

European Network on Statelessness submission to inform the European Commission 2020 Enlargement Package: progress towards addressing statelessness in Enlargement countries

January 2020

The [European Network on Statelessness \(ENS\)](#) is a civil society alliance with over 150 members in 41 countries, committed to addressing statelessness in Europe. Everyone has the right to a nationality. We believe this must be respected and that the human rights of people who lack a nationality – stateless people – must be protected. We are dedicated to working with stateless people in Europe to advocate for their rights. We aim to reach our goals through law and policy development, awareness-raising, and capacity-building. We welcome the opportunity to inform the European Commission's 2020 Enlargement Package. This submission covers Albania, Bosnia-Herzegovina, Kosovo, Montenegro, North Macedonia and Serbia, and is based on information provided by our members working in those countries, our [Statelessness Index](#), and our [#RomaBelong project](#).

1. Albania

The last few years have seen notable progress and commitment on the part of the Government of Albania to addressing statelessness. This was exemplified at UNHCR's High-Level Segment on Statelessness in Geneva in October 2019 where Albania made one of the most positive and comprehensive interventions by European States, delivering three concrete and measurable pledges towards ending statelessness in the country. Albania pledged to introduce a statelessness determination procedure by 2020; to fully implement the legislative amendments improving access to birth registration for children of Roma and Egyptian communities and children born to Albanian nationals abroad, by 2021; and to effectively reduce the risk of statelessness and align its Law on Citizenship with the 1961 and 1954 statelessness conventions by 2019.¹

To meet these very welcome and ambitious commitments, the Government and donors will need to invest in training and capacity building for its institutions and public services, and continue to work closely with key stakeholders such as UNHCR, ENS and our national members, Tirana Legal Aid Society and Roma Active Albania. Six new bylaws were approved in March 2019 implementing the amended Law on Civil Status (which came into force in October 2018), which have significant practical implications for Albanian consulates abroad and the courts, Civil Registry Directorate (and offices), child protection, health and other administrative services in Albania, as well as for lawyers and civil society.

In the course of its casework with children and families at risk of statelessness, Tirana Legal Aid Society has reported inconsistent application of the new process for the certification of judicial fact of birth by judges of the District and Appeal Court; a lack of communication in practice (despite an official communication requiring close cooperation) between the Ministry of Interior and the Ministry of European and Foreign Affairs about the changes to the Law on Civil Status; and a lack of capacity among consular officials on the ground to implement the changes. With support from ENS, TLAS conducted three training sessions and engagement activities with Albanian consular officials in Greece (Athens, Ioannina and Thessaloniki) in 2019, during which the need for a concerted investment in further guidance, capacity-building, awareness-raising and coordination between civil status officials in Albania and consular authorities abroad was identified.

¹ <https://www.unhcr.org/ibelong/results-of-the-high-level-segment-on-statelessness/>

Albania's political commitment to bring its law, policy and practice in line with international standards for the protection of stateless people and prevention and reduction of statelessness is very welcome. It will be important for Albania to continue to engage with key stakeholders, including statelessness experts, as it seeks to establish a statelessness determination procedure in line with international norms and good practice, and to reform its nationality law, including to ensure that otherwise stateless child born in Albania can acquire Albanian nationality regardless of the legal status of their parents.

2. Bosnia-Herzegovina

The Government of Bosnia-Herzegovina (BiH) has also shown welcome political commitment to addressing statelessness in recent years. This was again exemplified in the four concrete and measurable pledges it made at UNHCR's High-Level Segment on Statelessness in Geneva in October 2019. BiH committed to developing, by the end of 2020, a state action plan for ending statelessness by 2024 in cooperation with all relevant stakeholders; to developing a dedicated statelessness determination procedure and providing stateless people rights in accordance with international conventions by 2022; to issuing nationality documents to people who cannot acquire documentary proof of their nationality and creating a mechanism for regulating the status of long-term residents (formerly displaced SFRY citizens) by 2022; and improving birth registration for all children regardless of their or their parents' status (in particular children born to BiH parents abroad and the children of undocumented parents born in BiH) and improving birth registration law and practice, by 2023.

These very welcome commitments must be accompanied by investment in monitoring, capacity-building and implementation activities, including in close cooperation with key stakeholders such as UNHCR, ENS, our national members, Association "Vaša Prava BiH", and wider civil society including groups representing and advocating on behalf of people disproportionately affected by (risk of) statelessness in BiH, Romani communities, refugees and migrants.

A lack of state funded legal aid, an excessively formalistic approach and prejudicial attitudes among civil registry officials present barriers to civil registration for Romani people and other marginalised communities in the country. Specifically in 2019, our member reports that people who have expressed their intention to seek asylum and people with irregular migration status faced difficulties in registering new-borns, since the authorities require parents to provide the same documentation as people with regulated residence status in the country. This results in delays, birth registrations not being conducted within the regular deadline, and registrations not containing information on the child's father. Depending on the country of origin, this could potentially lead to statelessness, as the nationality laws of 25 countries around the world (including several countries of origin of refugees arriving in Europe such as Syria, Iran, and Iraq), do not permit women equal rights to confer their nationality on their children.²

Permanent residence remains one of the most important factors for the enjoyment and exercise of many rights, including to civil registration, identity documents, healthcare, social welfare and travel documents. Romani people living in informal settlements are usually unable to register their permanent residence at the address where they live. The authorities have discretion when assessing the evidence of those in vulnerable circumstances, but rarely use it in such cases, exacerbating documentation challenges and the risk of statelessness.

² See www.statelessjourneys.org for more information.

3. Kosovo

The legal framework for the prevention and reduction of statelessness and the protection of stateless people in Kosovo is relatively strong. Kosovo is one of only a handful of countries in Europe to have established a dedicated statelessness determination procedure (SDP), for example. However, there are continued challenges in the consistent implementation of the law across the country. The first applications for determination of stateless status were admitted in 2018 with two positive decisions issued in 2019. Seven applications remain pending. The Government should invest in capacity-building for decision-makers to strengthen the institutional framework for the implementation of the SDP. Various administrative and bureaucratic obstacles continue to create barriers for access to rights, although there have been recent improvements.

On the prevention and reduction of statelessness, our member, Civil Rights Programme Kosovo (CRPK), reports that the situation concerning people in possession of documents issued by relocated municipal civil status registration offices managed by the Serbian Administration is being successfully addressed by the Ministry of Internal Affairs (MIA). Following a decision of the MIA, between July 2018 and the end of December 2019, around 760 birth, 853 marriage and 389 death registrations were conducted, and the possibility of an extension of the deadline to 2020 has been announced. The decision mainly affects the Serb community, but Romani people in Kosovo have also benefitted from this action with the support of NGOs. CRPK has supported 10 Romani children to register their births under this decision, for example. Issues relating to the change of spouse surnames have been resolved, and a further decision was issued enabling non-Kosovar parents in possession of Serbian Coordination Centre Passports and married to Kosovar citizens to register as foreigners in Kosovo and obtain temporary ID cards on this basis.

The late birth registration procedure in Kosovo can be considered an example of good practice, as, where evidence can be provided, this can be completed through a simplified administrative procedure rather than a more lengthy and complex non-contentious court procedure. Where evidence is missing, a bylaw enables late birth registration with two witnesses. With the support of UNHCR and Romani community advocates, CRPK has been conducting awareness-raising activities on the importance of birth registration, available municipal protection mechanisms, the identification of unregistered persons, and coordination mechanisms between communities and the authorities. This has resulted in improved identification of people who are unregistered and swifter action on the part of municipal civil status offices. CRPK has also convened meetings with other NGOs to coordinate identification efforts and facilitate access to registration, rights and services.

Nevertheless, people who are unregistered and at risk of statelessness are completely reliant on the legal assistance provided by NGOs, as state-funded legal aid requires proof of citizenship as a precondition for eligibility. In 2019 alone, CRPK supported 330 people with legal aid related to late birth registration and citizenship matters. Roma, Ashkali, and Egyptian communities in Kosovo continue to be disproportionately impacted by the risk of statelessness, contributing to their marginalisation and preventing access to public services as well as political, social and economic rights.

The Kosovar Government should ensure that the right to legal aid extends to all those on the territory who require it to access their rights to legal identity, protection and nationality. It is also vital that Kosovo undertakes concrete action and introduces systemic solutions to address the risk of statelessness faced by Romani people in the country.

4. Montenegro

The Government of Montenegro also made four political commitments to addressing statelessness at the UNHCR High-Level Segment in Geneva in October 2019, pledging to strengthen implementation of the statelessness determination procedure and access to rights; to improve communication between relevant ministries to facilitate the immediate birth registration ‘of children abandoned by their mothers or whose mothers are missing identification documents’; to implement simplified procedures for obtaining identification documents in cooperation with neighbouring countries and grant remaining pending cases of refugees from the former Yugoslavia the status of ‘foreigners with permanent residence’ by 2023; and to sharing its experiences of work to prevent statelessness with other countries.

Although these public commitments are welcome, there remain important gaps in Montenegro’s approach to addressing statelessness and implementing international standards. The statelessness determination procedure does not substantively improve legal protection for stateless people in Montenegro as it does not establish statelessness as a ground for protection and legal residence, merely allowing stateless people who fulfil strict criteria to benefit from legal residence under general rules. The conditions it sets out for the issuance of a stateless travel document are not in line with the 1954 Convention. There remain significant barriers to stateless people and those at risk of statelessness resolving their lack of a nationality through the acquisition or confirmation of Montenegrin citizenship. Montenegro could use the opportunity of its commitments at the High-Level Segment in 2019 to improve its SDP to ensure that it has in place a rights-based, protection-oriented framework in line with international standards and the UNHCR Handbook on the Protection of Stateless Persons.³

Our member, Roma youth NGO, Phiren Amenca, has worked in 2019 with ENS support to train volunteers to identify Romani individuals and families at risk of statelessness in Podgorica and refer them to specialist legal advice to resolve their legal status. Between April and July 2019, their five volunteers identified 38 people at risk of statelessness, 32 of whom were referred to specialist legal advice. Of these, 25 were cases of people with no legal status. The most common reasons for this were that the person had lost their former status as a displaced person or never had the status of a displaced person; they had not accessed the pre-registration procedure prior to 2014; or they were returnees from Western Europe. This small-scale volunteer-led project in one region demonstrated the value of training community members to lead mapping and outreach projects to identify individuals at risk of statelessness and connect them with expert legal advice to help resolve their status. This project identified more cases that it had capacity to support in just a few months, indicating the need for an investment in similar projects to build capacity and provide legal advice within Roma communities, who remain disproportionately at risk of statelessness in the region.

5. North Macedonia⁴

There has continued to be some positive political commitment to addressing statelessness in North Macedonia in 2019, most notably demonstrated in its welcome pledge at the High-Level Segment on Statelessness to accede to the 1961 Convention on the Reduction of Statelessness (and subsequent formal accession on 3 January 2020). The new Law on Foreigners, which came into force in May 2019, also includes a new provision to grant permanent residence to those former citizens of SFR Yugoslavia (and their children under five) who were residing in Macedonia on 8 September 1991 and

³ <https://www.unhcr.org/uk/protection/statelessness/53b698ab9/handbook-protection-stateless-persons.html>

⁴ See <https://index.statelessness.eu/country/macedonia> (data for 2019-20 will be published in March 2020).

continued to live in the country without acquiring Macedonian or any other citizenship. However, this and other recent legislative proposals, do not go far enough to ensuring the prevention and reduction of statelessness and right to nationality in all cases.

As of 2019, our national member, Macedonian Young Lawyers Association (MYLA), had identified 574 people at risk of statelessness in the course of their work (298 with unregulated citizenship and 276 with undetermined Macedonian nationality). A Government-led public registration campaign in 2018-2019 identified and recorded 750 people at risk of statelessness in the country due to their births and personal names not being registered. This figure represents people who responded to the campaign and approached the authorities to identify and register themselves. MYLA has stated that there are likely to be more people who either did not hear about the public call or were not able to register themselves.

In November 2019, the Government adopted a proposed draft law in response to the findings of the registration campaign, which introduces a 'special civil status' for individuals who were identified in the 2018-2019 public calls as having unregulated status. The law proposes that this group will be issued with a 'special' personal number, birth certificate and identity card enabling them to access healthcare, education and social care during the procedure for inscription in the birth registry until they are officially registered. This law is expected to be officially brought into force by Parliament in early 2020.

Although the law provides for a route to civil registration and access to some socio-economic rights for the individuals identified in the public campaign, it does not provide for any route to determine or confirm their citizenship, to enable them to enjoy their right to a nationality and equal status as citizens in the country. Nor does it provide for a sustainable solution to prevent the risk of statelessness arising in future cases. It is still not possible, for example, for the births of children born to undocumented mothers to be registered immediately and parents must routinely produce many and varied documents at the discretion of registry officials for late birth registration. There is still no dedicated statelessness determination procedure in North Macedonia. Roma communities continue to be disproportionately impacted by barriers to accessing birth and civil registration, which are exacerbated by discriminatory attitudes among officials.⁵

6. Serbia⁶

Following some positive developments in past years, there is little concrete progress to report from Serbia on how it has sought to address statelessness in 2019-20 and Serbia did not submit any formal written pledges at the UNHCR High-Level Segment on Statelessness in October 2019. The new Law on Legal Aid (adopted in 2018) came into force in October 2019 and explicitly provides for the right to free legal aid for stateless people and people who are not registered in the registry books. But, despite a definition of a stateless person being introduced into Serbian law in 2018, there has been no further progress towards establishing a statelessness determination procedure to identify stateless people on the territory and grant them their 1954 Convention rights. Gaps in how safeguards to prevent childhood statelessness are implemented in practice also remain, and the barriers to immediate birth registration identified in previous years have still not been addressed, despite concerted advocacy by our national member, Praxis, among others.

⁵ European Roma Rights Centre, North Macedonia Takes Important First Step Towards Ending Statelessness, 25 Nov 2019, <http://www.errc.org/news/north-macedonia-takes-important-first-step-towards-ending-statelessness>

⁶ For further information on Serbia, see <https://index.statelessness.eu/country/serbia> (data for 2019-20 will be published in March 2020).

In June 2019, Praxis wrote to the Minister of Public Administration and Local Self-Government and the Minister of Health to appeal for action to address remaining barriers to immediate birth registration for children born to undocumented mothers.⁷ The response received stated that all children born in Serbia have an opportunity to be registered in the registries, but ignored the fact that children born to undocumented mothers cannot be issued with a birth certificate at birth. Praxis has raised this issue repeatedly over the course of 2019 in the media, on social media, and in advocacy interventions at the Council for Child Rights, the Thematic Group on Early Childhood Development and Education of Children, a Public Hearing on the Draft Law on the Rights of the Child, the Public Policy Secretariat, in human rights submissions to CESCR and the UN Human Rights Committee, and at a range of events on child rights and Roma inclusion. Despite this, no significant progress has been achieved, according to Praxis, due to a lack of understanding of the core issues and a lack of political will.

Nevertheless, international bodies, such as CESCR have consistently concluded that Serbia must solve the problem of immediate birth registration. In October 2019, the Ministry for Public Administration and Local Self-Government, the Ombudsperson and UNHCR signed a new Memorandum of Understanding, which refers to further cooperation to resolve the problems faced in particular by Roma communities in Serbia to exercise their right to civil registration and legal identity, with special emphasis on new-born children, so it is hoped that this is an indication of some willingness in the Ministry to solve the problem.

Praxis also reports persisting challenges in access to late birth registration under the non-contentious procedure as prescribed deadlines are often not met, fees are sometimes requested of applicants who should be exempt by law, court decisions are often not forwarded to the registrars and data is not entered in the birth registry books for a long time after decisions are concluded. Decisions sometimes contain errors or do not contain all the necessary data, inhibiting a person's ability to confirm their nationality. Registrars sometimes do not enter the nationality into the birth registry books, even when the legal requirements for nationality are fulfilled. These practical challenges must be urgently addressed to ensure the legal procedure to facilitate late birth registration is being implemented as intended. Issues reported last year relating to the implementation of Article 13 of the Law on Citizenship (safeguard to grant nationality at birth to otherwise stateless children born in Serbia) also persist with parents being required to submit a request and enter a procedure for the child to acquire nationality and the Ministry interpreting the safeguard as only applying to children under 18.

For further information please contact:

Nina Murray, Head of Policy & Research, European Network on Statelessness

nina.murray@statelessness.eu | www.statelessness.eu | www.index.statelessness.eu

⁷ Praxis requests that birth registration immediately after birth is available to every child, 4 June 2019: <http://bit.ly/2MXMKxs>