

European Network on Statelessness submission to inform the European Commission 2021 Enlargement Package

Progress towards addressing statelessness in Enlargement countries

April 2021

The [European Network on Statelessness \(ENS\)](#) is a civil society alliance with over 160 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 2021 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 countries¹, our [Statelessness Index](#), and [our work in the region](#).

1. General Comments

In the Enlargement region as in other parts of Europe, statelessness affects both migrants and refugees² and people who have lived in the same place for generations. Many people affected by (risk of) statelessness in the Western Balkans are members of Roma, Ashkali, and Egyptian communities.³ Causes of statelessness in the region include state succession, displacement, gaps and conflicts in nationality and civil registration laws, discrimination and antigypsyism. A stateless person is someone who has no nationality. This can mean not having basic rights most people take for granted: to go to school or work, to get married or register the birth of your child, to 'legally exist'. As a result, many of those affected face marginalisation and heightened risk of discrimination and rights violations. All Enlargement countries have specific obligations under international law to protect stateless people and prevent statelessness, but in many cases, these have not been translated into effective law, policy, and practice at national level. As a result, people are still falling through the gaps and being left with no nationality.

Due to the disproportionate impact of (risk of) statelessness on Roma communities in the region, it is vital that measures to address statelessness go together with concerted action to address antigypsyism and facilitate Roma participation in decision-making. In this regard, there have been two very welcome developments in 2020. Firstly, the new EU Strategic Framework on Roma Equality, Inclusion and Participation emphasises the need to reflect diversity and address multiple discrimination experienced by Romani people in Europe. It includes specific reference to stateless Roma and calls on all States to implement specific measures in their national strategic frameworks to end Roma statelessness and facilitate universal civil registration. Secondly, following concerted efforts by the Regional Cooperation Council and other actors, including ENS and its members, in the framework of the Poznan Declaration, the Ministers of the Western Balkans responsible for Roma

¹ With thanks to Tirana Legal Aid Society; Roma Active Albania; Association "Vaša prava BiH"; Civil Rights Program Kosovo; Roma Versitas Kosovo; Roma Youth Organisation 'Walk with us-Phiren Amenca' Montenegro; Macedonian Young Lawyers Association; and, Praxis Serbia.

² For more on how statelessness affects migrants and refugees in Europe, see: www.statelessjourneys.org

³ For more on how statelessness affects Roma in the Western Balkans, see: <https://www.statelessness.eu/sites/www.statelessness.eu/files/attachments/resources/roma-belong.pdf>

Integration/Heads of Delegations unanimously committed to adopting economy-specific roadmaps towards ending statelessness of Roma in the course of 2021.⁴

Finally, the impact of the COVID-19 pandemic on communities affected by statelessness in the region in 2020-21 must be addressed. When a person lacks a nationality, they lack the rights and duties attached to belonging to a State, which leads to violations of other human rights, including the right to health. Research commissioned by ENS (forthcoming), shows how COVID-19 has exacerbated pre-existing discrimination, social exclusion, and deprivation experienced by many stateless people in Europe. Social, structural, and environmental determinants of health have worsened, including racism, antigypsyism, and xenophobia; poor and congested living conditions; lack of sanitation and hygiene; chronic (mental and physical) ill health; overrepresentation in the informal labour market; and lack of access to healthcare and social security. During the pandemic, many stateless people have lost their sources of income, had to work whilst sick and without adequate protection, been unable to access State aid and healthcare, and children's education has been disrupted. Our research makes a series of policy recommendations seeking to ensure that States take action to guarantee the right to health of all on their territory, including stateless people, during and after the COVID-19 pandemic.⁵

2. Albania⁶

The last few years have seen notable progress and commitment on the part of the Government of Albania to addressing statelessness. Pledges⁷ Albania made at UNHCR's High-Level Segment on Statelessness in 2019 are on the way to being implemented and further progress has been made in 2020-21. Nevertheless, it remains the case that to fully implement welcome reforms, the Government and other actors will need to invest in training and capacity building for its institutions and public services and continue to work closely with key stakeholders including affected communities.

In terms of prevention of statelessness, it is very welcome that the new Law on Nationality (2020) now includes a full, automatic safeguard to ensure that a child born in Albania who would otherwise remain stateless acquires Albanian citizenship at birth (Article 7(1)). It remains to be seen how this provision will be implemented in practice, so it will be important for the Albanian authorities to work with national experts and draw on good practice to ensure effective implementation as intended. The Albanian legal framework now prevents statelessness in most cases, but there are some remaining gaps. For example, a decision to grant nationality may be revoked if it was acquired by fraud, even if this results in statelessness (there is a safeguard to prevent statelessness for children, but not for adults). 2020 amendments to the Law on Nationality also removed an additional safeguard to prevent statelessness arising through voluntary renunciation of nationality. Additionally, as same-sex partnerships are not legally recognised in Albania, it is unclear what rights same-sex parents would have to confer their nationality to their children, which could lead to a risk of statelessness.⁸ Despite positive amendments to the Law on Civil Status in 2018, in practice,

⁴ Conclusions of the Ministerial Meeting on Roma Integration, 27 October 2020:

<https://www.rcc.int/romaintegration2020/news/343/conclusions-of-the-ministerial-meeting-on-roma-integration>

⁵ Research report and policy briefing are forthcoming and will be published at www.statelessness.eu on 21 April 2021.

⁶ For more detailed information on all aspects of law, policy, and practice relating to statelessness in Albania, see:

<https://index.statelessness.eu/country/albania> (last updated March 2021).

⁷ 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. See: <https://www.unhcr.org/ibelong/results-of-the-high-level-segment-on-statelessness/>

⁸ For more on this issue see: <https://www.statelessness.eu/updates/blog/protecting-right-nationality-children-same-sex-couples-eu-key-issue-cjeu-vma-v>

children still face difficulties accessing birth registration and acquiring a birth certificate if parents are undocumented or have irregularities in their documentation.

Albania has also made some progress towards improving the protection of stateless people on its territory. In early 2021, a new draft Law on Foreigners was introduced to the Albanian Parliament. It is very welcome that the draft law proposes to introduce the legal basis for a statelessness determination procedure (SDP). However, it is vital that legislators engage with and adhere to the advice of statelessness experts and mandate-holders, including UNHCR⁹, to ensure that the new law is in line with international norms and good practice. For example, as is the case in the current law in force, the definition of a stateless person included in the draft law is not in line with the 1954 Convention definition (which is also considered international customary law). Additionally, UNHCR notes that the draft law proposes to exclude asylum-seekers, refugees, and beneficiaries of complementary forms of protection from the possibility to apply for stateless status under the SDP. This is problematic as a stateless person may also be an asylum seeker, refugee, or entitled to a complementary form of protection, so it is important that each claim is assessed and both types of status can eventually be explicitly recognised.

The current Law on Foreigners does not provide for a mechanism to determine statelessness, but it does provide for some rights to be granted to 'stateless status' holders 'as determined by the competent authorities', including the right to apply for residence on humanitarian grounds, social services, education, legal aid, representation before the courts, and a travel document. However, these rights are very difficult to access in practice as they require a formal procedure and identification documents. There is a facilitated route to naturalisation for stateless people in Albania, including a reduced residence period (seven years) and exemption from the minimum age, income, property ownership, and no convictions requirements, as well as the language test.

As part of our research on health rights and statelessness in the context of COVID-19, Roma Active Albania carried out a focus group with representatives of communities affected by statelessness in Albania. Focus group participants highlighted how the health system had been impacted by the pandemic, with access to non-COVID-19 related healthcare being reduced and appointments being provided online or by telephone. Roma participants reported delays in COVID-19 test results being returned, issues with contact tracing, and financial barriers to purchasing medicines as well as personal protective equipment, which was not available for free. They also reported difficulties following social distancing guidance due to overcrowded housing conditions. Participants said NGOs and neighbours had stepped in to assist to some extent, but that this was not enough, and several had been unable to access government aid due to problems with the system. Overall, they felt insecure about their future. Participants who had had COVID-19 said they tried to hide it from their neighbours and others due to stigma. Almost all had experienced a rise in hate speech, stigma, and discrimination during the pandemic with people visibly seeking to avoid them on the street or on public transport due to prejudices and misconceptions about Roma 'spreading COVID-19', as well as experiencing explicit hate speech on social media.

3. Bosnia-Herzegovina

The Government of Bosnia-Herzegovina (BiH) has made welcome commitments to addressing statelessness in recent years, including through pledges¹⁰ at UNHCR's High-Level Segment on

⁹ UNHCR Comments for the Parliament of the Republic of Albania on the Draft Law on Aliens, March 2021: <https://www.refworld.org/docid/605339874.html>

¹⁰ Bosnia-Herzegovina pledged to develop, by the end of 2020, a State action plan for ending statelessness by 2024 in cooperation with all relevant stakeholders; to develop a dedicated statelessness determination procedure and provide stateless people rights in accordance

Statelessness in 2019, and through the Poznan Declaration process. Although some progress has been made in the last year, some of these commitments have not yet been implemented as envisioned. For example, one of the pledges made at the UNHCR High-Level Segment was to adopt an action plan to end statelessness by the end of 2020, which has not yet been adopted.

However, other activities towards ending statelessness have been progressed. The Association “Vaša prava BiH” notes that the drafting of the Action Plan of Bosnia-Herzegovina for Roma equality, inclusion, and participation 2021-2025 is underway. The adoption of a “Roadmap for ending the risk of Roma statelessness in Bosnia-Herzegovina” is envisaged as one of the objectives of the plan. As members of the expert thematic working group for the development of the plan, the Association “Vaša prava BiH” advocated for the commitments made at UNHCR's High-Level Segment on Statelessness in 2019 to be included in the Roadmap.

In October 2018, the Association “Vaša prava BiH” submitted an Initiative to amend the Law on Extrajudicial Proceedings, which the Government of the Federation of BiH stated it considered partially founded in October 2019. In February 2021, the Law on Amendments to the Law on Extrajudicial proceedings FBiH entered into force. The Law prescribes the procedure for determining the time and place of birth for persons who are not registered in the birth register and cannot prove the time and place of their birth in the manner prescribed by the regulations governing the keeping of registers. The Law will enable persons at risk of statelessness who cannot prove the time and place of birth in the manner prescribed by regulations governing the keeping of registry books to be registered in the registers and obtain a legal identity. However, there are some shortcomings to the Law as adopted. The Association “Vaša prava BiH” provided comments on the proposed text of the Law on the issues of mandatory medical expertise and costs of the proceedings to be borne by the applicant. These comments were not taken into account and the Law was adopted as proposed by the Federation BiH Government. It is of concern that if unregistered persons seeking to access the procedure are not exempted from paying court fees and other costs, this will present a significant financial burden and potentially discourage people from initiating proceedings.

Investment in monitoring, capacity-building, and implementation activities in close cooperation with key stakeholders and affected communities, remain vital in BiH. A lack of State-funded legal aid, an excessively formalistic approach, and prejudicial attitudes among civil registry officials still present barriers to civil registration for Romani people and other marginalised communities in the country. People who have expressed their intention to seek asylum and people with irregular immigration status also face 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.¹¹

Permanent residence remains one of the most important factors for the enjoyment and exercise of many rights in BiH, including to civil registration, identity documents, healthcare, social welfare, and travel documents. Romani people living in informal settlements are usually unable to register their

with international conventions by 2022; to issue nationality documents to people who cannot acquire documentary proof of their nationality and create a mechanism for regulating the status of long-term residents (formerly displaced SFRY citizens) by 2022; and improve 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 improve birth registration law and practice, by 2023. See: <https://www.unhcr.org/ibelong/results-of-the-high-level-segment-on-statelessness/>

¹¹ See www.statelessjourneys.org for more information.

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.

4. 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). 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 in absentia, whilst the very first effective decisions were issued to four female applicants in early November 2020. Three 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, Roma Versitas Kosovo reports that it is difficult to obtain exact figures for Roma, Ashkali and Egyptian communities at risk of statelessness in Kosovo, especially as there are many cases of returned or repatriated persons from the EU whose citizenship status remains unresolved. A number of minor and adult individuals belonging to Roma, Ashkali and Egyptian communities living in Kosovo do not enjoy many basic rights because they lack documents to prove their citizenship. Their risk of statelessness and the violation of their right to nationality causes them to face significant challenges when attempting to access healthcare, education, employment, social assistance, and the right to vote.

Civil Rights Programme Kosovo (CRPK) also reports that confirmation and acquisition of citizenship for adult Romani persons who were born in Western European countries or in displacement in the Western Balkan region is problematic. Some face a serious risk of remaining stateless, as the authorities are assessing their right to a nationality at the moment of the application and some face difficulties securing the required evidence, despite a parental link to Kosovo. For some, the only legal avenue for legal status in Kosovo is the statelessness determination procedure.

CRPK reports that the situation concerning people in possession of documents issued by relocated municipal civil status registration offices managed by the Serbian Administration was successfully addressed by the Ministry of Internal Affairs (MIA) by September 2020. The decision mainly affected the Serb community, but Romani people in Kosovo have also benefitted from this action with the support of NGOs. CRPK has supported 20 Romani children to register their births under this decision.

On paper, 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. However, in terms of implementation, CRPK reports that bureaucratic obstacles and misinterpretation of the norms continue to pose a major issue in resolving these applications, often preventing a final legal solution. In the absence of evidence, even where a person brings witnesses, in the majority of cases, municipal officials make negative decisions, especially if the applicants are adults. Appeals are lodged with the relevant authorities and then with the judiciary, which causes further and prolonged delays, sometimes for years, as the judiciary does not prioritise such cases.

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 2020 alone, CRPK supported 240 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. These rights and services were and still are exacerbated by the ongoing COVID-19 pandemic. Unregistered persons were not considered under any relief measures offered by authorities. In 2020, following UNHCR and CRPK advocacy, the right to legal identity as a fundamental right was highlighted by the Ombudsperson through the publication of a Legal Opinion in the capacity of court friend (*amicus curiae*), as well as a Report with recommendations regarding the legal identity of unregistered persons. However, regardless of the published opinions, no major improvements have been observed.

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 a 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. In this regard, the Government should establish a working group within the Office for Good Governance mandated to include a special pillar in the Strategy for Inclusion that would deal directly with the issue of statelessness. Furthermore, courts should be advised to treat persons without legal identity as a priority.

5. Montenegro

The Government of Montenegro made four political commitments to addressing statelessness at the UNHCR High-Level Segment in October 2019.¹² Although public commitments are welcome, there remain important gaps in Montenegro's approach to addressing statelessness and implementing international standards, and Roma Youth Organisation 'Walk with us-Phiren Amenca' (Phiren Amenca) reports that little progress has been made towards implementing these commitments since 2019.

Phiren Amenca reports that there are at least five hundred stateless persons and persons at risk of statelessness in Montenegro, contrary to reports by the Government that statelessness is no longer an issue. The majority of stateless persons in Montenegro belong to the Roma community, many of whom came to Montenegro after the 1999 Kosovo war. Many of these people were not able to apply for legal status as they missed the deadline to apply under a public call in 2015, and so are

¹² Montenegro pledged 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. See: <https://www.unhcr.org/ibelong/results-of-the-high-level-segment-on-statelessness/>

residing in Montenegro with insecure legal status. They face the risk of deportation to Kosovo at any time. Most applications by these individuals to resolve their legal status in Montenegro are rejected.

Phiren Amenca conducted research at the end of 2020 within the Roma and Egyptian community in Podgorica with the aim of registering persons who do not have a regulated legal status. The goal is to create a reliable database on statelessness and to establish a direct link between the distribution of State aid to mitigate the consequences of the pandemic and the (non)possession of documentation. The research showed that there are 198 adults and 216 children in Podgorica with unresolved legal status and revealed how easily statelessness is inherited by the next generation.

The public call for registration that closed in 2015 should be reopened to facilitate the resolution of remaining cases of (risk of) statelessness in Montenegro. Legal and administrative procedures governing civil registration should be simplified to ensure long-term sustainability in terms of resolving the risk of statelessness and lack of legal identity. Cooperation between the relevant ministries and the Diplomatic and Consular Representation of Kosovo in Podgorica should be improved and regulated through a signed bilateral agreement, providing funds for travel to access necessary documentation. Procedures for the acquisition or confirmation of Montenegrin citizenship must be improved, particularly to ensure that children born on the territory who would otherwise be stateless acquire a legal identity and a nationality as soon as possible after birth.

6. North Macedonia¹³

Although there has been some progress towards addressing statelessness in North Macedonia in recent years, significant gaps and challenges remain. North Macedonia acceded to the 1961 Convention on the Reduction of Statelessness in January 2020, and new regularisation routes were introduced in 2019 and 2020 to facilitate access to socio-economic rights for people at risk of statelessness due to a lack of civil status, and stateless people from the former Yugoslavia (and their children) residing on the territory. However, there is no statelessness determination procedure nor protection status for stateless people on the territory, and the new regularisation route for those at risk of statelessness is limited to a specific group of identified people and does not resolve their nationality status, nor prevent new cases of statelessness arising. There remain significant barriers to universal birth registration and gaps in the legal framework for civil registration and the prevention of childhood statelessness, which disproportionately impact on Roma, Ashkali and Egyptian communities.

As of December 2020, Macedonian Young Lawyers Association (MYLA), reported they were working with 558 people at risk of statelessness (286 with unregulated citizenship and 272 with undetermined North 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.

A new 'Law on Persons without Regulated Civil Status' was adopted in 2020, which enables the specific group of people already identified by the Government as being at risk of statelessness and without civil status (and their children born after the closure of the public call) to register for a 'special registration', which provides access to socio-economic rights. However, the application of

¹³ For more detailed information on all aspects of law, policy, and practice relating to statelessness in North Macedonia, see: <https://index.statelessness.eu/country/north-macedonia> (last updated March 2021).

the law is limited to this specific group, and it does not provide for any route to determine or confirm their citizenship, to enable them to enjoy their right to a nationality. Moreover, MYLA reports in April 2021 that two and a half years since the identification of 750 people at risk of statelessness, and 15 months since the adoption of the new Law, only 207 people have initiated the procedure for obtaining personal documentation, and, of these, only 60 have received special birth certificates. There is an urgent need for a more proactive approach by government institutions to complete this process in timely manner.

Moreover, the new law unfortunately does not provide for a sustainable solution to prevent the risk of statelessness arising in future cases. It is still not possible 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. The requirements for late birth registration are extremely difficult to meet and the risk of births remaining unregistered impacts disproportionately on marginalised communities, including Roma, Ashkali and Egyptians, due to a range of factors, including inability to meet documentary evidence requirements, discriminatory attitudes of registry officials, and poverty and marginalisation.

There is only a partial safeguard in nationality law to prevent children being born stateless in North Macedonia (Article 6(1)), which is not in line with the 1961 Convention. A child born on the territory to stateless or unknown parents acquires North Macedonian citizenship, but the provision focuses on the status of the parents rather than the statelessness of the child, so does not cover children born to parents who may have a nationality but cannot confer this to their child. As there is no procedure for determining statelessness in North Macedonia, proving the statelessness of the parents can be very challenging in practice; nor is there any framework for identifying where a child would otherwise be stateless at or after birth registration. The law stipulates that only children can benefit from the provision, so this is interpreted as under 18 years-old, leaving a protection gap for young adults.

North Macedonian law contains a definition of a stateless person that aligns with the 1954 Convention, but it does not have a comprehensive legal framework in place to identify and protect stateless people. There is no statelessness determination procedure nor stateless protection status. During the asylum procedure a person can be recorded as 'a stateless person from [country of birth]', but there is no procedure for the identification of statelessness. If the person later receives an identity card as an asylum seeker or beneficiary of international protection, they will be identified as 'stateless person born in [country of birth]'. Stateless migrants may regularise their stay and obtain a temporary residence permit on humanitarian grounds, but only at the discretion of the Government on a case-by-case basis and dependent on the documentation available. Free legal aid is only available to stateless persons who have a residence permit or otherwise have a right to stay, including people who have been registered under the Law on Persons without Regulated Civil Status. Stateless people can apply for naturalisation after six years of legal and permanent residence in North Macedonia, which is accelerated in comparison to others. However, other conditions for naturalisation must be met, including submission of a certificate confirming no criminal convictions or prosecutions and birth registration documentation. There are no exemptions from these requirements for stateless people.

7. Serbia¹⁴

There has been limited progress to address statelessness in Serbia in 2020-21. There have been some efforts to prevent and reduce statelessness, including in relation to the risk of statelessness

¹⁴ For further information on Serbia, see: <https://index.statelessness.eu/country/serbia> (last updated in March 2021).

facing Romani communities under the Poznan Declaration and follow-up process in 2019 and 2020, but gaps remain in law and practice. Although Serbia is party to both the 1954 and 1961 Conventions and has a 'stateless status' in law providing for a right to work, education, social security, and a travel document, it still does not have a dedicated mechanism in place to determine statelessness and grant stateless people on its territory the protection they are due under international law.

The problem of access to immediate birth registration for undocumented parents in Serbia remains, despite persistent advocacy by Praxis, including submissions to European institutions, human rights advocacy before the UPR and treaty bodies, news articles, and detailed case studies provided to the Government as evidence of the key issues.¹⁵ According to the existing bylaws, to register the birth and the name of their child immediately upon birth, parents must possess birth certificates and ID cards. Children cannot be registered immediately after birth if parents are undocumented. Despite numerous appeals to the relevant ministries, government working groups, and international bodies, including the UN Human Rights Committee and CESCR, which has made recommendations in this regard, no significant progress has been achieved to date. In October 2019, the Ministry for Public Administration and Local Self-Government, the Ombudsperson and UNHCR signed a 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, but further concrete progress to resolve the issue is yet to be seen.

Challenges described in previous years with access to late birth registration under the non-contentious procedure also remain. 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.

In 2020, the Supreme Court of Cassation brought a Conclusion in which it took the position that non-contentious procedures for determining the date and place of birth could be conducted only if the administrative procedure of subsequent registration in birth registry books had been previously unsuccessfully conducted. It also took the position that persons who are registered in the birth registry books of Kosovo could not ask the non-contentious court to establish the fact of their date and place of birth (even though Serbia has not recognised Kosovo and people cannot exercise any rights in Serbia on the basis of Kosovar documents). The implementation of the Conclusion by first instance courts would significantly prolong and complicate registration in the birth registry books, while many people who were born and registered in the birth registry books in Kosovo will be left without the possibility of registering in Serbia, regardless of the fact that they have not lived in Kosovo for years, have lived in cohabitation and had children in Serbia, and meet the requirements for Serbian citizenship.

Legal safeguards are in place in Serbian citizenship law to prevent statelessness in the case of children born on the territory (Article 13) or to Serbian citizens abroad, foundlings and adopted children. However, there are implementation gaps. The authorities interpret the safeguard for stateless children born in Serbia as applying only to minors, and in practice, a request must be

¹⁵ All publicly available on Praxis's website at: <https://praxis.org.rs>

submitted to the competent authority for a decision to be made on the acquisition of nationality, and documentary evidence of the child and/or parents' statelessness must be provided.

Serbia does not have a dedicated statelessness determination procedure nor any other mechanism to identify and determine statelessness. Since 2018, the Law on Foreigners provides for a definition of a stateless person in national law, but it is narrower than the 1954 Convention definition. Rights granted to stateless people include a travel document, right to work, social security, education, legal aid, and protection against discrimination. The law also prescribes that the 1954 Convention should be applied to stateless individuals if this is more favourable for them, but without an SDP, the risk is that these rights cannot be obtained in practice. There is no simplified or accelerated route to naturalisation for stateless people in Serbia.

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