

THE COMMITTEE ON THE RIGHTS OF THE CHILD

74th Pre-Sessional Working Group (06 Jun 2016 - 10 Jun 2016)

SERBIA

Civil Society Submission on the right of every child to acquire a nationality under Article 7 CRC

1 March 2016

Introduction

1. Praxis,¹ the Institute on Statelessness and Inclusion (Institute)² and the European Network on Statelessness (ENS)³ welcome the opportunity to make this submission to the Committee on the Rights of the Child regarding Serbia's compliance with Article 7 of the CRC, which states that every child has the right to acquire a nationality. This submission highlights challenges in the realisation of the right of every child to acquire a nationality and the avoidance of childhood statelessness in Serbia as a result of discrimination, poor implementation of the law and challenges related to birth registration, faced in particular by the Roma community. In light of the Committee's previous recommendations to Serbia on the issue,⁴ state recommendations issued to Serbia during the second UPR cycle,⁵ the importance of the eradication of statelessness as expressed by the UN High Commissioner for Refugees #IBelong campaign,⁶ and the relevance of Goal 16.9 of the Sustainable Development Goals, which aims to "by 2030, provide legal identity for all, including birth registration",⁷ the submitting organisations hope the Committee will **raise the issue of realising the right of every child to acquire a nationality in its List of**

¹ 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 status and socioeconomic rights, antidiscrimination, gender equality, migration and child rights. Praxis has spent ten years working to solve and prevent the issue of statelessness. (<http://www.praxis.org.rs/index.php/en/>)

² The Institute on Statelessness and Inclusion is an independent non-profit organization committed to promoting the human rights of stateless persons and fostering inclusion to ultimately end statelessness. Addressing childhood statelessness is one of the core thematic priorities of the Institute. See further: <http://www.institutesi.org/ourwork/children.php>.

³ The European Network on Statelessness is a civil society alliance of NGOs, academic initiatives and individual experts committed to addressing statelessness. With 103 members in 39 European countries, the Network's current thematic priority is ending childhood statelessness in Europe, including through its #StatelessKids campaign. See further www.statelessness.eu.

⁴ The Committee previously recommended that Serbia "Take all necessary measures to systematically register Roma children so as to provide equal access to health services and to avoid statelessness". CRC/C/SRB/CO/1, 20 June 2008, para. 76 C.

⁵ In January 2013, Serbia accepted the recommendation made by Brazil, during the second UPR cycle, to "Take appropriate measure to ensure that the basic civil and political rights of Roma are being assured and that birth registration is available and accessible for all children without discrimination".

⁶ The UNHCR #IBelong campaign aims to eradicate statelessness by the year 2024, see further: <http://www.unhcr.org/ibelong/>.

⁷ A/RES/70/1.

Issues for Serbia and address recommendations to the Government of Serbia to further prevent and reduce the problem of childhood statelessness in the country.

2. This submission draws on the extensive experience in providing free legal aid, monitoring and research carried out by Praxis in Serbia through its statelessness related projects. Since 2012, Praxis has been a member of the European Network on Statelessness (ENS) and thus further acted in the field of statelessness issue through various advocacy and research activities, as well as statelessness-oriented campaigns. Praxis has continuously engaged with the CRC reporting process including through submitting information to the Republic of Serbia to assist with its preparations to submit its combined Second and Third Periodic Report on the implementation of the CRC; and through contributing to an Alternative Report on the general implementation of the CRC in Serbia, which also addressed the main problems related to nationality and was prepared by the Coalition for Monitoring Child Rights.
3. The Submission also draws on the Institute's and ENS' expertise in this area. The Institute is committed to helping promote children's right to a nationality, establishing it as one of its five thematic priorities. As part of this work, the Institute has developed a set of tools, to strengthen engagement on children's right to a nationality with the Committee on the Rights of the Child, including a fact sheet summarising state parties' obligations in respect of children's right to a nationality under the CRC, a draft Policy Paper discussing the work of the Committee in promoting children's right to a nationality and how this can be strengthened, and an analytical database of the Concluding Observations of the Committee which relate to children's right to a nationality.⁸ Furthermore, the Institute is also an expert partner for the campaign by the European Network on Statelessness, entitled None of Europe's children should be stateless. This campaign aims to promote the enjoyment of a nationality – and thereby the prevention of statelessness – by all children who are born in Europe or who are born to European parents in other parts of the world.
4. This submission has been structured to highlight issues which may be included in the List of Issues by including them in text boxes under each substantive section, and recommendations which may be drawn on for the Committees Concluding Observations by listing them at the very end of the text. For the Committee's convenience, an annex to this submission includes English translations of all relevant legal provisions. A list of bylaws is also included. These bylaws are not available in English, nor are the instructions and opinions of relevant ministries mentioned in the submission. However, if the Committee so requires, the submitting organisations will be able to do an unofficial translation of these bylaws, and share them with the Committee.

The Report of Serbia to the Committee

5. The Republic of Serbia's Second and Third Periodic Report to the Committee provided an overview of Serbia's performance in relation to birth registration, the right to a name and nationality (Article 7 of the Convention, and the Committees recommendations 33 and 34 under its previous review of Serbia).⁹ The state report highlights the main improvements in this area and claims that the Law on Registry Books and accompanying bylaws contributed to improving the exercise of the right to birth registration regardless of whether the child's parents are known or unknown, the child is without parental care or adopted, and whether the birth registration is entered within or after the legal time frame for registration. The adoption of the Law on Amendments to the Law on Republic Administrative Fees,¹⁰ also improved the child's right to birth registration, while the birth registration procedure was also regulated in more detail by the Instruction on Administering the Birth Registry Books and Their Forms.¹¹ The report also states

⁸ All of these resources can be found at: www.InstituteSI.org/children

⁹ CRC/C/SRB/CO/1

¹⁰ The Law on Amendments to the Law on Republic Administrative Fees, the Official Gazette of RS, 50/2011

¹¹ The Instruction was issued on 7 April 2011 by the Ministry for Human and Minority Rights, Public Administration and Local Self-Government

that the Law on Amendments to the Law on Non-Contentious Procedure¹² provide for the procedure of determining the date and place of birth based on which all persons who are not registered in the birth registries and who, at the same time, cannot provide evidence of their birth as stipulated under the regulations on administering the birth registries, may submit a motion for determining the date and place of birth to the court.

6. The submitting organisations recognise and appreciate all the efforts made by the state of Serbia, especially those related to the adoption of the Law on Amendments to the Law on Non-Contentious Procedure which makes it possible to determine the fact of birth for persons who had not been able to register for years. However, the State report did not refer to comments by Praxis related to still unresolved issues and the need for further improvements in exercising the right to birth registration and nationality. Specifically, Praxis, together with Centre for Children's Rights, was invited in 2012 by the Office for Human and Minorities Rights, which coordinated the preparation of the State report, to take part in the drafting process. In December 2012, Praxis sent comments and information about its experience, as well as about various unresolved issues in relation to Articles 2 and 7 CRC. Feedback from the Office for Human and Minority Rights was received one and a half years later, and a new meeting was held in July 2014. Praxis again sent in comments in relation to gaps and issues in accessing the rights guaranteed under Article 7 CRC. However, these comments were not included in the state report. Hence, this alternate report provides the Committee with further information to complement and fill out the gaps in the state party report.

Statelessness in Serbia¹³

7. Several categories of children are particularly at risk of statelessness in the Republic of Serbia. These include children who have not been registered in birth registries, children of undetermined citizenship and those who were registered in registry books that were lost or remain unavailable to the authorities of Serbia. The great majority of these children belong to the Roma community, which lives in deep poverty and social exclusion, exposed to discriminatory treatment in almost every area of life.
8. Statelessness and the risk of statelessness is an issue that the Republic of Serbia has made efforts to address. Legislative changes and better practices have helped to both prevent new cases of statelessness and find solutions for persons who have been living without citizenship or proof of citizenship for many years. However, some gaps still remain, which must be addressed to fully resolve statelessness in the country. In particular, in order to prevent childhood statelessness and to fulfil obligations stemming from Serbia's international obligations and its constitution, it is still necessary to ensure that every child is registered at birth without discrimination and regardless of status of his/her parents.
9. In addition to the CRC, Serbia is party to the core international human rights treaties, including the ICCPR, the ICESCR, ICERD, CEDAW, CRPD, CAT. Serbia is also party to the 1954 Convention on the Status of Stateless Persons and acceded to the 1961 Convention on the Reduction of Statelessness in 2011.
10. The Constitution of the Republic of Serbia guarantees to everyone the right to legal personality and to every child the right to a name and the right to be registered in the birth registries. The Constitution also in effect provides a guarantee against statelessness, through Article 38 which prescribes that *"Acquiring and terminating citizenship of the Republic of Serbia shall be regulated by the law. A citizen of the Republic of Serbia may not be expelled or deprived of citizenship or the right to change it. Any child born in the Republic of Serbia shall have the right to citizenship of the Republic of Serbia"*.

¹² The Law on Amendments to the Law on Non-Contentious Procedure, the Official Gazette of RS, 85/2012

¹³ According to Article 1.1 of the 1954 Convention relating to the Status of Stateless Persons, a stateless person is someone "who is not considered as a national by any state under the operation of its law." The United Nations High Commissioner for Refugees estimates more than 10 million people worldwide are stateless and without the protection of any state.

11. The Constitution does not actually prescribe the procedure for acquiring nationality. This is regulated by the Law on Citizenship, Article 6 of which states that:

“Citizenship of the Republic of Serbia is acquired by:

- 1) descent;*
- 2) birth in the territory of the Republic of Serbia;*
- 3) admission;*
- 4) pursuant to international treaties.*

By descent and by birth in the territory of the Republic of Serbia, citizenship of the Republic of Serbia is acquired pursuant to recording of the fact on citizenship in the Register of births.

By admission, citizenship of the Republic of Serbia is acquired pursuant to the valid decision made by the ministry competent for internal affairs upon a procedure predicted herein.”

In addition, Article 13 of the Law on Citizenship sets out that *“A child born or found in the territory of the Republic of Serbia (foundling) acquires citizenship of the Republic of Serbia by birth if both his parents are unknown and of unknown citizenship or without citizenship of if the child is without citizenship.”* This provision in gives effect to Serbia’s obligations under Article 1 of the 1961 Convention on the Reduction of Statelessness. It should also be interpreted in light of Serbia’s obligations under Article 7 of the CRC, which includes an absolute protection against childhood statelessness.

12. Finally, despite the legal system being largely in place with various improvements having been made, the exercise of the right to nationality is impeded by difficulties and discriminatory practices related to birth registration. This is because birth registration is a precondition for the initiation of procedures for acquisition of nationality. Further challenges remain in relation to regulations which require further clarification and gaps in the law and policy framework. This submission draws the attention of the Committee to these various areas and issues of concern.

Issues of concern related to birth registration and personal name determination and suggested questions for the state party’s review

13. As outlined above, birth registration is a key prerequisite for accessing Serbian citizenship, and late birth registration directly contributes to the risk of childhood statelessness. The Law on Civil Registry Books and related bylaws regulate the procedure for birth registration, regardless of whether the child’s parents are known or unknown, whether the child is without parental care or adopted, or whether the birth registration is completed within or after the legal time frame for registration. However, the birth registration and personal name¹⁴ determination regime also contains barriers which make it impossible or particularly difficult for certain categories of person to access birth registration, thus undermining their legal identity including their right to acquire a nationality. The most important concerns are as follows:

Discrimination in relation to birth registration

14. According to the latest data,¹⁵ 99.4% of children under age 5 have had their births registered in Serbia. However, when looking specifically at the Roma community living in informal settlements, this percentage drops to 95.3%. As already stated, the main reason for late birth registration is the parents’ lack of documentation. The above given data confirms the fact that members of the Roma national

¹⁴ Personal name refers both to first name and family name

¹⁵ Statistical Office of the Republic of Serbia and UNICEF, Serbia Multiple Cluster Survey and Serbia Roma Settlements Multiple Indicator Cluster Survey, 2014, Final Reports, Belgrade, December 2014

minority are disproportionately affected by this problem. Besides the lack of personal documents, life in informal settlements, poverty and discrimination also disproportionately impact the Roma. All this contributes to the fact that the Roma are most exposed to the risk of statelessness in Serbia. Finally, if not registered at birth and not given a personal name and citizenship at birth, the poor, illiterate and uneducated persons need to have access to free legal aid in order to be able to initiate and complete relevant procedures. The fact that Serbia does not have Law on Free Legal Aid yet additionally burdens the position of marginalized Roma.

15. Although the right to non-discrimination is a well-established human rights principle in international law, discrimination against children, especially the most vulnerable among them, still occurs in practice. Article 2 of the CRC clearly prohibits discrimination of any kind, including that based on birth or other status. Also, recognising that children born of stateless parents may be subject to discriminatory treatment, the UN Committee on Economic, Social, and Cultural Rights also has interpreted the prohibition of discrimination based on birth in the International Covenant on Economic, Social, and Cultural Rights (to which Serbia is a State Party) as follows: “Distinctions must therefore not be made against those who are born out of wedlock, born of stateless parents or are adopted or constitute the families of such persons”.¹⁶ However, despite all guarantees, the children of vulnerable and marginalised Roma in Serbia – particularly undocumented persons who themselves are stateless or at risk of statelessness – are still discriminated against, are less likely to have their births registered than the children of parents who belong to the majority population and are more likely to have their status regulated. All these clearly indicate the violation of Article 7 read in conjunction with Articles 2 and 3 CRC.

16. It must be noted that this situation has existed in Serbia for many years. In fact, during the Committee’s previous review of Serbia, it recommended that Serbia “Take all necessary measures to systematically register Roma children so as to provide equal access to health services and to avoid statelessness”.¹⁷

In light of the disproportionate nature of provisions regulating birth registration, the Committee is urged to ask Serbia:

- **What measures is it taking to prevent discrimination against children of undocumented Roma parents in relation to birth registration**
- **What steps it is taking to provide free legal aid to vulnerable persons so they may initiate and complete relevant registration procedures**

The requirement that the parents of the child have official documentation

17. In order to register the birth and the name of their child immediately upon birth through a regular procedure, parents need to possess birth certificates and ID cards, or if they are foreign citizens, passports. The stated requirement is prescribed within the Instruction on Administering the Birth Registry Books and Birth Registry Forms,¹⁸ the bylaw which closely regulates the manner of registration in the birth registry. Therefore, children whose parents are undocumented cannot be issued a birth certificate upon birth with their names determined. They need to undergo one of the following procedures - determination of personal name, subsequent birth registration or determination of the date and place of birth. Each of these procedures often lasts several months, while in particularly complicated cases they may last even a year or longer. At the same time, the lack of immediate registration may create a risk that some children will not be registered at all. Obtaining birth certificates later in life, instead of upon birth, may increase the risk of statelessness. Even if children finally do have their births

¹⁶ General Comment No.20 (2009), § 26.

¹⁷ CRC/C/SRB/CO/1, 20 June 2008, para. 76 C.

¹⁸ The Instruction was published in the Official Gazette of the Republic of Serbia, no. 109/2009, 4/2010, 10/2010, 25/2011, 5/2013 and 94/2013

registered (and subsequently have a recognised name and secure recognition of their citizenship), they will spend some time without birth registration and the legal protection that comes with it.

18. The stated restriction is contrary to the Articles 37, regulating the right to legal personality and 64, regulating the rights of the child of the Constitution of Republic of Serbia and Article 7 of the CRC. The right to be registered in birth registries and to have an officially registered personal name are inherently linked to the child's right to an identity. Delay in registering birth and personal name indefinitely deprives the child of a legal identity, despite the CRC clearly establishing that birth registration should be universal and immediate. Furthermore, this also impedes access of children born to known, but undocumented parents, to the safeguard against statelessness. In other words, as a result, both the registration of children and the safeguard against statelessness are contingent on the status of the parents.
19. It must be noted in this regard that Goal 16.9 of the Sustainable Development Goals aims to "by 2030, provide legal identity for all, including birth registration".¹⁹ Indeed, it is evident that Goal 16.9 can only be achieved if CRC 7 is universally respected and protected. As mentioned in the UN Secretary General's recent Report, Goal 16.9 "will not be fully met unless articles 7 and 8 of the Convention on the Rights of the Child are universally respected and fulfilled and childhood statelessness has been eradicated."²⁰
20. On a number of occasions,²¹ officials of the Republic of Serbia announced that introducing electronic procedures for data and document exchange between civil registrars and other authorities involved in the birth registration procedure will ensure improved cooperation, but more importantly, lawful and effective exercise of the right of birth registration within the stipulated time limit. However, amendments to the Rules on birth registration and forms of registration of birth in health institutions, adopted in February 2016, prescribe in Article 5 that "When registering the child's birth, information about parents are entered based on their ID cards issued by the competent body of the Republic of Serbia and data recorded in the birth and marriage registries or personal documents considered to be evidence on such data, and for foreigners based on the passport/ID card or an identification document issued by the competent body of the Republic of Serbia". While this provision refers to "personal documents considered to be evidence on such data", it is evident that registration is again based on a document and that the amendments will not secure birth registration immediately upon birth regardless of the status of the child's parents.

21. In light of the disproportionate nature of provisions that only allow birth registration of children whose parents have valid legal documentation, the Committee is urged to ask Serbia:

- **Can it provide disaggregated data (including by ethnicity) on the number of births that were not registered over the recent 5 year-period due to these restrictions?**
- **What steps is it taking to ensure that the births of all children can be immediately registered, regardless of the status or documentation of their parents?**

Difficulties in determination of personal name

22. The right to a name from birth is specifically prescribed in Article 7 of the CRC. In Serbia, when children are born in health institutions, their birth is registered in the birth registries based on the report of birth issued by the health institution. The child's parents then have 30 days within which to determine the name of their child for the official record. If the parents fail to do so, which is most often the case when parents do not possess documents themselves, the social welfare centre must initiate the procedure *ex*

¹⁹ A/RES/70/1.

²⁰ UN Human Rights Council, *Impact of the arbitrary deprivation of nationality on the enjoyment of the rights of children concerned, and existing laws and practices on accessibility for children to acquire nationality, inter alia, of the country in which they are born, if they otherwise would be stateless*, 16 December 2015, A/HRC/31/29, para 33.

²¹ For example see the Social Inclusion Seminar: Roma issues in the Republic of Serbia available at <http://www.ljudskaprava.gov.rs/index.php/ynu/nacionalne-manjine2/propisi-i-strategije>

officio and determine the personal name of the child. However, according to Praxis' experience,²² there have been cases where social welfare centres have refused to determine personal names. Without an official personal name listed on the birth certificate, children cannot obtain a citizenship certificate.

23. Difficulties in determination of personal name occur when social welfare centres refuse to act in cases where parents do not have documents or permanent residence registered in the territory of the jurisdiction of the social welfare centre. Although it is possible for undocumented parents to prove their identity with the assistance of two witnesses and for territorial jurisdiction to be established based on the 'place of factual residence' of the parents or the 'place where the reason for initiation of the procedure occurred', the practice of social welfare centres is particularly unequal and inefficient.
24. Recognising the need for improvement, in December 2014, the Ministry of Labour, Employment, Veteran and Social Policy (hereinafter: MLEVSP) issued an instruction to social welfare centres, which was supposed to eliminate most of the problems identified in practice.²³ The instruction explicitly envisages that social welfare centres are responsible for appointing a temporary guardian to parentless children to conduct the procedure for the determination of a personal name. When parents do not possess personal documents and their identity cannot be determined, the instruction envisages enabling them to participate in the procedure if their identity can be guaranteed by a third person who possesses a personal document or if the parents are personally known to the official who conducts the procedure. This instruction should contribute to unified and lawful practice by social welfare centres in these cases and also facilitate the exercise of the right to a personal name for all children. However, it remains to be seen whether the instruction will be implemented consistently.
25. The case of one of Praxis' clients, Valjbona, may best illustrate the practice but also the importance of the MLEVSP Instruction. Valjbona was a legally invisible person who Praxis assisted by registering her birth, determining her personal name, acquire Serbian citizenship on her behalf and obtaining personal documents for her. All of this should have enabled her to determine the personal names to her children in due course. Upon the birth of her children, she first addressed the social welfare centre (SWC) and was referred first to obtain an ID card as proof of her identity. Since she only completed the subsequent birth registration procedure at the time, and data on her name and surname were not entered in the birth certificate, she addressed the competent SWC to reach a decision determining her personal name first. Under the number of pretexts, including the one that SWC is not responsible for determining the personal name of adults, she was prevented from submitting the request. Therefore, with assistance of Praxis, she submitted a written request and later filed an appeal against the SWC for not reaching a decision. The decision on determination of personal name was made after 5 months. This was only the first step – she had to initiate a procedure for determination of citizenship, then a procedure for registration of residence and only after that was she able to submit request for an ID card. All those procedures lasted 10 months, after which, Valjbona managed to obtain her ID card. Consequently, her children had to wait for 15 months for the possibility of personal name determination. They would have had to wait even longer if the Instruction of the MLEVSP was not issued. Provisions of the Instruction enabled Praxis' lawyer to insist on Valjbona's participation in the procedure regardless the fact that she did not possess an ID card. However, worryingly, lawyers of the SWC were not familiar with the instruction.

26. In the context of the recent developments and the need for consistent implementation of new solutions, the Committee is urged to ask Serbia:

- **Can it provide desegregated data on the number of determined personal names for children of undocumented parents?**

²² For more details refer to Analysis of the late birth registration procedures, page 13-15, [http://praxis.org.rs/images/praxis_downloads/OSCE - Final Report.pdf](http://praxis.org.rs/images/praxis_downloads/OSCE_-_Final_Report.pdf)

²³ Act of the Ministry of Labour, Employment, Veteran and Social Affairs no. 551-00-00051/2014-14 as of 10.12.2014.

- **How does it plan to ensure monitoring of implementation of the Instruction? What steps will be taken to address inconsistent practice in this regard?**

Difficulties with acknowledgment of paternity

27. Difficulties related to the acquisition of citizenship may also arise if a child is registered in birth registries with his/her name written, but the mother does not possess any documents. If the father is a Serbian citizen, the child has the grounds to acquire Serbian citizenship by descent. However, in order for a child to acquire citizenship through his/her father, the father needs to acknowledge paternity,²⁴ and the mother needs to agree to the acknowledgement of paternity, which is not possible if the mother's residence is unknown. In such cases, the social welfare centre should initiate the procedure for appointment of a temporary guardian to consent to the acknowledgement of paternity. However, in practice social welfare centres refuse to take statements acknowledging paternity not only when the mothers are absent, but also in cases when mothers want to take part in the procedure but have no ID card. Therefore, even children whose fathers are Serbian citizens have difficulties in acquiring citizenship.
28. According to the Serbian Law on Citizenship, even without the proof of paternity, being the children of a stateless mother, these children have the right to Serbian citizenship for being born in its territory, i.e. based on the Article 13 of the Law on Citizenship which guarantees the acquisition of citizenship based on the principle *ius soli* for the child born in Serbia if both parents are unknown or of unknown citizenship or without citizenship or if the child would be left stateless otherwise.
29. The MLEVSP has not adopted any specific instruction on this issue, even though Praxis has raised the problems related to acknowledgement of paternity since the children of undocumented mothers and those abandoned by their mothers are at risk of statelessness, even if their fathers are Serbian citizens. It would be therefore crucial that the SWC appoints a temporary guardian for the acknowledgement of paternity, since the possibility of acquisition of citizenship depends on this.
30. Finally, although there is a possibility for initiation of a court procedure for the determination of paternity, we find it unsuitable for the situations described above, because these procedures are lengthy and complicated, and poor, illiterate and uneducated persons are not able to initiate such procedures or cover the costs of extremely expensive DNA testing, which is often requested in the procedures for determination of paternity before the court. Therefore, if neither the mother nor the child can provide consent to the acknowledgement of paternity, the appointed guardian of the child should provide consent which results in a more acceptable way to determine the origin of the child in the aforementioned cases.

31. In this context, the Committee is urged to ask Serbia:

- **Can it provide desegregated data on the number of children for whom paternity was not acknowledged due to the lack of undocumented mother consent, and of those assigned with temporary guardian in such cases?**

²⁴ If the mother of the child is undocumented, she cannot conclude the marriage and thus the data on the father of her child are registered only if the paternity is acknowledged.

Issues of concern related to the right to nationality and suggested questions for the state party's review

Provision provided in Article 71k, Paragraph 2 of the Law on Non-Contentious Procedure

32. As already stated, the introduction of the procedure for determining the date and place of birth prescribed by the Law on Non-Contentious Procedure was a significant step forward towards a solution of the problem of legally invisible persons in Serbia. It has put in place a system of Rules under which the fact of date and place of birth is to be established through judicial proceedings for persons who could not be registered into the birth registries under the Rules of an administrative procedure. However, the registration of legally invisible persons in birth registries is only the first stage on the way to their integration into the legal system. Besides being recorded in birth registries, they need to regulate their citizenship, unique personal ID numbers, identity cards, permanent residence, rights to education, health care, etc.
33. Having in mind that birth registration ultimately should lead to the citizenship acquisition and access to a range of rights, it is worrying that the Law on Amendments to the Law on Non-Contentious Procedure in its Article 71k, Paragraph 2 explicitly prescribes that the *“competent authority, that is, the authority in charge of conducting the citizenship acquisition procedure, is not bound by a final and binding ruling of the non-contentious court department establishing the date and place of birth”*. Therefore, Article 71k makes it possible for the Ministry of Interior (MoI) to decline a request for acquisition of citizenship, despite the fact that the statutory requirements have been met.²⁵
34. Despite the fact that, according to the Praxis' experience, the Article 71k has not been applied yet or caused any problems in practice so far, this provision undermines the integrity of the legal order and the exercise of the right to citizenship. It also undermines efforts to eradicate a risk of statelessness. Finally, Article 71k seriously calls into question the observance of the constitutional provisions on separation of powers, the implementation of judicial decisions and the possibility for their review.

35. In light of the above, the Committee is urged to ask Serbia:

- **Has the Article 71k been implemented to-date and if yes, can it provide a number of cases and reasons for its implementation?**
- **Does it intend to amend the Law on Non-Contentious Procedure and set aside Article 71k, Paragraph 2?**

The lack of regulations or guidelines to implement Article 13 of the Law on Citizenship

36. Article 13 of the Law on Citizenship envisages the acquisition of citizenship according to the *ius soli* principle and stipulates that *“A child born or found in the territory of the Republic of Serbia (foundling) acquires citizenship of the Republic of Serbia by birth if both his parents are unknown and of unknown citizenship or without citizenship or if the child is without citizenship”*. Therefore, the citizenship should be acquired at birth, automatically, by operation of the law.
37. However, the Rules on the registration of citizenship in the birth registry book, forms for keeping records of decisions on acquisition and termination of citizenship and form for a citizenship certificate, stipulate in Article 10 that for a child who acquires the citizenship of the Republic of Serbia by being born in its territory, the fact of his/her citizenship shall be registered in the birth registries where the fact of his/her

²⁵ Legal Analysis of the Article 71k, Paragraph 2 of the Law on Non-Contentious Procedure by Nikola Bodiřoga, PhD is available at <http://praxis.org.rs/index.php/en/praxis-in-action/nationality-statelessness/item/716-pravna-analiza-%C4%8Dlana-71k-stav-2-zakona-o-vanparni%C4%8Dnom-postupku-dr-nikola-bodiřoga>

birth has been registered. In that case, the registration is conducted based on the document proving that they are stateless or of unacknowledged citizenship or that a child is stateless, or based on the decision of the competent body on the basis of which the birth registration was conducted.

38. In the case of a foundling, the competent body is the SWC and the procedure is more strongly regulated by the relevant bylaw – Rules on the manner of conducting a procedure and recording a foundling. According to Article 8, the SWC which brought a decision shall send a copy of the record of a foundling, together with the decision on registration of birth of a child born to unknown parents, to a competent registry office. No further procedure for acquisition of citizenship is needed.
39. Unlike the case of a foundling, there are no further provisions or guidelines on what is considered to be a document by which parents prove that they are stateless or of unacknowledged citizenship, or that a child is stateless. Prescribing that registration of citizenship should be conducted based on such a document, where the content or a procedure in which it should be issued is unknown and unregulated, causes only confusion in accessing the right to nationality for otherwise stateless children. Therefore, although those children have the right to citizenship according to the *ius soli* principle, there is a threat that they may be deprived of this right due to the difficulties in proving that their parents are stateless or of unknown citizenship. In addition, both imprecise regulations and the imposing of additional conditions significantly undermines the prescribed safeguards against statelessness.

40. In this context, the Committee is urged to ask Serbia:

- **Can it provide data on the number of children who acquired citizenship based on the Article 13 of the Law on the Citizenship for a child whose parents are of unknown citizenship or without citizenship or if the child is without citizenship?**
- **Can it provide details of the procedure for acquisition of citizenship in such cases?**
- **Does it intend to simplify the application of stated provisions in practice?**

Not registering or incorrect registration of citizenship

41. This problem refers to cases in which children are not registered as Serbian citizens despite meeting all necessary legal requirements. This is often the case when children are subsequently registered in the birth registries or when the children are registered in the reconstructed birth registries (in case of destroyed or unavailable registries). In such cases, these children are instructed by registry offices to initiate a procedure for the determination of citizenship, which lasts on average six months, and sometimes several extra months in order to collect relevant evidence. Not registering the citizenship of a child in such cases does not result in statelessness because the child will receive the citizenship certificate after the completion of the procedure for determination of citizenship. However, the failure to promptly register the child's citizenship prolongs the time which the child spends without access to rights, which is clearly contrary to the principle of the best interests of the child.
42. The relevant Ministry of Interior issued an opinion according to which the fact of the child's citizenship needs to be registered in the birth registries during the enforcement of a court decision and upon the completion of a subsequent birth registration procedure, in case there is a ground in the Law on Citizenship. Therefore, it is not necessary to conduct a procedure for determination of citizenship in these cases. The MoI also specified in its opinion that in cases when the registrar fails to register the fact of citizenship along with subsequent birth registration when enforcing decisions on subsequent birth registration or determination of date and place of birth, they may do so at a later date. Thus, conducting procedures for determination of citizenship in these cases may be avoided, and the time a child is left with undetermined citizenship would be significantly reduced.

43. Difficulties may also arise if a competent registrar records incorrect data on (foreign) citizenship of the child. This is another reason as to why children spend a long period of time without Serbian citizenship certificate and are forced to initiate the procedure for determination of citizenship even though it is clear that they have fulfilled all conditions for acquisition of Serbian citizenship at birth.

44. Recognising the efforts made, the Committee is urged to ask Serbia:

- How does it plan to monitor the implementation of the issued opinion and overcome malpractice?

Impeded access to human rights for children who are not registered in birth registries and are therefore at risk of statelessness

45. Despite the fact that the international legal framework, in particular, provisions related to protection of child rights are designed to protect and promote human rights equally for all individuals, unregistered children in Serbia face numerous obstacles in accessing their rights. The exclusion of children who are not registered in birth registries starts immediately upon their birth. They cannot be registered for health insurance, exercise the right to social protection and have impeded access to education. Even when undocumented children are enrolled in elementary schools, they cannot obtain a diploma and enrol in high school. Hindered education possibilities make them more vulnerable to drifting into child labour. In addition, undocumented children face greater risk of various forms of abuse, exploitation and human trafficking. Therefore, the fact that there are still children, who cannot obtain birth and citizenship certificates for months after their birth, does not only increase the risk of statelessness, it can also lead to the violation of a series of other rights of children.

46. Undocumented children are dependent on the status of their parents, so the resolution of their problem, may take many years. Thus, the Committee on Economic, Social and Cultural Rights in its Concluding Observations on the second periodic report of Serbia gave an important recommendation:

“...that the State party ensure effective access by refugees, returnees and internally displaced persons, in particular Roma without a registered residence who live in informal settlements, to procedures for birth and residence registration in order to facilitate access to personal documents, including birth certificates, identity cards and work booklets. In the meantime, those affected should have access to economic, social and cultural rights.”

47. The case of Praxis beneficiary Raman shows how the “meantime” can last for years in which those affected are deprived of the majority of human rights. Raman approached Praxis for legal assistance when he was 23 years old and a father to children whom he could not officially recognise as his own. He lived with his common-law wife and their children in a shack in the woods. He has not finished school, never had a formal employment contract, does not receive social welfare and cannot receive medical treatment. Procedures for regulation of his status, which included birth registration, acquisition of citizenship, residence registration and obtaining an ID card, lasted for more than 3 years. Therefore, not only did Raman spend his entire childhood without any documents and without access to basic human rights, but his status affected the quality of life of his own children, as he was not able to adequately support his family without education, employment or social welfare assistance.

Recommendations

48. Based on the content of this submission, the following recommendations are made which we hope the Committee will consider in urging the Government of Republic of Serbia to ensure the right of every child to acquire a nationality:
- I. **Ensure that national laws, regulations and policies are in line with Serbia's obligations under international law and its Constitution, ensure the right of every child to acquire a nationality, and prevent childhood statelessness.**
 - II. **Prevent discrimination of Roma children, especially those born outside of hospitals, on the basis of the status of their parents. Such children are particularly vulnerable, live in poverty and in informal settlements. Take further measures to promote birth registration among Roma population, such as measures directed at raising awareness of the importance of birth registration and possession of personal documents.**
 - III. **Amend legislation that creates barriers to immediately accessing the right to birth registration. In particular, amend the bylaw which closely regulates the manner of registration in the birth registry book – Instruction on Administering the Birth Registry Books and Birth Registry Forms - so that neither the legal status of the parent nor their possession of identity document should determine whether a child's birth can be registered or not.**
 - IV. **Ensure lawful, equal and consistent implementation of regulations relevant for birth registration, in particular those related to the determination of personal name for children of undocumented parents and acknowledgment of paternity to children of an undocumented mother. Also, take further measures to promote favourable regulations and educate local officials for their implementation.**
 - V. **Set aside Article 71k, Paragraph 2 in order to ensure full compliance with the Constitution of Republic of Serbia and also to minimise the space for arbitrary actions by the Ministry of Interior in relation to citizenship acquisition.**
 - VI. **Ensure the smooth implementation, without further requirements and based on the *ius soli* principle, of the Article 13 of the Law on the Citizenship. In particular, guarantee the right to acquire Serbian citizenship for all otherwise stateless children born in Serbia, regardless of the parents' citizenship or statelessness, or of their legal status.**
 - VII. **Ensure that children who have not been registered at birth have equal access to the right to health care, education, protection and other social services.**

ANNEX – Excerpts of relevant Serbian legislation

The Constitution of the Republic of Serbia

Article 37. Right to legal person

Everyone shall have legal capacity.

Upon becoming of age all persons shall become capable of deciding independently about their rights and obligations. A person becomes of age after turning 18.

A person may choose and use personal name and name of their children freely.

Article 38. Right to citizenship

Acquiring and terminating citizenship of the Republic of Serbia shall be regulated by the law.

A citizen of the Republic of Serbia may not be expelled or deprived of citizenship or the right to change it.

Any child born in the Republic of Serbia shall have the right to citizenship of the Republic of Serbia unless conditions have been met to acquire citizenship of some other country.

Article 64. Rights of the child

A child shall enjoy human rights suitable to their age and mental maturity.

Every child shall have the right to personal name, entry in the registry of births, the right to learn about its ancestry, and the right to preserve his own identity.

A child shall be protected from psychological, physical, economic and any other form of exploitation or abuse.

A child born out of wedlock shall have the same rights as a child born in wedlock.

Rights of the child and their protection shall be regulated by the law.

The Law on Citizenship of the Republic of Serbia

Part Two. Acquiring of Citizenship of the Republic of Serbia

Article 6

Citizenship of the Republic of Serbia is acquired by:

- 1) descent;*
- 2) birth in the territory of the Republic of Serbia; admission*
- 3) admission;*
- 4) pursuant to international treaties.*

By descent and by birth in the territory of the Republic of Serbia, citizenship of the Republic of Serbia is acquired pursuant to recording of the fact on citizenship in the Register of births.

By admission, citizenship of the Republic of Serbia is acquired pursuant to the valid decision made by the Ministry competent for internal affairs upon a procedure predicted herein.

Part Two. Acquiring of Citizenship of the Republic of Serbia. Section 2 - Acquiring of Citizenship by Birth in the Territory of the Republic of Serbia

Article 13.

A child born or found in the territory of the Republic of Serbia (foundling) acquires citizenship of the Republic of Serbia by birth if both his parents are unknown or of unknown citizenship or without citizenship of if the child is without citizenship.

A child that acquired citizenship of the Republic of Serbia pursuant to the para. 1 of this Article is considered citizen of the Republic of Serbia since his birth.

A child from the para. 1 of this Article can cease to be citizen of the Republic of Serbia if by the age of 18 it be proved that both his parents are citizens of another member state or foreign citizens.

*The citizenship ends at request of the parents on the day of delivery of the decision.
If a child is over 14, it is necessary to have his consent for termination of citizenship in the Republic of Serbia.*

The Law on Registry Books

Manner of administering the birth registry books

Article 23

*The registrar is obliged to register data in the register without delay.
Exceptionally, registration may be deferred in order to verify or ascertain the missing data to be entered in the register.
A separate record is kept of delayed registrations.*

Article 25

If the data on birth or death is reported after the expiry of 30 days from the day of birth or death, the registrar may enter the data in the birth registry book only on the basis of the decision of the competent body.

Article 45

The following data shall be entered in the birth registry book:

- 1) Data on birth: name and surname of the child; sex of the child; day, month, year and time of birth; place and municipality of birth, and if a child is born abroad, the name of the state of birth; unique personal identification number and citizenship of the child;*
- 2) Data on the parents of the child: name and surname, and if parents are married the surname prior to the conclusion of the marriage; unique personal identification number; day, month and year of birth; place and municipality of birth, and if a parent was born abroad the name of the state of birth; citizenship; permanent residence and address;*
- 3) Data on: maternity determined or disputed by the court decision; recognition of paternity; paternity determined or disputed by the court decision; adoption and termination of adoption; placement under guardianship and termination of guardianship; deprivation and restitution of parental rights; extension and termination of extended parental rights; conclusion and termination of marriage; change of the personal name, name or surname of the child and the parents or adoptive parents or guardians; acquisition and termination of nationality; death, and other data stipulated by the law or other regulations passed on the basis of the law.*

Article 46

The birth of the child is reported to the competent registrar in order to be entered in the birth registry book.

Article 47

*The birth of a child born in a health institution shall be reported by the health institution on a prescribed form.
The birth of a child born out of a health institution shall be reported by the father of the child, and if the father is unable to do so by another member of the household or a person in whose apartment the child was born or by a mother, as soon as she is able to, or by a midwife or a doctor present at birth, and by a person who learned about the birth in the case these people are absent or unable to report it.*

Article 48

*The birth of a child is reported within 15 days upon the birth.
If a child is born dead, the birth shall be reported within 24 hours upon the birth.*

Article 50

The birth of a child of unknown parents is registered in the birth registry book for the area where the place of the child's birth is located.

The birth is registered on the basis of the decision issued by the competent social welfare centre, which includes the following data: name of the child; sex; date, month, year and time of birth; place and municipality of birth and citizenship of the child. The populated place where a child has been found shall be registered as the place of birth.

The social welfare centre issues the decision from the Paragraph 2 of this Article, on the basis of the minutes on the found child and delivers it together with the minutes to the registrar.

Section III. Birth registry book

Article 54

Persons who are under regulations on personal names authorized to determine the personal name of a child, are obliged to report the personal name of a child to the competent registrar for the needs of the registration in the birth registry book, within 30 days upon the birth.

If persons from the Paragraph 1 of this Article do not agree on the personal name of a child, they are obliged to inform the competent registrar within 30 days from the day of the child's birth.

If the deadline from the Paragraph 1 of this Article has expired, the personal name of a child will be registered on the basis of the decision of the competent social welfare center.

The Law on Amendments to the Law on Non-Contentious Procedure

Chapter 3a. Establishing the Time and Place Of Birth

Article 71a

(1) Persons who are not entered in the birth register and cannot prove their time and place of birth in the manner specified by regulations on the keeping of civil registers, may submit a motion to the court for establishing their time and place of birth (proving of birth).

(2) Apart from the persons whose birth is being proven, the procedure for establishing the time and place of birth may be initiated by any person with a direct legal interest, and by a guardianship authority.

Article 71b

Territorial jurisdiction for establishing the time and place of birth shall belong to each court with subject matter jurisdiction.

Article 71c

(1) The motion for establishing the time and place of birth must contain information on the name and surname of the person whose birth is being proven, his/her gender, time and place of birth, if known, as well as the evidence that may establish the existence or likelihood of these facts.

(2) If available, the motion for establishing the time and place of birth should also include other facts that may help the court determine the time and place of birth (information on parents and other close relatives of the person whose birth is being proven, his/her spouse, education, employment, change of temporary residence, etc).

(3) The motion for establishing the time and place of birth which is not filed by the person whose birth is being proven, or by the guardianship authority, must contain facts showing that the petitioner has a legal interest in initiating the procedure for establishing the time and place of birth.

Article 71d

(1) Upon receiving the motion for establishing the time and place of birth, the court shall order the ministry responsible for internal affairs and the registrars in whose area the person whose birth is being proven had temporarily resided to check whether their records contain data on the time and place of birth of the person whose birth is being proven, and to submit a report thereof within a period that may not exceed 30 days.

(2) If it deems it appropriate, the court shall also order other authorities and institutions that keep records on natural persons to provide it with necessary information.

(3) *If the report is not submitted to the court within the given time limit, it shall be presumed that the records of authorities instructed to conduct the check do not contain data on the person whose birth is being proven.*

(4) *If there are indications that the person whose birth is being proven had temporary residence in a foreign state, the court shall issue a decision to discontinue the proceedings until obtaining necessary information from the competent authorities of the foreign state in accordance with rules on international legal assistance.*

Article 71e

(1) *Upon receiving the report, or upon expiry of the deadline for submission of the report, the court shall schedule a hearing inviting the petitioner and the person whose birth is being proven and shall present the necessary evidence.*

(2) *To establish the time and place of birth of the person whose birth is being proven, the court shall hear at least two adult witnesses whose identity it shall determine by checking their public identity document containing a photograph.*

(3) *The court may order that a physician of appropriate specialty examine the person whose birth is being proven and provide his/her findings and opinion on the person's age.*

Article 71f

The decision establishing the time and place of birth shall contain the name and surname of the person whose birth is being proven, his/her gender, day, month, year and hour of birth, place of birth, as well as data on such person's parents, if known.

Article 71g

If the court cannot determine when the person whose birth is being proven was born, it shall be presumed that the person was born on 1 January at 00:01 hrs in the year that can be deemed as the likely year of his/her birth based on the evidence presented.

Article 71h

If the court cannot determine where a person whose birth is being proven was born, it shall be deemed that the person's place of birth is the seat of the town or municipality which may be deemed, based on the evidence presented, as his/her likely place of birth, and if the place of birth cannot be determined in this way, it shall be presumed that the person whose birth is being proven was born in the place where such person was found, or where such person had temporary residence at the time of submission of the motion for establishing the time and place of birth.

Article 71i

(1) *The court shall render the decision on the time and place of birth within 90 days from the date when the motion was filed, and this period may be extended up to 60 days only if the decision was made to discontinue the proceedings because of indications that the person whose birth was being proven had had temporary residence in a foreign state.*

(2) *An appeal against the decision on the time and place of birth may be filed within eight days from the date of delivery of the decision.*

(3) *The appeal against the decision on the time and place of birth shall be decided by the chamber of the higher court within 30 days from the date of receipt of the appeal.*

Article 71j

In the procedure for establishing the time and place of birth, the petitioner shall be exempt from paying the fees and other costs of the proceedings, and the costs of expertise in such proceedings shall be borne by the court.

Article 71k

(1) *The final decision on the date and place of birth does not affect the right of the authorized persons in another procedure to determine the family status of the persons whose birth has been proved.*

- (2) *The body responsible for carrying out the procedure for acquisition of the citizenship of the Republic of Serbia is not bound by the court decision determining the date and place of birth.*

Article 71l

- (1) *The finality of the decision on the time and place of birth shall not affect the right of authorised persons to establish the family status of persons whose birth has been proven, in other proceedings.*
- (2) *The authority competent for conducting the procedure for obtaining citizenship of the Republic of Serbia shall not be bound by the final decision on the time and place of birth.*

Article 71m

- (1) *If it is subsequently determined that the person whose birth is being proven had already been entered in the birth register, the court that had adopted the decision on the time and place of birth shall, ex officio, initiate and carry out the procedure for revoking that decision.*
- (2) *The first-instance court shall deliver the final decision on the revocation of the decision on the time and place of birth to the competent registrar within eight days from the date when the decision became final.*

Article 71n

If a participant in the proceedings for establishing the time and place of birth discovers new facts or acquires the possibility to present new evidence based on which the time and place of birth could have been established differently, or if other conditions for repeating the proceedings under the rules of civil procedure are met, the proceedings for establishing the time and place of birth shall not be repeated, but the parties may enforce their rights in a civil action."

The Family Law

Part Three. PARENT-CHILD RELATIONS. 1. FAMILY STATUS OF CHILD.

1. Maternity and Paternity

Establishment of Maternity by Court Decision

Article 45

- (1) *If the woman who gave birth to child is not entered in the register of births as the child's mother, her maternity may be established by a finally binding court judgement.*
- (2) *The right to establishment of maternity shall pertain to child and the woman claiming to be the child's mother.*
- (3) *It shall not be allowed to establish maternity if the mother used the right to anonymous childbirth.*

Contesting Maternity

Article 46

- (1) *If the woman entered in the register of births as the child's mother did not give birth to the child, her maternity may be contested.*
- (2) *The right to contesting maternity shall pertain to: child, the woman entered in the register of births as the child's mother, the woman claiming to be the mother, if she, in the same action, requests the establishing of her maternity, and the man considered the father of the child under this Act.*
- (3) *It shall not be allowed to contest maternity established by a finally binding court judgement.*
- (4) *It shall not be allowed to contest maternity after the adoption of child.*
- (5) *It shall not be allowed to contest maternity after the death of child.*

Paternity

Article 47

- (1) The husband of the child's mother shall be considered the father of child born in marriage.*
- (2) The husband of child's mother shall be considered the father of child born within 300 days after the termination of marriage, if the marriage was terminated due to death of husband or him being pronounced dead and if the mother had not concluded another marriage in the meantime.*
- (3) Husband from the subsequent marriage shall be considered father of the child born within a longer time limit.*
- (4) Man whose paternity was established by recognition, or finally binding court judgement, shall be considered the father of child born out of marriage.*

Who May Recognise Paternity

Article 48

Paternity may be recognised by a man who has reached 16 years of age and who is capable of reasoning.

When Paternity May be Recognised

Article 49

- (1) Paternity may be recognised only if the child is alive in the moment of recognition.*
- (2) Exceptionally, paternity may be recognised if the child is conceived in the moment of recognition, and is born alive.*

Consent of Mother

Article 50

- (1) Mother has to consent to recognition of paternity if she has reached 16 years of age and is capable of reasoning.*
- (2) If mother cannot give her consent, consent of child shall suffice.*

Consent of Child

Article 51

- (1) Child has to consent to recognition of paternity if he/she has reached 16 years of age and is capable of reasoning.*
- (2) If the child cannot give consent, consent of mother shall suffice.*

Part Ten. Proceedings regarding to family relations

II PROCEDURE BEFORE ADMINISTRATIVE ORGAN

Entry in the Register of Births

Article 344

- (1) Final ruling on placement under guardianship and/or final ruling on termination of guardianship shall be serviced without delay to the registrar keeping the register of births for the ward.*
- (2) If ward has immovable property, ruling shall be serviced to the court in order to be entered in the public record where rights on immovable are registered.*

The Instruction on Administering the Birth Registry Books and Birth Registry Forms

II. Manner of Administering the Birth Registry Books.

Registering the data into birth registry books, Item 10, Paragraph 2

The personal data on the child's parents, spouses and late persons are entered on the basis of the data from registry books, birth certificates and ID cards, and travel documents for foreigners.

Birth registry book, Item 24, Paragraph 1

The fact of birth is registered in the birth registry book on the basis of the report of birth submitted by person from the Article 47 of the Law on Registry books. In the report of birth, information about parents are entered based on their ID cards passports for foreigners, birth and marriage certificates.

List of relevant bylaws

The listed bylaws are not available in English, nor are the instructions and opinions of relevant ministries mentioned in the submission. However, if the Committee so requires, the submitting organisations will be able to do an unofficial translation of these bylaws, and share them with the Committee.

- I. Rules of the manner of registration of citizenship in the birth registry book, forms for keeping records of the decisions on acquisition and termination of citizenship and form of a citizenship certificate
- II. Rules of the manner of conducting a procedure and making record on a found child
- III. Rules on birth registration and forms of registration of birth in a health institution