

**Submission concerning Serbia to the**

---





**Human Rights Committee**

---

**For Consideration at the 140th session  
(4 – 28 March 2024)**

---

**submitted by:**

P R A X I S  
   



European  
Network on  
Statelessness

**5<sup>th</sup> February 2024**

Praxis and the European Network on Statelessness welcome the opportunity to make this submission to the Human Rights Committee, 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 almost 15.000 persons at risk of statelessness in about 21.000 administrative and court proceedings.<sup>1</sup>

The [European Network on Statelessness](#) (ENS)<sup>2</sup> is a civil society alliance of NGOs, lawyers, academics, and other independent experts committed to addressing statelessness in Europe. Based in London, it currently has over 180 members in 40 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.<sup>3</sup>

---

<sup>1</sup> For more information, see: <https://www.praxis.org.rs>.

<sup>2</sup> For more information, see <https://www.statelessness.eu>.

<sup>3</sup> ENS, Statelessness Index: North Macedonia, <https://index.statelessness.eu/country/north-macedonia>.

## **INTRODUCTION**

1. This 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<sup>4</sup>. 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.

## **ISSUE 1: THE RIGHT TO IMMEDIATE BIRTH REGISTRATION**

### **Description of the problem and international recommendations**

---

<sup>4</sup> See annual reports of the Commissioner for Protection of Equality, available at: <http://ravnopravnost.gov.rs/en/reports/>

3. Despite its international obligations<sup>5</sup> and domestic laws<sup>6</sup>, 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<sup>7</sup> 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. According to UNICEF, the legal standard 'immediately after birth' "implies a defined period of days rather than months".<sup>8</sup>
4. 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 26 of the International Covenant on Civil and Political Rights (ICCPR), 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.
5. Various UN Treaty Bodies 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 or

---

<sup>5</sup> Article 24, paragraph 2 of the ICCPR; Article 7 of the Convention on the Rights of the Child.

<sup>6</sup> Every child has the right to a personal name and entry in the registry of births (Constitution of the Republic of Serbia, article 64, paragraph 2); Everyone has the right to a personal name: The right to a personal name is acquired by birth (Family law, article 13).

<sup>7</sup> 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.

<sup>8</sup> 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](http://www.unicef.org/publications/files/Implementation_Handbook_for_the_Convention_on_the_Rights_of_the_Child.pdf).

documentation status of their parents.<sup>9</sup> The European Commission in its progress reports for 2019, 2020, 2021 and 2022 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.<sup>10</sup>

6. 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 second quarter of 2021 (activity 3.6.2.8).<sup>11</sup> 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”.<sup>12</sup> 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”,<sup>13</sup> portraying progress that is not seen in practice.

### **A brief overview of the relevant information from the Third periodic cycle**

---

<sup>9</sup> Concluding observations on the third periodic report of Serbia of the Committee on Economic, Social and Cultural Rights – recommendation 31 (c); Universal Periodic Review of the UN Human Rights Council concerning Serbia from 2023 – recommendations 6.154 and 6.193; 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.

<sup>10</sup> 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](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](https://neighbourhood-enlargement.ec.europa.eu/document/download/fbe0f0b7-d8ff-4b89-a4ed-af5ccd289470_en?filename=Serbia-Report-2021.pdf); The European Commission's Serbia 2022 report p.47, available at: [https://neighbourhood-enlargement.ec.europa.eu/document/download/d87e4167-65fd-42b0-8ede-7fa05c3d9355\\_en?filename=Serbia%20Report%202022.pdf](https://neighbourhood-enlargement.ec.europa.eu/document/download/d87e4167-65fd-42b0-8ede-7fa05c3d9355_en?filename=Serbia%20Report%202022.pdf).

<sup>11</sup> 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>.

<sup>12</sup> 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>.

<sup>13</sup> 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>.

7. In Its Concluding observations on the third periodic report of Serbia (CCPR/C/SEB/CO/3) the Human Rights Committee (Committee) recommended that Serbia, inter alia, should facilitate and enable registration of children born to parents without identification documents (recommendation 15).
8. This recommendation was identified by the Committee as a recommendation that requires immediate attention, and the Committee required the State party to provide information on its implementation within one year of the adoption of the concluding observations (CCPR/C/SEB/CO/3, para. 43).
9. In the Report on follow-up to the concluding observations, Addendum - Evaluation of the information on follow-up to the concluding observations on Serbia (CCPR/C/130/2/Add.4), the Committee assessed that the recommendations selected for the follow-up procedure (including recommendation no. 15) have not been fully implemented and decided to request additional information on their implementation.

#### **Fourth periodic cycle**

10. In the Fourth periodic report on the implementation of the ICCPR (CCPR/C/SRB/4), Serbia stated that “Conditions have been achieved for the smooth realization of the right to registration at the book of births, and that every child can be registered at the book of births immediately at birth, which is recognized as a model of good practice by the countries in the region and beyond. This ensures both the registry of children in the book of births, and that their parents, who do not have personal documents, may exercise their right to them, which enables them to exercise other rights” (para. 50).
11. However, none of the above statements correspond to the facts. Children who cannot be registered immediately after birth are still continuously born in Serbia, and the state has not taken any measures that could solve this problem. Therefore, Serbia could not be recognized as an example of good practice. Persons whose birth is not registered and who do not possess personal documents in Serbia cannot enjoy almost any right, including the right to register their children in the birth books immediately after birth.
12. In the List of issues in relation to the fourth periodic report (CCPR/C/SRB/Q/4), the Committee asked Serbia to respond to reports indicating that births of Roma and other children who are born to parents who do not have identity documents are not registered in a timely manner (paragraph 8).
13. In the Replies of Serbia to the list of issues in relation to its fourth periodic report (CCPR/C/SRB/RQ/4) the State provided that “the situation where a person is not registered in the Register of Births is exceedingly rare nowadays” (para. 45) and that “Instruction for

handling cases of the birth of a child whose parents do not have personal documents in order to enable registration in the birth register” was issued in December 2020, and that in the following two years trainings were held for the application of this Instruction (para. 46).

14. However, Praxis is constantly approached for help by persons who are not registered in the birth books. So, in 2021, 162 unregistered persons addressed Praxis for assistance, as well as 152 persons in 2022.
15. Moreover, the State itself publishes data on the number of procedures for the subsequent registration of persons who were not registered which convincingly refutes the claim that cases of non-registration are "exceedingly rare". Thus, in the report on the implementation of the Action Plan for Chapter 23 of the EU accession negotiations, it was published that “in the administrative procedure of subsequent registration of the fact of birth, a total of 316 persons have exercised the right to entry into the birth register in 2021. Persons who could not provide evidence of the fact of birth in the administrative procedure have exercised the right to entry into the birth register in the [court] procedure for determining the time and place of birth (...) a total of 221 court decisions have been reached in 2021 on the basis on which the fact of birth was entered into the birth register.”<sup>14</sup> According to the data of the State, even more people were subsequently registered in 2022: 772 persons were registered after the administrative procedure, and 348 after the judicial procedure.<sup>15</sup> Therefore, in 2022 and 2023 alone, a total of 1,657 people were subsequently registered, so it cannot be said that the cases of unregistered persons are extremely rare nowadays.
16. Regarding the Instruction for handling cases of the birth of a child whose parents do not have personal documents in order to enable registration in the birth register - the very fact that such an instruction was passed confirms that issues related to birth registration still exist. However, that Instruction does 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, 2022 and 2023 showed

---

<sup>14</sup> Report on the implementation of the Revised Action Plan for Chapter 23: “Justice and fundamental rights” 2-2022, page 393, available at:

<https://www.mpravde.gov.rs/files/Report%20on%20AP23%20implementation%202-2022.docx>

<sup>15</sup> Report on the implementation of the Revised Action Plan for Chapter 23: “Justice and fundamental rights” -I quarter 2023 -, page 236, available at:

<https://www.mpravde.gov.rs/files/Report%20on%20AP23%20implementation%201-2023.docx>

that this Instruction is not applied in practice. Indeed, even the acquisition of documents for the mothers is not facilitated.

17. In paragraphs 48 and 49 of its Replies to the list of issues, Serbia states that a Memorandum of Understanding was signed and Operative Group was formed “in order to solve the remaining cases and prevent the emergence of new cases of persons who have not exercised their right to be entered into the Register of Births“, and that an information campaign for representatives of the Roma community and training for officials were held (data from paragraph 47, apparently, refer to the residence registration).
18. These activities certainly deserve praise. However, the problem is that they do not solve the most important problem regarding birth registration: the impossibility of timely registration of children whose mothers do not have personal documents. In its Replies, Serbia did not actually respond at all to the Committee's invitation to provide information on issue of the timely birth registration of children whose parents do not have identity documents.

### **Conclusion**

20. 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, it is still not possible for every child to be registered immediately after birth.
21. 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**

22. 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.

23. 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.
24. In 2020, the Supreme Court of Cassation issued a conclusion on the jurisdiction of the courts in non-contentious birth registration procedures.<sup>16</sup> 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 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”.
25. 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 expose 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.<sup>17</sup>

---

<sup>16</sup> 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.

<sup>17</sup> 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>

26. 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.<sup>18</sup> 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.
27. 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,<sup>19</sup> 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 requirements for Serbian citizenship.<sup>20</sup>
28. 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, in turn increasing the risk of new cases of statelessness arising.<sup>21</sup>

---

<sup>18</sup> 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.

<sup>19</sup> 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.

<sup>20</sup> 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>.

<sup>21</sup> For a detailed analysis of the problems in the procedures for determining the date and place of birth, see: Ten years of implementation of the procedure for determining the date and place of birth, Praxis 2022,

### ISSUE 3: FREE LEGAL AID

29. 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. 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.
30. 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.
31. 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 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 for free legal aid 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.

---

available at:

[https://www.praxis.org.rs/images/praxis\\_downloads/Ten\\_Years\\_of\\_Procedure\\_For\\_Determining\\_the\\_Date\\_and\\_Place\\_of\\_Birth\\_final.pdf](https://www.praxis.org.rs/images/praxis_downloads/Ten_Years_of_Procedure_For_Determining_the_Date_and_Place_of_Birth_final.pdf)

32. 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.
33. 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.
34. 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.<sup>22</sup>

#### **List of issues and Replies of Serbia**

35. In paragraph 17 of the List of issues (CCPR/C/SRB/Q/4), the Committee asked Serbia to indicate the steps to ensure effective implementation of the Law on Free Legal Aid, including statistics on the number and types of cases in which free legal aid has been sought, granted and denied since its entry into force. In its Replies to the List of issues, Serbia provided data on submitted and approved requests in 2020 (para. 138). However, these data do not bring insight into the real number of rejected requests, because, as stated in paragraph 31 of this report, the requests of Praxis beneficiaries are most often rejected orally, without a written decision, and these requests are not even recorded in the free legal aid services. Serbia did not respond at all to the question of what steps it is taking to ensure its effective implementation of the law.
36. Serbia also did not respond to the Committee's invitation to provide additional information on efforts made to establish a statelessness determination procedure in line with the 1954 Statelessness Convention (LoI, para. 16 - c). In paragraph 33 of this report,

---

<sup>22</sup> 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>.

it was pointed out that due to the lack of statelessness determination procedure, stateless persons cannot obtain free legal aid.

#### **ISSUE 4: THE RIGHT TO A NATIONALITY**

##### **Acquisition of citizenship for otherwise stateless children born in Serbia**

37. 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.
38. 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.
39. 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 are uncertain about whether they will even acquire citizenship.
40. 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.<sup>23</sup> It is possible to acquire Serbian citizenship on the basis of birth on its territory only until the age of 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

---

<sup>23</sup> Serbia is State Party to the 1961 Convention on the Reduction of Statelessness.

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.

41. 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.
42. 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.

#### **Statelessness determination procedure**

43. Although a State party to the 1954 Convention Relating to the Status of Stateless Persons, Serbia does not have a dedicated statelessness determination procedure nor any other mechanism to identify and determine statelessness. Thus, stateless persons cannot prove their status, and therefore cannot access the rights guaranteed by the Convention and some domestic laws.

#### **Fourth periodic cycle**

44. In the Fourth periodic report of Serbia on the implementation of the ICCPR, para. 52, it is said that “the Ministry of Interior, applying the Law on Citizenship, decides on the requests for admission to citizenship by accelerated procedure.”
45. Unfortunately, the situation in practice does not match this information. On the contrary, one of the biggest problems that have been observed in previous years in the procedures for acquisition of citizenship is the length of the procedures. In the cases in which Praxis is providing free legal aid to the Roma, the deadlines for issuance of decisions in the procedures for determination of citizenship and naturalization (which is two months) were always exceeded, often multiple times. Thus, the procedure for determination of citizenship lasts for three to four months at best, while the naturalization procedure is almost never completed in less than a year. During 2023, a certain improvement was observed, so the procedures generally lasted a little shorter, but the deadlines were still exceeded.

46. In the List of issues in relation to the fourth periodic report (CCPR/C/SRB/Q/4), the Committee asked Serbia to respond to reports indicating that many Roma children remain stateless for a prolonged period, including due to the lengthy citizenship and costly naturalization procedures (paragraph 8 - c)
47. In the Replies to the list of issues, Serbia only responded that “There are no pending cases concerning children and their acquisition of citizenship.”
48. In this regard, it should be noted that, at the time when the Government adopted the Replies of Serbia (September 2023), Praxis alone had at least two pending cases for the acquisition of citizenship for children (and about 20 pending procedures for adults).
49. However, the statistics on the number of pending cases do not reflect the state of affairs in terms of solving the problem of statelessness, as the delay in acquiring citizenship is not only a consequence of the length of the procedures, but it can also be caused by the fact that children cannot be registered in the birth books a long time after their birth, or by improper application of the regulations governing the acquisition of citizenship, as it is stated in the previous parts of this report. Some people, for various reasons, for a long period of time do not manage to initiate procedures at all. The Committee also cited the lengthy and expensive procedures just as examples of reasons for delaying the acquisition of citizenship.
50. Unfortunately, Serbia has not provided information about the measures it intends to take to eliminate any of the possible causes that lead to the delay in acquiring citizenship.
51. As already stated in this report, Serbia did not respond either to the Committee's invitation to provide information on efforts made to establish a statelessness determination procedure (LoI, para. 16 - c)

## **ISSUE 5: REGISTRATION OF RESIDENCE**

52. 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 permanent residence at the address of a social welfare centre. However, some obstacles are still present.
53. 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).

54. 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.
55. 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.<sup>24</sup>

### **Third periodic cycle**

56. In the Concluding observations on the third periodic report of Serbia, Serbia received the recommendation to “allow internally displaced Roma who live in informal settlements to register their place of residence and to acquire identification documents” (recommendation 15b).
57. However, this recommendation has not yet been implemented, 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.

### **Fourth periodic cycle**

---

<sup>24</sup> For a detailed analysis of the problems in the procedures for residence registration, see: Permanent Residence Registration For Marginalised Citizens – Law and Practice, Praxis 2023, available at: [https://www.praxis.org.rs/images/praxis\\_downloads/Permanent\\_Residence\\_Registration\\_For\\_Marginalised\\_Citizens\\_Law\\_and\\_Practice.pdf](https://www.praxis.org.rs/images/praxis_downloads/Permanent_Residence_Registration_For_Marginalised_Citizens_Law_and_Practice.pdf)



58. In its Fourth periodic report on the implementation on the ICCPR (par. 54), Serbia provides some data on the number of persons who have registered permanent residence at the address of social welfare centres (1,142 persons in the period from 20 December 2017 to 11 December 2020).
59. In the Replies to the LoI, Serbia stated that “personal documents have been issued for 4,532 persons (mostly Roma living in informal settlements), while in the period from 20.12.2017 – 9.06.2023, for 2,083 persons” (para. 47).
60. Information that a significant number of persons had their permanent residence registered and obtained personal documents should be welcomed, but it is worrying that also 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.<sup>25</sup> Also, among the undocumented persons who turn to Praxis for legal assistance, by far the most are those who have a problem with residence registration.<sup>26</sup>
61. The Committee asked Serbia to respond to reports indicating that some internally displaced Roma still face difficulties in registering their place of residence (List of issues para. 8 – c), but Serbia did not do that, and only provided data (quoted above) on the number of people who managed to obtain personal documents.

## RECOMMENDATIONS

62. Based on this submission, Praxis and ENS 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.

---

<sup>25</sup> 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>

<sup>26</sup> During 2023, a mapping exercise on the number of persons at risk of statelessness was carried out by Praxis in the selected cities and municipalities where it is assumed that most persons at risk of statelessness live. On that occasion, 746 persons who do not have registered residence in the place where they live were identified, as well as 573 persons who have no registered residence at all. These data refer to specific identified persons and are not estimates based on extrapolation. Bearing this in mind, as well as the fact that the mapping was not carried out on the entire territory of Serbia, it can be safely concluded that the number of persons without residence registration is significantly higher.

- 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 Egyptian 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.
- Establish a statelessness determination procedure in order to fully implement obligations under the 1954 Convention and to provide protection to stateless persons.
- 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.