UN Treaty Bodies also emphasised in their recommendations to Serbia that children whose parents do not possess documents must be enabled to register in the birth registry immediately after birth, without discrimination and regardless of the legal

[5] UNICEF, Implementation Handbook for the Convention on the Rights of the Child (2007), p. 100, available at: http://www.unicef.org/publications/files/Implementation_Handbook_for_the_Convention_on_the_Rights_of_the_Child.pdf.

[6] Human Rights Council, Report of the Working Group on the Universal Periodic Review, Serbia, 18 April 2018, A/HRC/38/17, recommendation 114.28 by Brazil.

[7] Human Rights Council, Report of the Working Group on the Universal Periodic Review, Serbia, 8 January 2009, A/HRC/10/78, recommendation 22 by Austria.

[8] Human Rights Council, Report of the Working Group on the Universal Periodic Review, Serbia, 22 March 2013, A/HRC/23/15, recommendation 132.8 by Mexico.

[9] Human Rights Council, Report of the Working Group on the Universal Periodic Review, Serbia, 22 March 2013, A/HRC/23/15, recommendation 132.93 by Brazil.

or documentation status of their parents.[10] The European Commission in its progress reports for 2019, 2020 and 2021 also stated that all births need to be registered immediately after children are born, regardless of their parents' status, and called on Serbia to amend the related implementing legislation.[11]

8. Serbia has also committed to fulfil the Sustainable Development Goals, one of them being to provide "legal identity for all, including birth registration" (Goal 16.9). Moreover, in the revised Action Plan for Chapter 23 of the EU accession negotiations from 2020, Serbia committed to "amend the by-laws governing the procedure of birth registration and entry into the birth registry … in order to enable registration in the birth registry immediately after the birth of children whose parents do not have personal documents" by II quarter of 2021 (activity 3.6.2.8).[12] However, it seems that Serbia abandoned its pledge to amend the by-laws. Thus, in the reports on the implementation of the Action Plan from 2021, the Ministry of Public Administration and Local Self-Government declared that "this activity is not acceptable", at the same time falsely claiming that in Serbia there is "a mechanism that enables every child to be registered in the birth register immediately after birth".[13] Controversially, although nothing has changed since the adoption of the Action plan and since the publishing of the reports of its implementation in 2021 (the disputed provisions of by-laws are still in force), in the "Revised AP23 with implementation status" from July 2022 it is unexpectedly stated that "Activity is being successfully implemented",[14] portraying progress that is not seen in practice.

National legal framework

[10] Concluding observations on the third periodic report of Serbia of the Committee on Economic, Social and Cultural Rights – recommendation 31 (c); Concluding observations on the third periodic report of Serbia of the Human Rights Committee - recommendation 15 (b); Concluding observations on the fourth periodic report of Serbia of the Committee on the Elimination of Discrimination against Women – recommendation 32; Concluding observations on the combined second and third periodic reports of Serbia of the Committee on the Rights of the Child – recommendation 31.

[11] The European Commission's Serbia 2019 report, p.29, available at https://neighbourhood-enlargement.ec.europa.eu/system/files/2019-05/20190529-serbia-report.pdf; The European Commission's Serbia 2020 report, p.40, available at: https://neighbourhood-enlargement.ec.europa.eu/system/files/2020-10/serbia_report_2020.pdf; The European Commission's Serbia 2021 report, p.40, available at: https://neighbourhood-enlargement.ec.europa.eu/document/download/fbe0f0b7-d8ff-4b89-a4ed-af5ccd289470_en?filename=Serbia-Report-2021.pdf.

[12] Republic of Serbia, Negotiation Group for Chapter 23, Action Plan, Judiciary and Fundamental Rights, July 2022, available at: https://www.mpravde.gov.rs/files/Revised%20AP23.docx.

[13] Republic of Serbia, Coordination Body for the Implementation of the Action Plan for Chapter 3, Report on the Implementation of the Revised Action Plan of Chapter 23: „Justice and Fundamental Rights", available at: https://www.mpravde.gov.rs/files/Report%20on%20AP23%20implementation%203-2021.docx.

[14] Republic of Serbia, Negotiation Group for Chapter 23, Action Plan, Judiciary and Fundamental Rights, July 2022, available at: https://www.mpravde.gov.rs/files/Revised%20AP23%20with%20implementation%20status%20as%2030.%20June%202022.docx.

9. The Serbian Constitution prescribes that every child shall have the right to a personal name and entry in the registry of births,[15] while the Family Law stipulates that everyone shall have the right to a personal name and that the personal name shall be acquired by birth.[16]
10. Despite its international obligations and domestic laws, Serbia does not ensure the right to immediate birth registration in the case of children born to parents who do not have identity documents. The reason for this lies in the provisions of two bylaws[17] which stipulate that parents' data is entered into the birth notification form and birth registry books on the basis of their birth certificates (and marriage certificates if they are married) and identity cards (or passports for foreigners). This means that in cases where the mother does not possess such documents, it will not be possible for her to record the personal name of her child and the child will remain unregistered in the birth registry, regardless of the documentation status of the father. In cases where the father is undocumented and the mother possesses her documents, the child can be registered but without a recognised paternity. If the child remains unregistered after birth, it will be necessary to conduct one or more procedures: determination of the child's personal name (if the child is born in the hospital), subsequent birth registration and determination of the date and place of birth (if the child is born at home). These procedures can often be complicated and lengthy, lasting from several months to sometimes even years.

The impact on children and families

11. In this way, the child's right to timely birth registration is grossly violated. It is also a violation of the child's right to non-discrimination on the basis of their parents' documentation status, prohibited by Article 2 of the CRC, and prevents children from enjoying several other fundamental rights. During this time, the affected children are left without birth and citizenship certificates and, consequently are unable to access healthcare and social welfare in a critical period of their life. Their families, usually belonging to already marginalised groups, are unable to access parental and child allowance, further contributing to social exclusion. The lack of identity documents is also perpetuated intergenerationally, as the parents who lack identity documents were themselves not registered at birth. In its work, Praxis is constantly coming across new cases of Roma children who are not registered in the birth registries, mostly due to the lack of documentation of the parents. In 2021, Praxis had 95 new cases of unregistered persons born in Serbia.

Attempts to solve the problem and legal initiatives

12. In 2018, 2019 and 2021, Praxis sent appeals to the Ministry of Public Administration and Local Self-Government, as the competent body for amendments of the bylaws that

[15] Constitution of the Republic of Serbia, article 64, paragraph 2.
[16] Family law, article 13, Official Gazette of the Republic of Serbia, no. 18/2005, 72/2011 – other law and 6/2015.
[17] Article 5 of the Rulebook on the procedure for the issuance of birth notification and form of the issuance of birth notification in a health care institution and points 10 and 24 of the Instruction on administering registry books and forms of registry books.

prevents timely birth registration. However, the Ministry did not recognise the need for amendments, explaining that the Serbian legal framework enabled every person to be registered in the birth registry, but ignoring the fact that children of undocumented parents cannot be registered *immediately* after birth.

13. Similarly, Serbia in its Third Cycle Mid-term Report states that "It can be concluded that the legal framework allows every child to be registered in the birth registry book",[18] but again ignores the fact that children whose parents do not have personal documents cannot be registered immediately after birth.
14. In 2018, Praxis lodged the Initiative to the Constitutional Court of Serbia for assessment of the provisions of two by-laws that prevent registration of children in the birth registry immediately after birth in the case when children's parents do not possess personal documents. However, the Constitutional Court rejected the initiative. While not denying the impossibility of registering children of undocumented parents immediately after birth, the Court points out that every person over the age of 16 is obliged to have an identity card, and that a fine or prison sentence is prescribed for those who do not have identity cards. The Constitutional Court ignored the reality that many Romani women in Serbia cannot obtain identity cards (e.g. because they themselves are not registered in the birth registry or because they cannot register their residence) and thus ignored the child's right to be registered immediately after birth. In June 2022, Praxis lodged an application with the European Court of Human Rights on behalf of a child who could not be registered in birth registry books immediately after birth.[19]
15. At the end of 2020, an *Instruction for dealing with cases of birth of a child whose parents are undocumented in order to enable birth registration* was adopted and distributed to competent bodies. Although it is not publicly available, the distribution of this instruction demonstrates that the Government acknowledges that issues related with birth registration still exist. However, that Instruction could not solve the problem of timely birth registration because it does not address the question of how to register a child of an undocumented mother immediately after birth. It only guides the authorities on how to act to subsequently register the mother in the birth registry and/or obtain her personal documents, while the child remains unregistered until the mother obtains an identity card. Moreover, this Instruction is not a legally binding act and the experiences of undocumented beneficiaries of Praxis who gave birth in 2021 and 2022 showed that this Instruction is not applied in practice. Indeed, even the acquisition of documents for the mothers is not facilitated.

[18] Universal Periodic Review – UPR, Third Cycle, Mid-Term Report of the Republic of Serbia, 2018-2020, February 2021, p. 63.

[19] See Praxis, Praxis lodged an application with the European Court of Human Rights for Violation of the Right to Register in Civil Registry Book, available at: https://www.praxis.org.rs/index.php/en/praxis-in-action/status-and-socioeconomic-rights/item/1685-praxis-lodged-an-application-with-the-european-court-of-human-rights-for-violation-of-the-right-to-register-in-civil-registry-books; Praxis, The case of Mirita – Just another one of many or a turning point? available at: https://www.praxis.org.rs/index.php/en/praxis-in-action/status-and-socioeconomic-rights/item/1683-the-case-of-mirita-just-another-one-of-many-or-a-turning-point.

16. In order to solve this problem, it is necessary to amend the above-mentioned provisions of the by-laws that prevent timely birth registration.

Conclusion

17. Therefore, despite the provisions of ratified international treaties and domestic laws, as well as the recommendations of international bodies and the obligations undertaken by the State, in Serbia every child still does not have the right to registration immediately after birth.
18. The lack of immediate registration may create the risk that some children will not be registered at all, which increases the risk of statelessness. Even if children eventually have their births registered (and subsequently have a recognised name and acquire confirmation of their nationality), they will nevertheless spend a period of time without birth registration and the legal protection that comes with it. The fact that there are still children who cannot obtain birth and citizenship certificates at birth is not just contrary to the need to prevent statelessness, but leads to the violation of a series of other rights of children.

**Issue 2: Late birth registration**

19. In cases where more than 30 days have passed since the day of birth, and the child has not been registered in the birth register, it is necessary to carry out the procedure for subsequent registration. In 2012, a non-contentious court procedure for determining the date and place of birth was introduced into the Serbian legal system, to facilitate the registration of persons who cannot prove their date and place of birth in the administrative procedure. This procedure has allowed many people, who were previously legally invisible, to finally register their birth.
20. However, despite this progress, some practical challenges remain. Most courts significantly exceeded the deadlines for completing the procedure. In many procedures, the parties were requested to pay fees, although the law exempted them from that obligation. Although the law only prescribes that witnesses must be adults, the courts applied different evidentiary rules – some courts required witnesses to be close relatives, and others did not accept relatives as witnesses. In many cases, it took an unreasonably long time for the courts to send the decisions to the registrars, from several months to even more than a year.
21. In 2020, the Supreme Court of Cassation issued a conclusion on the jurisdiction of the courts in non-contentious birth registration procedures.[20] This Conclusion could particularly hinder the exercise of the right to birth registration, as the court held that non-contentious procedures for determining the date and place of birth could be

[20] Civil Division of the Supreme Court of Cassation, Conclusion on the jurisdiction of the non-contentious court in the procedure of registration in birth registry books, 3 July 2020.

conducted only if the administrative procedure for subsequent registration in the birth registry books had been previously conducted and were unsuccessful. In addition, the Supreme Court of Cassation states that a person who had been registered in birth registry books, but those books were destroyed, cannot initiate a procedure for determining the date and place of birth, which applies to "persons registered in the birth registry books of the so-called Republic of Kosovo".

22. Such positions of the Supreme Court of Cassation not only unreasonably hinder or deny citizens access to the court, but are also in conflict with the applicable regulations and the Constitution of Serbia. Insisting that administrative procedures should be conducted in cases where it is obvious that the parties have no prospect of success would not only unnecessarily prolong the period in which citizens remain without registration in birth registry books and often exposed them to futile costs, but would also increase the risk of citizens not initiating a court procedure and remaining unregistered as a result of their discouragement by the lack of success in the administrative procedure.
23. The position taken by the court, that persons who were registered in birth registry books that have now been destroyed or are missing cannot request the court to determine their date and place of their birth, is contrary to the provisions of the regulation governing the administration of civil registry books.[21] For citizens who do not have the evidence required to re-register their birth according to the administrative procedure, this position means that they will not be able to access the non-contentious court procedure, leaving them without any possibility to re-register their birth in the birth registry books.. The lack of registration results in a serious violation of their rights, and these people should not be the ones bearing the burden of the state's failure to keep the civil registry books that it was obliged to take care of.
24. The position of the Supreme Court of Cassation according to which persons who are registered in "the birth registry books of the so-called Republic of Kosovo" cannot request the court to determine the date and place of their birth also puts these citizens in a hopeless situation, because it is not possible to exercise any rights before the authorities of the Republic of Serbia on the basis of documents from Kosovo. If the first-instance courts act in line with the position of the Supreme Court of Cassation,[22] many citizens born and registered in Kosovo will not have the possibility of registering in the birth registry books and regulating their status, regardless of the fact that they have not been living in Kosovo for years, that they may have lived in cohabitation and had children in Serbia (outside Kosovo), and regardless of the fact that they meet the

[21] Point 93 of the Instruction on administering civil registry books and forms of registry books provides that in cases where it is impossible to reconstruct destroyed or missing civil registry books due to the impossibility of obtaining evidence, the competent authority will instruct the citizen to initiate a court procedure for establishing the relevant facts, and that re-registration in civil registry books will be done on the basis of a court decision.

[22] The Supreme Court of Cassation has the task of unifying the practice of the courts. The legal positions adopted at the session of the division of the court are binding on all chambers within the division of that court and are not binding on lower courts. In practice, lower courts usually adhere to the positions adopted by the Supreme Court of Cassation.

requirements for Serbian citizenship.

25. In 2021 and 2022, cases began to appear in which the courts acted in accordance with the Conclusion of the Supreme Court of Cassation, which caused late birth registration more difficult or impossible.[23] In April 2022, Praxis lodged a constitutional appeal on the behalf of the woman whose proposal for determining the date and place of birth was rejected by the first and the second-instance courts, because she is registered in the civil registry books in Kosovo. Her request for subsequent registration in the administrative procedure was previously also rejected.[24]
26. These problems in the practice of first-instance courts and such positions of the Supreme Court of Cassation threaten to seriously compromise and significantly undermine the positive changes brought about ten years ago, and to put many citizens in a situation where they cannot register in birth registry books, and consequently, access a large number of rights. Thus, the number of legally invisible persons may start to grow rapidly, since undocumented parents cannot register their newborn children in birth registry books.
27. Persons who are not registered in the birth registry books and for whom it is necessary to carry out procedures for late birth registration belong almost exclusively to the Roma population.[25] Within the Third Cycle of the UPR, Serbia received several recommendations to improve the position of Roma and to end their discrimination, including to "***Strengthen anti-discrimination mechanisms, including for lesbian, gay, bisexual, transgender and intersex persons, and continue efforts to promote the human rights of persons belonging to minorities, especially the Roma minority***";[26] ***"Improve the human rights situation of the Roma minority"***;[27] and ***"Ensure the effective integration of Roma people into Serbian society"***[28]**.** Serbia has supported these recommendations, but they have **not been implemented yet**.

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[23] See, for example, a case study of one Praxis beneficiary, Praxis, Conclusion of the Supreme Court of Cassation Hinders Katarina's Registration into Registry Books, available at: https://www.praxis.org.rs/index.php/en/praxis-in-action/status-and-socioeconomic-rights/item/1682-conclusion-of-the-supreme-court-of-cassation-hinders-katarina%E2%80%99s-registration-into-registry-books/1682-conclusion-of-the-supreme-court-of-cassation-hinders-katarina%E2%80%99s-registration-into-registry-books

[24] See the case study, Praxis, Judicial practice leaves citizens undocumented, available at: https://www.praxis.org.rs/index.php/en/praxis-in-action/status-and-socioeconomic-rights/item/1672-judicial-practice-leaves-citizens-undocumented/1672-judicial-practice-leaves-citizens-undocumented

[25] Members of the Roma national minority are most represented among persons without documents and those whose births have never been registered. Protector of Citizens of the Republic of Serbia, *Report on the position of „Legally Invisible" Persons in the Republic of Serbia*, Belgrade, 2012, p. 11, available at: http://www.ombudsman.rs/attachments/2222_Izvestaj%20o%20polozaju%20%20pravno%20nevidljivih%20u%20RS.pdf.

[26] Human Rights Council, Report of the Working Group on the Universal Periodic Review, Serbia, 18 April 2018, A/HRC/38/17, recommendation 113.10 by France.

[27] Human Rights Council, Report of the Working Group on the Universal Periodic Review, Serbia, 18 April 2018, A/HRC/38/17, recommendation 113.72 by Mozambique.

[28] Human Rights Council, Report of the Working Group on the Universal Periodic Review, Serbia, 18 April 2018, A/HRC/38/17, recommendation 113.73 by Germany.

**Issue 3: Free legal aid**

28. Realisation of the right to birth registration, as well as access to other fundamental rights, is further threatened by the adoption of the Law on Free Legal Aid (which began to be implemented in October 2019). Although the proclaimed goal of the law is to provide every person with effective and equal access to justice, that is, that every individual must have access to legal aid, the law had the opposite effect in many cases.
29. According to the law, free legal aid providers are attorneys-at-law, services for the provision of free legal aid in local self-governments and citizens' associations (non-governmental organisations). However, the provisions of the Law that determine the procedures in which non-governmental organisations are allowed to provide free legal aid are not sufficiently clear and precise, and contradict the explanation of the Bill provided by the Government to the Assembly. They create legal uncertainty and leave room for different interpretations and therefore for the possibility of assessing the work of non-governmental organisations as illegal. According to the prevailing interpretation of the provisions of the Law, non-governmental organisations are not allowed to provide free legal aid in court proceedings or even to provide assistance in administrative procedures.
30. In recent decades, socially vulnerable categories of the population have relied almost exclusively on free legal aid provided by non-governmental organisations. After the Law on Free Legal Aid limited the possibility for non-governmental organisations to provide free legal aid, the only option for many citizens has been to initiate a procedure before the municipal authorities for obtaining free legal aid provided by attorneys-at-law or municipal legal aid services. However, the experience of Praxis' beneficiaries who tried to obtain legal aid in this way in the first two years of application of the Law are extremely negative. In almost all cases, their requests were rejected, and always orally, without a written decision. The practice has shown so far that the officials who decide on the requests often abuse the ignorance of clients and orally reject their requests for legal aid to which they are entitled by law. It was only when Praxis started providing assistance to citizens by drafting written requests or speaking to officials that citizens were granted free legal aid, although in some cases this did not help either. Overall, the practice has shown that clients are usually unable to exercise the right to free legal aid on their own.
31. The Law on Free Legal Aid generally requires beneficiaries to comply with financial eligibility requirements in order to obtain legal aid, although in some special cases it guarantees legal aid regardless of the fulfilment of conditions related to the person's financial situation. Those who do not have to fulfil these conditions include persons who are not registered in birth registry books and should exercise the right to registration through the procedure for determining the date and place of birth. However, all other persons at risk of statelessness and undocumented persons who need to initiate other procedures (e.g. subsequent registration in birth registry books,

acquisition of citizenship or registration of permanent residence) are excluded from these exceptions. In all these cases, individuals must meet the financial eligibility requirements to access legal aid, but they are often unable to obtain evidence to prove their financial situation.

32. The Law on Free Legal Aid does provide that stateless persons are potential beneficiaries of free legal aid, but there is no procedure for determining statelessness status in Serbia, which means that these persons will not be able to prove their status and therefore will not exercise the right to free legal aid.
33. There was no appropriate information campaign, due to which most marginalised and socially vulnerable citizens still do not know that they have the right to free legal aid or where to seek assistance.[29]

**Issue 4: Acquisition of citizenship for otherwise stateless children born in Serbia**

34. The main way of acquiring Serbian citizenship is by descent - a child whose parents are citizens of the Republic of Serbia will get the same citizenship. However, to prevent statelessness among children born in Serbia, Article 13 of the Law on Citizenship of the Republic of Serbia stipulates that citizenship can also be acquired by birth in the territory of Serbia, if both parents are unknown or have unknown citizenship or if the child would otherwise be stateless *(jus soli)*. Citizenship should be acquired at birth, automatically, by operation of the law.
35. Although this provision is automatic in the law, in practice this is not the case. In cases of children born in Serbia whose parents were stateless or of unknown citizenship, registrars most often do not enter data on Serbian citizenship in birth registry books, nor do they check the fulfilment of the requirements for acquiring citizenship by birth. Children are therefore registered without a record of their citizenship. In order for these children to acquire evidence of their citizenship, it is necessary to conduct special procedures before the Ministry of Interior.
36. Given that the procedures for acquiring citizenship before the Ministry of Interior are usually very lengthy (lasting from several months to often more than a year), children remain stateless for a long period of time and uncertain about whether they will even acquire citizenship.
37. An additional problem arises from the practice of excluding persons over the age of 18 from acquiring citizenship on the basis of the *jus soli* principle, which is contrary to the Law on Citizenship and Serbia's obligations under the 1961 Convention.[30] It is possible to acquire Serbian citizenship on the basis of birth on its territory only until the age of

[29] For more information on problematic provisions of the Law on Free Legal Aid and problems in the implementation of the Law see: Law on Free Legal Aid – the First Year of Implementation: Have the Goals Been Achieved?, Praxis 2021, available at: https://www.praxis.org.rs/index.php/en/reports-documents/praxis-reports/item/1597-law-on-free-legal-aid-%E2%80%93-the-first-year-of-implementation-have-the-goals-been-achieved.

[30] Serbia is State Party to the 1961 Convention on the Reduction of Statelessness.

18, whilst persons aged between 18 and 21 are left without protection. According to the 1961 Convention, the timeframe for submitting the request cannot end before a person has reached the age of 21. The purpose of this provision is to ensure that otherwise stateless children will have a chance to submit an application after becoming adults. This is important for preventing the risk of statelessness, particularly for persons without a birth certificate or whose citizenship remains undetermined after the age of 18. According to current practice in Serbia, if no one submits an appropriate request for acquisition of citizenship on behalf of a child before the child reaches the age of 18 years, the person will be unable to apply for citizenship themselves after coming of age.

38. As a result, and contrary to international standards, the only route to citizenship for a stateless young person born on the territory of Serbia, whose nationality has not been confirmed or determined as a minor, is through naturalisation. The naturalisation procedure is 15 times more expensive than the procedure for the acquisition of citizenship by birth, which presents a further barrier to the acquisition of nationality. Procedures for naturalisation are also more uncertain, because the Ministry of Interior is authorised to reject an application for naturalisation even if the legal requirements for acquiring citizenship are met, while this could not be possible in the procedures for determining citizenship on the basis of birth.
39. Besides being contrary to the 1961 Convention, this practice is also not in accordance with the Law on Citizenship, as the law does not prescribe that citizenship by birth can be acquired only up to a certain age.
40. The individuals affected by these barriers are almost exclusively members of the Roma national minority, who already face significant challenges in accessing birth registration and citizenship rights, therefore exacerbating their discrimination, marginalisation and social exclusion.
41. Within the Third Cycle of the UPR, Serbia received several recommendations related to the position, integration and discrimination of Roma, including "***Take further measures to overcome the prevailing discrimination against Roma in the enjoyment of economic, social and cultural rights***"[31]**;** ***"Strengthen efforts to prevent and combat all forms of discrimination, including against women, children, Roma and lesbian, gay, bisexual, transgender and intersex persons***"[32]**;** ***"Take the necessary steps to ensure the rights of minorities, particularly the Roma"***.[33] Serbia has supported these recommendations, but they **have not been implemented yet.**

**Issue 5: Registration of residence**

[31] Human Rights Council, Report of the Working Group on the Universal Periodic Review, Serbia, 18 April 2018, A/HRC/38/17, recommendation 114.103 by Albania.
[32] Human Rights Council, Report of the Working Group on the Universal Periodic Review, Serbia, 18 April 2018, A/HRC/38/17, recommendation 113.14 by Italy.
[33] Human Rights Council, Report of the Working Group on the Universal Periodic Review, Serbia, 18 April 2018, A/HRC/38/17, recommendation 113.67 by Afghanistan.

42. With regard to registration of permanent residence, Roma residents of informal settlements and non-legalised buildings benefited from the Law on Permanent and Temporary Residence of Citizens (from 2011), as they were provided a possibility to register residence at the address of a social welfare centre. However, some obstacles are still present.
43. In practice, persons who already have permanent residence registered are denied this option, even though they have not been living in their place of permanent residence for years or decades and have lost connection with that place (this primarily refers to Roma IDPs from Kosovo, who inhabited informal settlements in Serbia after fleeing Kosovo).
44. There are also irregularities in the procedure for registering permanent residence at the address of a social welfare centre. In this procedure, the police station sends a registration form to the social welfare centre, which is due to verify it. The regulations do not allow a margin of discretion for the social welfare centres to decide whether to give consent, but only stipulate that they are obliged to verify a registration form. However, in some municipalities, social welfare centres stopped verifying registration forms (i.e. they no longer give consent to the registration of permanent residence at their address). This has resulted in the Police rejecting requests for registration of residence. Irregularities have also been observed in a number of police stations in which officers refused to receive the requests and referred the parties to first address the social welfare centre, contrary to the procedure stipulated by the law.
45. Furthermore, in a great number of police stations, those who wish to register permanent residence and obtain ID cards for the first time are referred to the police station in their place of birth, even though these persons have not been living there for years or decades. This again especially refers to Roma IDPs from Kosovo.
46. Within the Third Cycle of the UPR, Serbia received the recommendation to "***Adopt a comprehensive policy aimed at providing durable solutions for all internally displaced persons in Serbia, which would include local integration in a pragmatic way, taking into consideration return and settlement in other places, implementing the law on temporary and permanent residence in a holistic manner***".[34] Serbia has supported that recommendation.
47. However, this recommendation **has not been implemented yet**, and many Roma, primarily internally displaced persons from Kosovo, cannot register permanent residence in the place where they live, even after more than two decades after displacement. This results in people being denied or struggling to access many rights which can only be exercised at the place of residence, including most social services and health protection. Persons who do not have a registered residence cannot obtain an identity card and, as previously stated, parents who do not have identity cards cannot register their children in the birth registry books immediately after birth.

[34] Human Rights Council, Report of the Working Group on the Universal Periodic Review, Serbia, 18 April 2018, A/HRC/38/17, recommendation 114.116 by Honduras.

48. In its Third Cycle Mid-term Report, Serbia provides some data on the number of persons who have registered permanent residence at the address of a social welfare centres (1,142 persons in the period from 20 December 2017 to 11 December 2020).[35] Information that a significant number of persons had their permanent residence registered should be welcomed, but it is worrying that a significant number of persons living in Serbia have still not been able to achieve this. According to research conducted in 2020 by UNHCR and Cesid, there were 2,027 Roma, Ashkali and Egyptians who live in Roma settlements without a registered permanent or temporary residence.[36]

[35] Universal Periodic Review – UPR, Third Cycle, Mid-Term Report of the Republic of Serbia, 2018-2020, February 2021, p. 63.

[36] See: Persons at Risk of Statelessness in Serbia: Overview of Current Situation and the Way Forward, UNHCR and Cesid 2020, available at: https://www.refworld.org/pdfid/615efd094.pdf

**Recommendations**

49. Based on this submission, the co-submitting organisations propose the following recommendations:

- Remove all practical barriers to birth registration and ensure that every child is registered immediately after birth, regardless of the status of their parents.

- Amend the regulations that prevent immediate birth registration of children of undocumented parents or that have a particular discriminatory impact on minority groups, including Roma, Ashkali and Egyptians communities.

- Take measures to facilitate the subsequent birth registration of all persons who are not registered in the birth registry books immediately after birth. Ensure that the procedures for determining the time and place of birth are carried out in accordance with existing regulations and as soon as possible after birth.

- Ensure that children's nationality status is determined and recorded as soon as possible after birth in order to ensure that otherwise stateless children born in Serbia acquire a nationality.

- Establish an efficient and effective system of free legal aid, which will enable all socially vulnerable residents to access justice.

- Amend the Law on Free Legal Aid to eliminate the existing contradictions and shortcomings; and authorise non-governmental organisations and graduate lawyers employed in these organisations to provide free legal aid in accordance with the laws governing the rules of procedure in certain areas of law.

- Conduct an information campaign to inform citizens about the possibility and procedure to obtain free legal aid and provide training for decision-makers responsible for legal aid applications, including on the principles of good governance and anti-discrimination.

- Ensure the correct interpretation and implementation of Article 13 of the Law on Citizenship (regulating the right to Serbian citizenship on the basis of the *jus soli* principle) in line with the 1961 Convention on the Reduction of Statelessness and the Convention on the Rights of the Child. Specifically, ensure that nationality is acquired automatically and that young people aged between 18-21 years, who would otherwise be stateless, can access their right to acquire Serbian citizenship.

- Take measures to enable all citizens to obtain an identity card and register permanent residence in the places where they live. To that end, ensure the consistent application of the regulations governing the procedures for registering permanent residence and issuing an identity card.