MACEDONIA
SERBIA
KOSOVO
MONTENEGRO
BOSNIA AND HERZEGOVINA
CROATIA

REGIONAL RESEARCH ON STATELESSNESS

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Macedonia, Serbia, Kosovo, Montenegro, Bosnia and Herzegovina, Croatia

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Macedonian Young Lawyers Association

Western Balkan Legal Aid Network WeBLAN

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INTRODUCTION

This research came about as a result of the longstanding relationship between the Macedonian Young Lawyers Association (MYLA), Praxis from Serbia, Vaša Prava BiH from Bosnia-Herzegovina, Information Legal Centre (ILC) from Croatia, Civil Rights Program Kosovo (CRPK) and the Legal Centre from Montenegro.

After working individually on projects supported by the UN High Commissioner for Refugees (UNHCR), these organizations decided in 2012 to increase their everyday collaboration. At a joint meeting in Sarajevo that year they formed the Western Balkan Legal Aid Network (WeBLAN).
The main purposes for which the network was formed are the protection, promotion and advancement of human rights, and the collective struggle against discrimination and social exclusion in the Western Balkans. The Western Balkans has over the years witnessed refugee crises, internal displacement and widespread discrimination.

In addition to these issues, statelessness has arisen as a particular phenomenon in all of these countries who, until 1990/1991 were part of the former Socialist Federal Republic of Yugoslavia.
Due to internal displacement between Yugoslav states, after the dissolution of Yugoslavia a large number of people, from different ethnic backgrounds, were left without any effective citizenship. In some cases, their children and grandchildren are faced with the same problem.

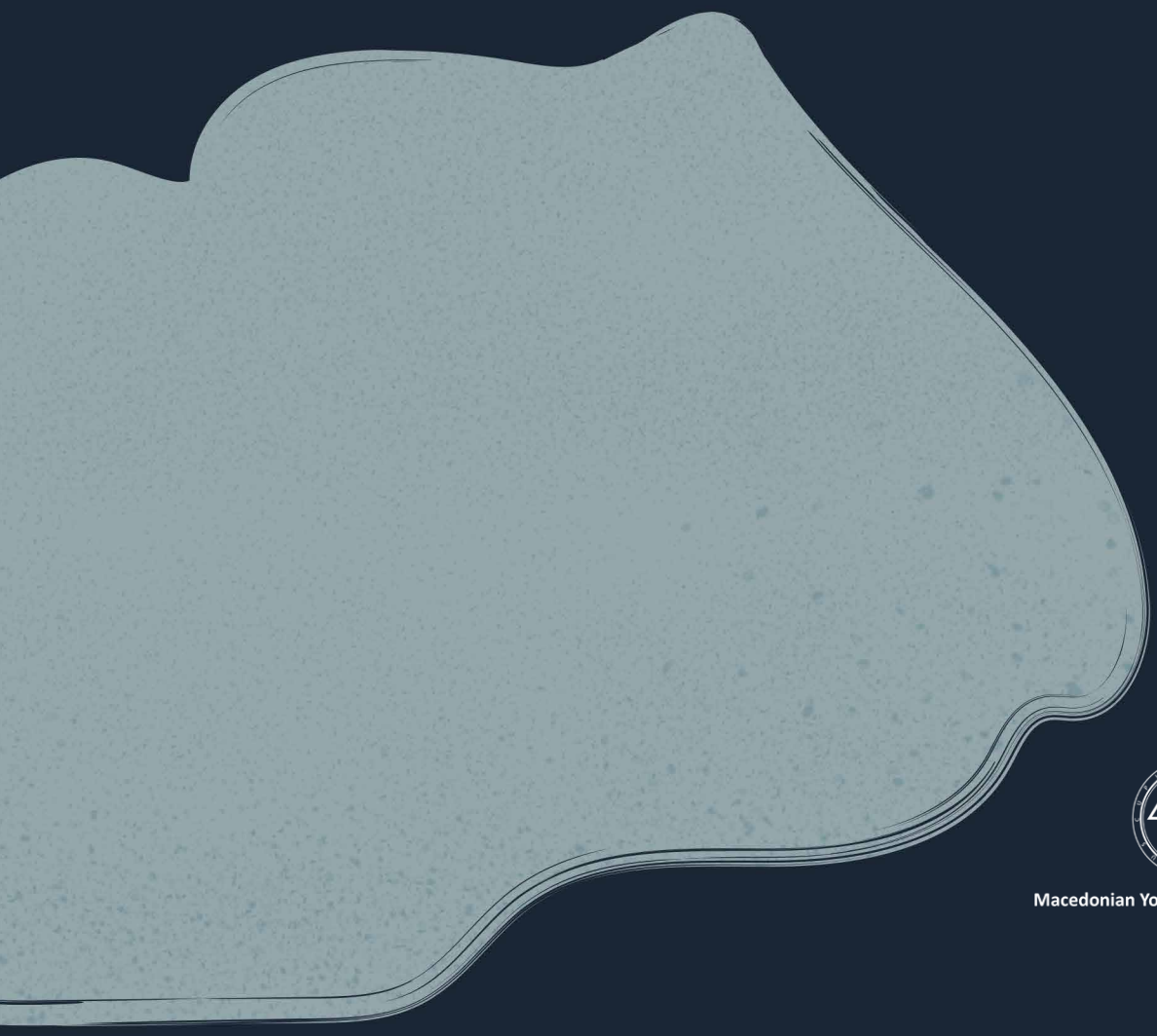
Every member of WeBLAN, working on projects on the prevention of statelessness supported by the UNHCR, regularly encounters individuals faced with serious problems due to a lack of citizenship. Some examples of these problems include: inability to have their children's births recorded in the birth registry, a lack of access to healthcare, education employment, acquisition of property and so on.

The aim of this research is to show the situation regarding statelessness in each of the countries of the Western Balkan, particularly focusing on the reasons for statelessness and the everyday problems this raises. Additionally, the research explores each country's legal framework for addressing this matter, the provision of protections for these individuals, the international instruments that each country has adopted, as well as the actions each NGO takes in order to raise awareness of, and successfully combat, this phenomenon.

Martina Smilevska
President

MACEDONIA

Macedonian Young Lawyers Association
Author: Aleksandra Efremova



Macedonian Young Lawyers Association

Country specific statistics

Number of stateless persons

There are no precise official statistics issued by a state authorities on the number of stateless persons in Macedonia.

Number of persons at risk of statelessness

There are no official statistics issued by state authorities on the exact number of persons at risk of statelessness in Macedonia. The UNHCR and other nongovernmental actors have carried out various surveys and mapping exercises covering different categories of people including those without documentation, those who are stateless and those with undetermined nationality.

MYLA through its identification activities in the field, as of 31 December 2015, is operating with a figure of 664 persons at risk of statelessness.

Ethnic background of the persons of concern

According to MYLA's findings, the majority of persons at risk of statelessness are ethnic Roma (69.6%). However, a significant portion of the persons at risk of statelessness are ethnic Albanians, Ashkali, Egyptians and other nationalities that live in Macedonia.

Type of population in concern (in situ or stateless in a migration context)

In Macedonia, the majority of the identified persons at risk of statelessness are persons that have been affected by the dissolution of the former Yugoslavia. In some cases, the children of these persons are facing the same issues, i.e. are the second generation at risk of statelessness. In most cases these persons were born in one of the countries that were part of the former Yugoslavia, such as Bosnia and Herzegovina, Montenegro, Serbia, Kosovo and Croatia, and resided in Macedonia during the dissolution of Yugoslavia. When Macedonia declared its independence in 1991, these persons applied for neither Macedonian citizenship nor citizenship of their country of origin.
Additionally, there are many persons at risk of statelessness who were born in Macedonia, lived their whole life in Macedonia, and consider themselves part of society. They are at risk of statelessness because their parents originate from other countries that were part of the former Yugoslavia and at the time of their birth, due to lack of legal knowledge and awareness, their parents did not apply for citizenship in their stead in either their country of origin or in Macedonia.

Brief legal framework on nationality and statelessness in the Republic of Macedonia

The national legal framework which includes provisions on statelessness in Macedonia are the Law on Citizenship of the Republic of Macedonia (1992), amended in 2004, 2008 and 2011 and the Law on Foreigners (1992), amended in 1993 and 2002. However, none of these laws provide a specific definition of statelessness or a stateless person.
Article 2 of the Law on Foreigners defines the term 'foreigner' as any person that does not have a Macedonian citizenship and "who is not considered a national by any country in accordance with its national law". According to Article 80 of the Law on Foreigners, a stateless person can obtain a tem-

porary alien residence permit on humanitarian grounds. Furthermore, Article 123 provides that the Ministry of Interior (MOI) shall issue travel documents for stateless persons according to the 1954 Convention Relating to the Status of Stateless Persons.

Even though there is no definition of a stateless person in the Law on Citizenship of the Republic of Macedonia, there are some safeguards for stateless persons that are provided by certain provisions. For instance, Article 6 of the Law on changing and amending the Law on Citizenship of the Republic of Macedonia provides that a child who is found or born in the territory of Macedonia and whose parents are unknown, or have unknown citizenship or are stateless, shall be granted Macedonian citizenship.

With the 2008 amendments, the Law on Citizenship of the Republic of Macedonia provides a facilitated naturalization procedure for stateless persons. Foreigners can acquire Macedonian citizenship after eight years of legal and continuous residence on the territory of Macedonia while the residence requirement for stateless persons is 6 years.

Macedonia is party to a number of international treaties in relation to statelessness including the 1954 Convention Relating to the Status of Stateless Persons, the European Convention on Nationality (ratified in 2002), the European Convention on Human Rights (ratified in 2003), Convention on the Rights of the Child (ratified in 1993), the International Convention on the Elimination of All Forms of Racial Discrimination (ratified in 1994), the Convention on the Elimination of Discrimination against Women (ratified in 1994) and the International Covenant on Civil and Political Rights (ratified in 1991).

Causes of statelessness in the Republic of Macedonia

The main causes of statelessness in Macedonia are the dissolution of the former Yugoslavia and the lack of registration of births and personal names.

After Yugoslavia dissolved into independent republics in 1990, all nationals of other republics of the former Yugoslavia, who from 8 September 1991 until the moment of application for citizenship had a registered, continuous and legal residence on the territory of Macedonia, were given the opportunity to acquire Macedonian citizenship. An additional condition for these persons was that they must not have been convicted or prosecuted for criminal acts which may threaten the security of the country. Due to a lack of legal knowledge and awareness, many of these persons did not apply for Macedonian citizenship at the time and are currently considered stateless. In many cases, their children are facing the same problems with regards to their nationality, even though they were born in Macedonia.

Members of the Roma population face significant problems with regards to the birth registration of their children, particularly for children born at home and for children whose parents do not have personal documents such as ID cards and birth certificates. If the parents do not register their newborns within 15 days of their birth, they will need to submit a request for an additional inscription of birth in the birth registration books and submit additional documents in relation to the request.

Furthermore, in cases where the mother has not been registered at birth and does not have any personal documents, her children cannot be registered into the birth registration books. In such cases, the parents face significant obstacles and problems to register their children. The birth registration authority insists on the presence of the mother during the procedures for additional inscription of birth, even though the Law on Birth Registry does not specifically provide that the child cannot be

registered without the presence of the mother. This means that in cases where the mother of the unregistered child cannot be found or is diseased, the child cannot be registered through this procedure. Another issue that many of the persons face is the fact that the authorities often insist on a DNA analysis, as the strongest evidence proving familial relations. The DNA analyses are expensive and in most cases these persons cannot afford them.

Acquisition of nationality for stateless persons in the Republic of Macedonia

- **Facilitated naturalization procedures**

The Law on Citizenship of the Republic of Macedonia with the amendments in 2008 has provided for a facilitated naturalization procedure for stateless persons in Article 7a:

„A statelessness person or a person with recognized refugee status may acquire citizenship of The Republic of Macedonia by naturalization if, from the determination of statelessness or respectively from the recognition of refugee status until the submission of the application for admission into citizenship, she/he has been legally and permanently living in the territory of Macedonia for six years".

The residency requirement for other foreigners is 8 years. Persons that have been legally residing in Macedonia for six years can acquire Macedonian citizenship if they fulfil additional conditions such as not being convicted or prosecuted in Macedonia and can show sufficient financial means and accommodation to support themselves.

When these persons apply for Macedonian citizenship, the Department for Citizenship of the MOI is provided with information by the Department for Foreigners of the MOI indicating that the person in question does not possess any nationality and has been issued a temporary alien residence permit without information on the person's nationality. Based on this information, the Department for Citizenship can bring a positive decision and grant Macedonian nationality to the person, if all other requirements are fulfilled.

- **Statelessness determination procedure**

In Macedonia there is no statelessness determination procedure and Macedonia is not party to the 1961 Convention on the Reduction of Statelessness. Even though there is no formal statelessness determination procedure, the Department for Foreigners conducts a determination of statelessness. That is, when a person who does not have any citizenship applies for a residence permit in Macedonia, the Department for Foreigners issues a temporary residence permit on which there is no indicated nationality. Temporary residence cards which indicate "XXX" in the section for nationality, indicate that the person in question has no nationality.

Protection of stateless persons

State and non-state legal aid systems in the Republic of Macedonia

According to the Law on Free Legal Aid, vulnerable persons who are facing social and financial hardship are provided with free legal aid in Macedonia. However, there is no free legal aid provided spe-

cifically to persons at risk of statelessness. The main provider of free legal aid to stateless persons and persons at risk of statelessness in Macedonia is MYLA. In cooperation with the UNHCR, MYLA is implementing a project aimed at the prevention and reduction of statelessness.
MYLA is assisting persons at risk of statelessness to register their legal status, obtain birth certificates, regularise their residence in Macedonia and, eventually, acquire Macedonian citizenship. Aside from legal assistance and representation before the state authorities, MYLA also provides financial support to the persons of concern with regards to the administrative costs for obtaining birth certificates, ID cards, residence permits, all necessary documents for applying for citizenship, naturalization and the additional birth registration procedure.
MYLA, in cooperation with the UNHCR advocates for the formal accession to the 1961 Convention and for changes and amendments to existing laws in order to meet the needs of the persons at risk of statelessness. Additionally, MYLA focuses on identifying legal and systematic solutions for the persons who lack effective access to the right to citizenship, such as long-term residents adversely affected by the dissolution of the SFRY and individuals who were born in the country but whose births were never recorded in the birth registries.

Judicial and quasi-judicial protection

There is no special judicial protection for stateless persons in Macedonia. Persons at risk of statelessness whose rights are violated by a state authority have access to the Macedonian courts and can seek judicial protection through lawsuits, legal applications and appeals, the same as Macedonian citizens. This, however, applies only to persons who possess valid identification documents. Persons without identification documents do not have access to the courts. Stateless persons and persons at risk of statelessness whose rights are violated and cannot access the legal system, can put in a complaint to the public Ombudsman's Office. Upon their complaint the Ombudsman can submit recommendations to the public officials on how to proceed with the person's case.

Conclusions and recommendations

Macedonia has not acceded to the 1961 Convention, but there are certain safeguards and provisions for stateless persons contained in the national laws. These include facilitated naturalization of stateless persons, the issuance of travel documents for stateless persons and the possibility of acquiring Macedonian citizenship for foundlings.
There are many challenges that remain in Macedonia in relation to statelessness, which require joint efforts by MYLA and the state authorities in order to be resolved. The key issues that need to be addressed are Macedonia's accession to the 1961 Convention and the adoption of a statelessness determination procedure in the national laws. Amendments to the Law on Foreigners are necessary so that persons at risk of statelessness who were born in Macedonia and persons who were negatively affected by the dissolution of Yugoslavia can be granted with permanent residence and subsequently citizenship. With regards to the issue of unregistered births which most often leads to statelessness among children and is one of the main causes of statelessness in Macedonia, the Law on Civil Records should be amended so as to ensure that every child can be registered in the birth registry immediately after their birth. Additionally, the Law on Civil Records should adopt a special facilitated procedure for additional inscription of births for persons at risk of statelessness. Lastly, the state authorities

should provide official statistics on the number of persons with no effective citizenship in the country and extend adequate legal protection to them. A key role that NGOs have in resolving statelessness is to provide adequate information and raise awareness on the importance of birth registration among the groups at risk of statelessness, particularly among the Roma, Ashkali and Egyptian communities.

SERBIA

Praxis
Authors: Milijana Trifkovic, Legal Analyst
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P R A X I S

Persons at risk of statelessness in Serbia

One of the preconditions for provision of adequate protection to stateless persons and for eradication of statelessness is the identification of persons who are facing this problem. Among the persons at risk of statelessness in Serbia, the most represented are those who are not registered in the birth registry – legally invisible persons, persons of undetermined nationality and persons who were registered in the registry books in Kosovo which were destroyed, missing or remain unavailable to the Serbian authorities.

In the past several years, the situation has significantly improved in relation to the possibility of late birth registration for legally invisible persons and their number has been considerably reduced. However, this problem has not yet been completely resolved. According to 2014 data, 4.7% children from Roma settlements up to five years of age were not registered in the birth registry.1 It is estimated that 5% of the households of the internally displaced Roma from Kosovo and 1% of the households of domestic Roma have a family member who is not registered in the birth registry.2 In the case of internally displaced Roma, 7% of children below 15 years of age are not registered in the birth registry, while it is 2% for children of domestic Roma. 3

In addition to legally invisible persons, according to 2010 research, 2.3% of the Roma, Ashkali and Egyptian population in Serbia were identified as not registered in the citizenship registry.4 The scale of this problem is also evidenced by the number of persons for whom Praxis initiated procedures for acquisition of nationality and registration in the reconstructed registries from 2004 to April 2015 – a total of 1,297 procedures for re-registration in the citizenship registry were initiated, 1,404 procedures for registration in the birth registry, 465 procedures for re-registration in the registry of marriages,5 97 procedures for naturalization and 363 procedures for determination of citizenship.

Members of the Roma ethnic minority are the most represented among the persons at risk of statelessness, while legally invisible persons are almost exclusively members of this ethnic minority group.6

Most persons at risk of statelessness have spent their whole lives in Serbia (59.4%), 43.3% of them were born in the place where they now live, while a significant number of persons were born in Kosovo (32.9%).7 Praxis' experience also shows that persons at risk of statelessness were mainly born in Serbia or in Kosovo. It is clear that these are almost exclusively persons who have strong and long-established connections to the state, i.e. that it is in situ population. In cases where persons at risk of statelessness have connections with some other state by birth or citizenship/origin of parents, in most cases these states are former Yugoslav republics.

1 Statistical Office of the Republic of Serbia and UNICEF, Multiple Indicator Cluster Survey - Monitoring the Situation of Children and Women in Roma Settlements in Serbia, July 2014.

2 Slobodan Cvejic, Assessment of the needs of internally displaced Roma in Serbia, UNHCR, May 2015.

3 Ibid.

4 Gazela Pudar, Persons at risk of statelessness in Serbia, UNHCR, June 2011.

5 In addition to its negative effect on family life, the difficulties related to re-registration in the registry of marriages in individual cases make it impossible to obtain ID cards and to exercise the rights conditioned by the possession of this document. There were cases where women were registered in the reconstructed birth registry under their maiden last name, without the data on the concluded marriage being recorded, and in the procedure for re-registration in the citizenship registry their last name taken after the conclusion of marriage was entered. Because of the difference in the last name in the birth certificate and the citizenship certificate, these persons could not obtain ID cards or register permanent residence until the re-registration in the registry of marriages was performed and the same last name entered in both the birth and citizenship registries.

6 The following data is illustrative: during the project implementation in the period from 2013 to 2015, Praxis initiated 969 procedures for subsequent birth registration, determination of date and place of birth and determination of personal name (the procedures initiated for legally invisible persons) and in 938 procedures (96.8%) the beneficiaries were members of Roma ethnic minority, in 27 procedures (2.8%) the beneficiaries did not state their ethnic origin, four procedures were initiated for persons of Serbian ethnicity, while one procedure was initiated for a person of Albanian ethnicity.

7 Gazela Pudar, Persons at risk of statelessness in Serbia.

Nationality and statelessness in the legal system of Serbia

The manner and procedure for acquisition and termination of citizenship is regulated by the Law on Citizenship of the Republic of Serbia.8 The basic manner of acquiring citizenship is by descent, i.e. the citizenship of parents (ius sanguinis principle). The manner in which the acquisition of Serbian citizenship by descent is regulated is completely in accordance with the international standards, including the 1961 Convention on the Reduction of Statelessness.

If both parents are Serbian citizens, the child shall acquire citizenship of Serbia regardless of his/her place of birth.9 If the child was born in the territory of the Republic of Serbia, it is sufficient that only one parent is a Serbian citizen for the child to acquire Serbian citizenship.10 Serbian citizenship shall also be acquired by a child born abroad who has one parent with Serbian citizenship, if the other parent is unknown, stateless or of unknown citizenship.11

If only one parent is a citizen of the Republic of Serbia, and the other is a foreign citizen, the child born abroad shall acquire Serbian citizenship if the parent who is the Serbian citizen registers the child in the competent Serbian diplomatic or consular office, or relevant state body in the Republic of Serbia as a Serbian citizen before the child turns 18 years of age.12 If the parent fails to do this before the child turns 18, the descendant of the Serbian citizen may submit the request for registration in the citizenship registry before he/she turns 23.13

With the aim of preventing statelessness, it is also prescribed that a child born abroad, whose one parent is a Serbian citizen and the other parent is a foreign citizen, shall acquire citizenship of the Republic of Serbia by descent if the child would otherwise remain stateless (because he/she cannot acquire the citizenship of the other parent or the citizenship of the country of birth).14 In such cases, the child should acquire Serbian citizenship even if he/she is not registered in the diplomatic or consular office of the Republic of Serbia, or if a request is not submitted for the child within the legally prescribed deadline.

In order to prevent statelessness, the application of the ius soli principle has also been prescribed, i.e. acquisition of citizenship by birth in the territory of the Republic of Serbia. Thus, Serbian citizenship shall be acquired by a child born or found15 in the Serbian territory if his/her parents are unknown, without citizenship or of unknown citizenship or if the child would otherwise be stateless.16

The manner in which the acquisition of citizenship as per the ius soli principle has been regulated is also completely in accordance with the international standards. Furthermore, the termination of Serbian citizenship has also been regulated so as to prevent a person being left without Serbian citizenship if he/she would, as a result, be stateless.

8 Official Gazette of the Republic of Serbia, No. 135/2004 and 90/2007.
9 Article 7, paragraph 1, item 1 of the Law on Citizenship of the Republic of Serbia.
10 Article 7, paragraph 1, item 2 of the Law on Citizenship of the Republic of Serbia.
11 Article 7, paragraph 1, item 3 of the Law on Citizenship of the Republic of Serbia.
12 Article 9, paragraph 1 of the Law on Citizenship of the Republic of Serbia.
13 Article 10 of the Law on Citizenship of the Republic of Serbia.
14 Article 9, paragraph 2 of the Law on Citizenship of the Republic of Serbia.
15 The fact of birth of a foundling is registered in the birth registry in the territory where the child was found. The registration is performed on the basis of the decision of the competent guardianship body which contains, inter alia, the data on citizenship of the child. See Article 50 of the Law on Registry Books, Official Gazette of the Republic of Serbia, No. 20/2009 and 145/2014.
16 Article 13 of the Law on Citizenship of the Republic of Serbia. The Serbian Constitution also prescribes that a child born in Serbia shall have the right to Serbian citizenship, if the conditions have not been met for him/her to acquire citizenship of another state. See Article 38, paragraph 3 of the Constitution of the Republic of Serbia, Official Gazette of the Republic of Serbia, No. 98/2006.

Causes of statelessness in Serbia

Despite the fact that the manner of acquisition and termination of citizenship of the Republic of Serbia is completely in accordance with international standards, some categories of the population are left without adequate protection against statelessness and face difficulties in exercising the right to citizenship of the Republic of Serbia.

One of the reasons for the existance of persons at risk of statelessness is the violation of the right of the child to be registered in the birth registry immediately after birth. In order for a child to be registered immediately after birth, it is necessary that the child's parents possess a birth or marriage certificate and anID card, or a passport in the case of foreigners.17 Parents who do not possess the required documents cannot register their children's births and personal names before the competent registrar within the legally prescribed deadline. These children must go through the procedure for subsequent birth registration, determination of personal name or determination of date and place of birth.18

Persons who are not registered in the birth registry – legally invisible persons – have long been one of the most vulnerable groups in Serbia., Not only are they atrisk of statelessness and unable to enjoy basic human rights, but for many, it has been impossible to subsequently register in the birth registry.19 In the last several years, late birth registration has been considerably simplified. In August 2012, the Law on Amendments to the Law on Non-Contentious Procedure20 was adopted and an administrative procedure for determination of date and place of birth was prescribed for persons who could not register in the birth registry. Another important element is the Instruction on the manner of proceeding in the procedures for determination of personal name, adopted by the Ministry of Labour, Employment, Veteran and Social Affairs in December 2014.21 The Instruction should simplify and improve the efficiency of the procedure for determining personal names (conducted before the social welfare centre) for both children and adults whose personal name has not been registered within the legally prescribed deadline.22 Owing to these changes, subsequent registration in the birth registries registration of personal names after the expiry of the legal deadline has been made easier. However, because measures that would enable every child to be registered and have a name upon birth have not been implemented, legal invisibility remains one of the main contributors to the risk of statelessness in Serbia.

Some persons are at risk of statelessness because their citizenship has not been recorded, even though they fulfilled the conditions for acquisition of Serbian citizenship. These persons must then initiate the procedure for determination of citizenship, with success depending on the evidence they possess. Another group of persons that face the risk of statelessness are those registered in the registry books in Kosovo which were either destroyed, lost or are considered unavailable by the authorities of the Republic of Serbia. Progress could be expected in the re-registration in the birth registry since, owing

17 See items 10 and 24 of the Instruction on administration of registry books and forms of registry books, Official Gazette of the Republic of Serbia No. 109/2009, 4/2010, 10/2010, 25/2011, 5/2013 i 94/2013.

18 Which of the procedures will be initiated – administrative procedure for subsequent birth registration, non-contentious procedure for determination of date and place of birth or the procedure for determination of personal name before the social welfare centre – depends, among others, on whether the child was born in a hospital or at home, what evidence is available for the child and for the parents, whether parents participate in the procedure, etc. For more details about these procedures see Praxis, Preventing childhood statelessness – remaining problems in Serbia, Belgrade, May 2015 and Praxis, Analysis of the late birth registration procedures, Belgrade, June 2015.

19 For example, persons whose parents had passed away or the parents' place of residence was unknown or they were legally invisible persons too, could not register in the birth registry. For more details about the reasons for which some persons could not register in the birth registry see Praxis, Legally invisible persons – still without a solution, Belgrade, June 2011.

20 Official Gazette of the Republic of Serbia No. 8/2012.

21 Act of the Ministry of Labour, Employment, Veteran and Social Affairs No. 551-00-00051/2014-14 as of 10 December 2014.

22 See Praxis, Preventing Childhood Statelessness – Remaining Problems in Serbia, 6-7.

to the changes in the Instruction on administration of registry books and forms of registry books from 2013, the persons who could not register in the reconstructed birth registry can now initiate anon-contentious procedure for determination of date and place of birth.23 When it comes to proving earlier registration of citizenship, the changes that occurred over the last three years have not facilitated registration in the reconstructed citizenship registries.24 If the applicants do not possess an old citizenship or birth certificate from the Republic of Serbia, they most often fail to register in the reconstructed citizenship registry and are referred to the procedure for determination of citizenship. Some persons cannot even collect the evidence necessary for determination of citizenship. In that case, the only option for acquiring citizenship again is naturalization.25

In some cases, the exercise of the right to citizenship has been hindered because of inadequate application of the Law on Citizenship. It has already been said that, with the aim of preventing statelessness, Article 13 of the Law on Citizenship prescribes the acquisition of Serbian citizenship per the ius soli principle for children who were born or found in Serbia and who would otherwise be stateless. However, it is possible to acquire Serbian citizenship on the basis of birth in Serbian territory only up to 18 years of age, leaving those between 18 and 21 without protection, contrary to the obligations from the 1961 Convention.26

Acquisition of citizenship by stateless persons in Serbia

Although the 1954 Convention relating to the Status of Stateless Persons requires the state signatories to facilitate naturalization of stateless persons and to make efforts to speed up and reduce the cost of the naturalisation process, the Law on Citizenship of the Republic of Serbia does not provide for this. Since the facilitated naturalization of stateless persons has not been prescribed, the provision most useful to persons without citizenship is Article 16 of the Law on Citizenship, which provides for that facilitation of naturalization for persons who were born in Serbia and who resided in Serbia for two years uninterrupted before applying for naturalization. With regard to the residence condition from Article 16, one should bear in mind that the law only requires that the residence is uninterrupted and that it has lasted for at least two years prior to applying. It is not necessary for the person to have registered permanent or temporary residence or to possess a temporary stay permit or permanent residence permit for foreigners. According to Praxis experience, the pieces of evidence successfully used so far include birth certificates or maternity hospital discharge papers of the applicants' children born in Serbia, statements of witnesses, records of the Roma coordinators who are know that the applicant lives at a certain address, school certificates or field checks by police officers.27

23 The changes of the Instruction on administration of registry books and forms of registry books from 2013 prescribe that the persons who cannot prove earlier birth registration may initiate the adequate procedure before court, and it could be the non-contentious procedure for determination of date and place of birth. See the Instruction on amendments to the Instruction on administration of registry books and forms of registry books. The Instruction was published in the Official Gazette of the Republic of Serbia No. 94/2013 as of 30 October 2013.

24 See Praxis, The Right to Citizenship in the Republic of Serbia – a Brief Analysis of the Remaining Challenges, 6-7.

25 Ibid.

26 The 1961 Convention allows states to enable children who would otherwise be stateless to acquire citizenship only after the submission of an adequate request, and to impose additional conditions for acquisition of citizenship, including limitations on the timeframe for submitting the request. However, this timeframe cannot end before a person has turned 21. See Article 1, paragraph 2, item (a) of the Convention on the Reduction of Statelessness.

27 See Praxis, The Right to Citizenship in the Republic of Serbia – a Brief Analysis of the Remaining Challenges, Belgrade, December 2014, 4-5.

For persons not born in Serbia (who therefore cannot benefit from Article 16 of the Law on Citizenship), Article 23 paragraph 1 can be useful as it provides for naturalization of members of the Serbian nation, as well as Article 23 paragraph 2 which provides for naturalization of refugees from former Yugoslav republics. In both cases, it is not necessary for the applicant to have residence in the Republic of Serbia in order to acquire citizenship. This is very important for persons who, usually due to poverty, cannot fulfil the conditions for a permanent residence permit and, consequently, for ordinary naturalization. However, this type of naturalization is available only to those who either have the status of refugee (from the former SFRY) or can prove that they are members of the Serbian nation. Initially, the Law on Citizenship, in Article 23 paragraph 3, provided for the acquisition of Serbian citizenship by members of other ethnic groups from the Republic of Serbia, under the same conditions as members of the Serbian nation (without permanent residence and with only the submission of a statement that they consider Serbia their own state). However, this provision was time-limited and it expired on 9 October 200928, even though there is no time limits for the facilitated naturalization of members of the Serbian nation. The Ombudsperson of the City of Zrenjanin submitted an application to the Constitutional Court of Serbia, requesting it to establish that the provision prescribing time limitations on requests for naturalization under Article 23 paragraph 3 is discriminatory against members of other ethnic groups from the territory of Serbia, since the time limitations only refer to them. It was argued that the stated provision is contrary to the provisions of the Constitution of the Republic of Serbia which prohibit discrimination on any basis, and that it is also contrary to human and minority rights guaranteed by generally accepted international law and ratified international treaties. However, the Constitutional Court found that the Constitution does not guarantee the right to acquisition of citizenship in a privileged or facilitated regime, and neither is such a right guaranteed by the European Convention on Nationality.29 It is regrettable that the Constitutional Court failed to investigate whether this unequal treatment was objectively and reasonably justified.30 Prescribing a deadline for the facilitated acquisition of citizenship bymembers of other ethnic groups did not in itself contribute to the appearance of new stateless persons in Serbia. However, if it had continued to be in force, the provisions of Article 23 paragraph 3 would have contributed to the reduction of the existing number of stateless persons, which is particularly important given that the Law on Citizenship does not provide for the facilitated naturalization of stateless persons and that the persons at risk of statelessness are most often members of the Roma ethnic minority. One should also bear in mind the Resolution of the Parliamentary Assembly of the Council of Europe, which calls on member states to revise their citizenship policies to conform to international legal standards, which implies, among other things, that the conditions and process for naturalization must not be discriminatory on any basis, including national or ethnic origin.31 The same document calls on states to facilitate acquisition of citizenship for stateless persons living in their respective territories. Although not binding, this document draws attention to what is necessary to do to harmonize national regulations and practice with international standards in the area of citizenship.

28 Article 18 of the Law on Amendments to the Law on Citizenship (Official Gazette of the Republic of Serbia, No. 90/2007 as of 1 October 2007) prescribes that the request for naturalization on the basis of the Article 23 paragraph 3 of the Law may be submitted within two years from the entry into force of the Law on Amendments.

29 See the decision of the Constitutional Court of the Republic of Serbia No. IUz-564/2011-18/2012-49. The decision was published on 9 March 2012.

30 See the separate opinion in the case IUz 564/2011 of the judge Marija Draskic, PhD.

31 Resolution of the Parliamentary Assembly of the Council of Europe 1989 (2014) adopted on 9 April 2014, available at http://assembly.coe.int/nw/xml/XRef/Xref-XML2HTML-en.asp?fileid=20871&lang=en, accessed on 8 September 2015.

Improvement of protection of stateless persons and protection against statelessness – judicial and quasi-judicial protection

The monitoring mechanisms attached to the treaties which contain provisions relateingto the prevention of statelessness or protection of stateless persons may have great significance for the protection of stateless persons. Using these mechanisms, non-governmental organizations from Serbia: Regional Centre for Minorities,32 CEKOR - Centre for Ecology and Sustainable Development,33 CHRIS - Network of the Committees for Human Rights in Serbia34 and Praxis submitted an alternative report to the Committee on the Elimination of Racial Discrimination on the occasion of the Initial Periodic Report on Serbia, where they pointed to the violation of the right to a nationality of the members of Roma ethnic minority and to the difficulties faced by legally invisible persons and persons who were registered in registry books that were destroyed, missing or unavailable to the Serbian authorities.35 These groups are at risk of statelessness and, for lack of documentation, cannot exercise a number of basic human rights. In its Concluding observations, considering the report submitted by Serbia, the Committee expressed its concern about the problem of legally invisible persons, who are, according to reports, mostly Roma, Ashkali and Egyptian. In particular, it is concerned that members of the Roma minority face difficulties and discrimination due to their lack of personal identification documents and birth certificates which puts them at risk of statelessness and affects the exercise of their rights which fall within the jurisdiction of the Committee. The Committee urges the State party to carry out the necessary measures, including legal amendments, to ensure that all persons lacking the required personal documents are able to register in the registry books and obtain the documents necessary to exercise their rights. In addition, the Committee recommends that the State party increase the safeguards against statelessness, and that it ratify the Convention on the Reduction of Statelessness of 1961.36

The recommendations of the Committee on the Rights of the Child, which were produced during consideration of the report of the Republic of Serbia in 2008, are also significant for the prevention of statelessness in Serbia. The Committee expressed its concern that birth registration procedures are overly complicated and that children are at times not registered due to the lack of identification documents of parents. The Committee also produced recommendations for ensuring that every child born in the territory of a state is registered in the birth registry, regardless of the nationality and status of parents.37 In recent years, Serbia has significantly facilitated the system of late birth registration, but no measures have yet been taken to ensure that every child is registered in the birth registry immediately after birth.

In addition, for the purpose of prevention of statelessness, there is also a possibility to address the Ombudsperson by submitting complaints in individual cases where there has been violation of the

32 See http://www.minoritycentre.org/.
33 See http://www.cekor.org/.
34 See http://chris-network.org/
35 See Information submitted to the committee on the elimination of racial discrimination on the occasion of Initial Periodic Report of Serbia, February 2011, 11-15, available at http://www.praxis.org.rs/images/praxis_downloads/Information_submitted_to_CERD_on_the_Occasion_of_Initial_Periodic_Report_of_Serbia.pdf, accessed on 8 September 2015.
36 Concluding observations on the Initial periodic report of the Republic of Serbia on the implementation of the Convention on elimination of all forms of racial discrimination referring to the period 1992-2008, paragraph 19, available at http://www.ljudskaprava.gov.rs/images/pdf/Zavrsne_primedbe_komiteta_2011.pdf, accessed on 8 September 2015.
37 Committee on the Rights of the Child, Concluding Observations of the Committee on the Rights of the Child, Republic of Serbia, Forty-eight session, CRC/C/SRB/CO/1, 6 June 2008, paras. 33-34.

right to a nationality or to birth registration.38 However, when it comes to prevention of statelessness, the most important role of the Ombudsperson was in the attempts to find a durable solution for legally invisible persons. Having estimated, based on complaints submitted by citizens, addressing of the non-governmental organizations Praxis and the Centre for Advanced Legal Studies and the information obtained in cooperation with the UN High Commissioner for Refugees, that there was a need for amendments of regulations in this area, the Ombudsperson submitted to the Government of the Republic of Serbia an initiative for amendments of the Law on Non-Contentious Procedure in order to enable the citizens who cannot register in the birth registry to prove their status before a court in a non-contentious procedure.39 As a result, the Law on Amendments to the Law on Non-Contentious Procedure was adopted, which prescribes special procedures for determination of date and place of birth directed at persons who cannot register in the birth registry through the administrative procedure. This represented the most significant progress in the efforts to resolve the problem of legally invisible persons in Serbia, which certainly contributes to more efficient protection against statelessness.40

In the efforts to improve the protection against statelessness, the role of the Constitutional Court is also very important, both in the procedures for constitutional complaints and in the procedures for constitutional review of general acts. Praxis used both these mechanisms with the aim to improve protection of persons at risk of statelessness.

In June 2011, the Centre for Advanced Legal Studies41 and Praxis submitted to the Constitutional Court an initiative for constitutional review of the Law on Registry Books – the provisions relating to birth registration procedure, considering that the disputed provisions put the legally invisible persons of Roma ethnicity in an unequal position and that the conditions set for birth registration are impossible to meet for a significant number of Roma.

Even though it found that the resolution of the problem of legally invisible persons was outside the scope of its competence, the Court did recognize their problems and the need for prescribing separate rules in order to finally solve them. At last, by explaining the legitimacy of the need to establish a separate manner for the exercise of, primarily, the status rights of the legally invisible persons, the Court pointed to the case of "the erased" and the verdict of the Grand Chamber of the European Court of Human Rights in the case Kuric v. Slovenia which established violations of Articles 8, 13 and 14 of the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR) because of the difficulties that these persons endured as a result of the impossibility to regulate their status after being erased from the Register of permanent residents of Slovenia.42

When it comes to individual cases, for Praxis beneficiary R.J., for whom the administrative procedure of subsequent birth registration lasted for more than seven years, a constitutional complaint was

38 Praxis submitted complaints to the Ombudsperson on various occasions on behalf of persons who faced difficulties in the procedures for exercise of the right to a nationality or to birth registration. See, for example, the recommendations of the Ombudsperson from 19 June 2012, issued upon Praxis' complaint, available at http://ombudsman.yucom.org.rs/preporuka-upravi-za-gradjanska-pitanja-i-opste-poslove-nis/, accessed on 8 September 2015

39 See the initiative of the Ombudsperson submitted to the Government of the Republic of Serbia for amendments to the Law on Non-Contentious Procedure, available at: http://www.ombudsman.rs/attachments/2126_Inicijativa%20Zastitnika%20gradjana.doc, accessed on 8 September 2015

40 For more details, see Praxis, Analysis of Practical Application of the Law on Non-Contentious Procedure - Determining the Date and Place of Birth, December 2013.

41 See http://cups.rs/.

42 For more details see Praxis, Constitutional Court Sees the Solution in Prescribing Special Legal Regulations for Elimination of the Problem of Legally Invisible Persons, available at http://www.praxis.org.rs/index.php/en/praxis-in-action/legally-in-persons/item/584-ustavni-sud-vidi-re%C5%A1enje-u-propisivanju-posebnih-zakonskih-pravila-za-otklanjanje-problema-pravno-nevidljivih-lica/584-ustavni-sud-vidi-re%C5%A1enje-u-propisivanju-posebnih-zakonskih-pravila-za-otklanjanje-problema-pravno-nevidljivih-lica, access on 8 September 2015.

submitted and a decision brought upon it establishing violation of the right to the trial within a reasonable time and the applicant was granted the right to compensation for non-material damage. The Constitutional Court particularly referred to the importance of the subject matter of the case – registration in the birth registry - for the applicant, stressing the indisputable interest of the applicant that a decision is reached within a reasonable time and reminding that the procedures relating to status issues are urgent by nature.43

Praxis still uses the aforementioned mechanisms in order to remove one of the most serious remaining problems related to prevention of statelessness, i.e. untimely birth registration of children. Even though the Convention on the Rights of the Child and the International Covenant on Civil and Political Rights guarantee the right of every child to be registered in the birth registry immediately after birth, in Serbia, children whose parents do not possess documents (birth certificate and ID card) cannot do so, within the legally prescribed 30-day deadline. Instead, complicated procedures for subsequent birth registration, determination of personal name and determination of date and place of birth need to be conducted, lasting for several months on average. This results in children being left without a birth certificate and the ability to access rights such as the right to health care in the most delicate period of their lives. Minor L.J., born in July 2015 in a hospital in Smederevo, found himself in such a situation. The competent registrar refused to register the child in the birth registry since his mother is a legally invisible person and does not possess documents which should be enclosed when registering child's birth according to the regulations in force. In August 2015, Praxis submitted a constitutional complaint to the Constitutional Court on behalf of L.J. for violation of the right of the child to be registered in the birth registry immediately after birth. In addition, the European Roma Rights Centre (ERRC)44 and Praxis are preparing to submit the initiative for constitutional review of the provision of the Law on Registry Books which, contrary to constitutional guarantees, the Convention on the Rights of the Child and the International Covenant on Civil and Political Rights, provides too broad powers to the registrars to delay the registration of the child in the birth registry without any time limits. The aim of both the constitutional complaint in the case of L.J. and the initiative for constitutional review of the Law on Registry Books is to amend the provisions regulating the administration of registry books by enabling every child to be registered in the birth registry immediately after birth, including children whose parents do not possess documents.

In relation to stateless persons and persons at risk of statelessness, one should not neglect the potential role of strategic litigation. Thus, upon a Praxis lawsuit, the Basic Court in Novi Sad established that the City of Novi Sad – City Administration for General Affairs, discriminated against persons of Roma ethnicity in the procedures for subsequent birth registration, and was ordered to publish the verdict in the daily newspaper Politika at its own expense. The negative and strict practices of the administrative body in Novi Sad, which had been present in the procedures for subsequent birth registration of the persons of Roma ethnicity, were changed only after the discriminatory behaviour had been established through a court procedure. This example points to the significance that strategic litigation might have for improving the position of persons at risk of statelessness and that such litiga-

43 For more details see Praxis, The Constitutional Court Found the Violation of the Right to Trial within a Reasonable Time, available at http://www.praxis.org.rs/index.php/en/praxis-in-action/legally-in-persons/item/917-the-constitutional-court-found-the-violation-of-the-right-to-trial-within-a-reasonable-time, accessed on 8 September 2015.

44 See http://www.errc.org/.

tion, apart from combatting discrimination, may contribute to the change of practice in the procedures for birth registration and, thus, to more efficient prevention of statelessness.45

In addition, addressing the Administrative Court represents a form of judicial review of the decisions of the administrative bodies in the procedures of registration in the birth registry. Praxis filed complaints to the Administrative Court in relation to these matters, both for administrative silence and for negative second-instance decisions.

In addition to using the above-mentioned protection mechanisms, Praxis also provided free legal assistance to persons at risk of statelessness in Serbia in individual procedures for birth registration or acquisition of citizenship. In the period from 2004 to April 2015 more than 4,000 procedures were successfully resolved for persons at risk of statelessness.

The stated mechanisms and measures undertaken point to a variety of ways to contribute to greater protection of stateless persons and more efficient prevention of statelessness. At the same time, they show how much needs to be done and what bodies should be addressed to make progress in upholding the right to a nationality and the right to birth registration.

Forprotection of stateless persons, the lack of statelessness status determination procedure aggravates the situation. Even though the persons at risk of statelessness in Serbia are mainly those who have long-standing and firm connections with the country (in situ population), and the priority in their cases should be finding easier ways to exercise the right to a nationality, a statelessness status determination procedure may also be necessary for meeting international obligations.46

A particular challenge in the Republic of Serbia is the issue of free legal aid. The Constitution of the Republic of Serbia prescribes that the issue of legal aid should be regulated by a separate law, but the relevant law has not been adopted for nine years now. In practice, legal aid, in a basic form, is currently provided by some local self-government units, legal clinics at some faculties of law and by some trade unions, while the marginalised population mostly relies on non-governmental organizations for provision of legal assistance, who in turn depend on the funds provided by international donors. However, this system is not systematically organized, so the legal aid providers decide, on the basis of their own capacities, to whom, in what way and to what extent they will provide legal aid. Sources of funding also differ, depending on the individual provider.

With regard to protection of persons at risk of statelessness, many institutions at the local level, including social welfare centres, and Roma activists and civil society, are referring the beneficiaries to Praxis for legal assistance.

The access to free legal aid is an issue that should be taken into consideration in potentially prescribing the statelessness status determination procedure. Since the applicants for statelessness status determination are, as a rule, persons in a state of need, they should be provided free legal aid in this procedure too.47

45 For more details see Praxis, Discriminatory Behaviour of the City of Novi Sad towards the Persons of Roma Nationality Established, available at http://praxis.rs/index.php/en/praxis-in-action/discrimination/item/382-discriminatory-behaviour-of-the-city-of-novi-sad-towards-the-persons-of-roma-nationality-established/382-discriminatory-behaviour-of-the-city-of-novi-sad-towards-the-persons-of-roma-nationality-established, accessed on 8 September 2015.

46 In reference to this, UNHCR is of the opinion that a separate statelessness status determination procedure is necessary so that a State party to the 1954 Convention could fulfil its obligations related to protection which stem from the treaty. See UNHCR, Guidelines on Statelessness No. 2: Procedures for Determining whether an Individual is a Stateless Person, 5 April 2012. See also, European Network on Statelessness, Statelessness determination and the protection status of stateless persons, 2013.

47 Nikola Bodiroga, Why is the statelessness status determination procedure necessary – what type of procedure is needed, forthcoming.

Concluding observations and recommendations

Over the past several years, significant progress has been made in Serbia in the prevention of new cases of stateless persons, especially in relation to enabling late birth registration. However, the risk of statelessness is still present, with not even the children exempt.48 The Law on Citizenship of the Republic of Serbia contains the regulations suitable for prevention of statelessness, both at birth and later in life, but the enjoyment of the right to a nationality may be hindered due to untimely birth registration.

One of the remaining problems refers to the fact that the registry books that became unavailable 15 years ago, after 1999 Kosovo conflict, have still not been reconstructed. Lengthy procedures of registration in the reconstructed registry books are a matter of concern since the persons who were registered in those books have not been able to access a range of basic human rights (the rights to work, health care or social welfare) for more than a decade now. The persons of undetermined nationality find themselves in a similar situation, and so do the children who cannot be registered immediately after birth for lack of documents of their parents, but have to go through late birth registration.

In reference to the position of stateless persons, the lack of a statelessness status determination procedure is an aggravating factor. In addition, despite the fact that the Law on Citizenship contains very progressive solutions for prevention of statelessness, no facilitated naturalization has been envisaged for persons who were left without citizenship of any state.

Even though there are still problems in the area of protection against statelessness, progress is possible and significant changes have already occurred, while the complete eradication of statelessness could be enhanced by using the United Nations human rights protection systems. In addition, one should not overlook the European system of human rights protection, especially since the inability of parents to determine the personal name oftheir children for lack of documents could fall within the provisions of Article 8 of the ECHR.49 The manner in which the birth registration of children is regulated in Serbia, which affects their right to identity and private life, does not meet the standards stemming from the Article 8 of the Convention or the practice of the European Court of Human Rights. It is unclear what the policy rationale is for preventing the children of legally invisible persons from being registered in the birth registry and having their name determined.50 Addressing national bodies (including the Ombudsperson and the Commissioner for Protection of Equality) may also contribute to better protection of stateless persons and improvement of practice and regulations in this area. The example of legally invisible persons in Serbia illustrates the significance that these bodies might have for prevention of statelessness.51 Their position was analysed by the Committee on the Rights of the Child, Committee on the Elimination of Racial Discrimination, Constitutional Court of Serbia, the Ombudsperson… The recommendations and decisions of these bodies do not only show the variety of institutions which might have a role in the efforts to prevent statelessness but also point to how this process can be complicated and lengthy. In addition, the stated recommendations, decisions and ini-

48 According to the data from UNICEF and the Statistical Office of the Republic of Serbia for 2014, 4.7% of children from Roma settlements up to five years of age are not registered in the birth registry, and the risk of statelessness is often related to untimely birth registration. See the remark 1.

49 If the parents who cannot determine a personal name to their child for lack of documents filed a complaint to the European Court of Human Rights, there is no doubt that the Article 8 of the Convention for the Protection of Human Rights and Fundamental Freedoms would be applied. Nikola Bodiroga, Registration of the Fact of Birth of a Child in the Birth Registry Book, Belgrade, November 2013.

50 Ibid, 10-11.

51 See the chapter Improvement of protection of stateless persons and protection against statelessness – judicial and quasi-judicial protection.

tiatives mainly referred to one segment of the prevention of statelessness – enabling birth registration, which represents only one step (though important) to accessingthe right to a nationality. During the efforts to find a solution for legally invisible persons, an important argument lay not only in emphasising the right to birth registration and a nationality, but also in emphasising equality, pointing out that one group of citizens (persons of Roma ethnicity) found it disproportionately more difficult to exercise their basic human rights.

After years of pointing to the difficult position of legally invisible persons, the procedure for determination of date and place of birth was prescribed and late birth registration facilitated. As a result, many persons who had not been able to register in the birth registry for years finally managed to obtain a birth certificate.52 This represented the greatest improvement in the prevention of statelessness in Serbia. Complete eradication of the problem of statelessness requires additional measures, particularly the facilitation of registration in the reconstructed registry books and, above all, creating a framework that would enable every child to be registered immediately after birth.

52 In April 2015, almost identical legal solution was introduced in the legislation of Montenegro with the aim to reduce the number of persons who are not registered in the birth registry (the amendments to the relevant law came into force in June 2015), so it could be said that the measures that Serbia undertook to resolve the problem of late birth registration served as a good practice example.

REPUBLIC OF KOSOVO

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* This designation is without prejudice to positions on status, and is in line with UNSCR 1244 and the ICJ Opinion on the Kosovo declaration of independence.

CRP/K
CIVIL RIGHTS PROGRAM KOSOVO
PROGRAMI PËR TË DREJTAT CIVILE KOSOVË
PROGRAM GRAĐANSKIH PRAVA KOSOVA

Country specific statistics

Number of stateless persons

Despite the fact that Administrative Instruction No. 05/2015 for the Procedure and Criteria of Determining the Status of the Stateless person, the manner of Acquisition of the Citizenship by the Stateless Person and the Person with Refugee Status was adopted by Ministry of Internal Affairs in 2015, there are no cases that proceeded in accordance with the above mentioned Administrative Instruction. In this regard, till now there are no data of stateless persons.

Number of persons at risk of statelessness

There is no official number of persons at risk of statelessness. The Kosovo census from 2010 did not include the relevant questions to assess the number of those that could be at risk of statelessness. According to incomplete census figures, around 5% of the total population is at risk of becoming stateless. In order to assess the numbers of those that might be at risk of statelessness, the Ministry of Internal Affairs/Civil Registration Agency has created a Working Group on Identification at the end of 2014. The Working Group is in the process of identifying the overall numbers of persons that might be at risk of becoming stateless.

Ethnic background of the persons of concern

The persons of concern are mostly members of the Roma, Askhali and Egyptian communities who are mainly faced with obstacles in birth registration and obtainment of citizenship due to the absence of required evidentiary documentation.

Brief legal framework on nationality and statelessness in Kosovo

Since Kosovo is not a state party toany of the stated conventions, its Constitution (Article 22) has provided for the direct application of the following conventions:
The Universal Declaration on Human Rights;
The European Convention for the Protection of Human Rights and Fundamental Freedoms and its Protocols;
International Convention on Civil and Political Rights and its Protocols;
Council of Europe Framework Convention for the Protection of National Minorities;
Convention on the Elimination of All Forms of Racial Discrimination;
Convention on the Elimination of All Forms of Discrimination against Women;
Convention on the Rights of the Child;
Convention against Torture and Other Cruel, Inhuman and Humiliating Treatment or Punishment;
The manner and procedure of acquisition and loss of nationality has been regulated by Law No. 04/L 215 on Citizenship of Kosovo issued on 2 September 2013. The procedures for acquisition and loss of citizenship are outlined respectively in Administrative Instruction No.04/2014 and Administrative Instruction No. 26/2013. The issue of acquiring citizenship for persons who had permanent residence in the territory of Kosovo until 1 January 1998 is addressed in Administrative Instruction No. 05/2014.

The procedure for determiningthe status of stateless persons is outlined in the Administrative Instruction of the Ministry of Internal Affairs No. 05/2015 for the Procedure and Criteria of Determining the Status of the Stateless person, the manner of Acquisition of the Citizeship by the Stateless Person and the Person with Refugee Status.

Causes of statelessness in Kosovo

In Kosovo, to reiterate, there are no clear stateless cases. However, it is always possible to fall between the cracks of the current legislative framework. The most frequent reasons in the Kosovo context non-registration of birth within the provided timeframes and anticipated fees which prevent parents from pursuing the registration of theirchildren. In these situations, marginalized and poor families have a tendency to further delay registration of birth. Implementation and interpretation of legal acts regulating late registration remains the main impediment to successful registration, followed by the hesitance of local authorities to conduct necessary background checks to support individual requests. For some persons, the lack of documentation among one generation creates obstacles in the registration of the next. This lack of documentation creates problems with the registration of children at birth, due to the failure of the parents to register themselves in the Civil Status Records. Due to this fact there are children who remain unregistered at birth, despite safeguards in the national framework. In order to register later in life they face complicated and difficult procedures.
Abandonment of children by one parent is a quite common phenomenon which can cause statelessness among the communities in Kosovo. As a consequence, significant difficulties arise, as the involvement of the Center for Social Work is required. For example, in the cases where one parent has left the country, they must cooperate with the Social Centre in that country, causing great difficulty and elongating the duration of the procedure.

Acquisition of nationality for stateless persons in Kosovo

Facilitated naturalization procedures

The law does provide facilitated naturalization of stateless persons in Article 14 with favorable conditions so as to expedite naturalization proceedings and to reduce as far as possible the charges and costs of such proceedings. Naturalization is regulated by Article 15 which stipulates the conditions for naturalization of stateless persons. In this regard, a stateless person may acquire citizenship of the Republic of Kosovo by naturalization if he/she resides in the Republic of Kosovo for five (5) years from the day of the recognition of stateless person status. Additionally, family members of the person referred to in paragraph 1 of this Article shall also be entitled to acquire citizenship of Kosovo. The criteria are determined through sub-legal acts issued by the Ministry of Internal Affairs.

Statelessness determination procedure

The facilitated procedure for Statelessness determination was provided for in Administrative Instruction No. 05/2015, which aims to establish the procedure for determining the stateless status of persons within the Republic of Kosovo. The instructions aim to establish the rights of stateless persons and the procedures for the acquisition of citizenship in the Republic by both stateless persons and refugees. The instructions provide the procedures necessary to insure stateless persons and refugees receive proper representation and rights in the Republic of Kosovo.

Protection of stateless persons

State and non-state legal aid systems in Kosovo

Pursuant to Article 22 of the Kosovo Constitution, human rights and fundamental freedoms guaranteed by a series of the international agreements and instruments, including Universal Declaration of Human Rights, European Convention for the Protection of Human Rights and Fundamental Freedoms and its Protocols and International Covenant on Civil and Political Rights and its Protocols, are guaranteed by the Constitution, are directly applicable in the Republic of Kosovo and, in the case of conflict, have priority over provisions of laws and other acts of public institutions. In this context, pursuant to qualification criteria as stipulated by Article 7, point 1.2 and 1.3 of the Law on Free Legal Aid, all persons with provisional residence in the Republic of Kosovo, and also other persons defined by law, or rules of international law that bind the Republic of Kosovo, are entitled to free legal aid. The same Law also establishes the Agency on Free Legal Aid which is obligated to provide free legal aid to all persons in need pursuant to qualification, financial, and judicial criteria.

In addition, ADMINISTRATIVE INSTRUCTION of MIA NO.05/2015 FOR THE PROCEDURE AND CRITERIA OF DETERMINING THE STATUS OF THE STATELESS PERSON, THE MANNER OF ACQUISITION OF THE CITIZENSHIP BY THE STATELESS PERSON AND THE PERSON WITH REFUGEE STATUS, and Article 10, stipulate that a UNHCR representative and other Authorized Representative may be present during the statelessness determination procedure.

It leads to the conclusion that Kosovo legislative framework guarantees the provision of free legal aid to persons in need, including stateless persons, pursuant to the stipulated criteria and conditions. It has also established the institutional framework to provide the free legal aid.

Despite the established Legislative and Institutional Framework concerning persons at potential risk of statelessness (as analysed above), due to the fact that no such person of concern has been provided with free legal aid by state institutions to this day, it can be ascertained that non-governmental organizations are the biggest providers of free legal aid and bear the main burden.

In this context, CRP/K is the biggest non-governmental organization which provides free legal aid, counseling and court representation in Kosovo. CRP/K is the implementing partner of the UNHCR Kosovo in all its protection projects. Through this engagement, CRP/K provides free legal aid, counseling and representation in court to the persons of concern pursuant to the mandate of UNHCR, including persons at risk of statelessness.

- ### Judicial and quasi-judicial protection

Kosovo Constitution in its Article 54 stipulates that "Everyone enjoys the right tojudicial protection if any right guaranteed by this Constitution or by law has been violated or denied and has the right to an effective legal remedy if it is found that such right has been violated". Based on above mentioned provisions, it can be concluded that rights, and also rights to effective legal remedy, are guaranteed for stateless persons in Kosovo.

The legal and sub-legal acts in force have envisaged judical protection for stateless persons. In this regard, where an applicatioon for the recognition of the status of a stateless person is rejected, or the acquisition of citizenship is rejected, stateless person have the right to appeal within thirty (30) days to the Commission for Reviewing the Complaints of citizenship within the Ministry of Internal Affairs. If unhappy with the decision of the abovemention Commission, the party can initiate an administrative dispute before a competent court, in accordance with the law on Administrative Disputes.

Conclusions and recommendations

Conclusions:

In Kosovo to this day there are no official statistics on the number of persons at risk of statelessness. The Working Group created by the Ministry of Internal Affairs at the end of 2014 is in the process of identifying the overall numbers of persons that might be at risk of becoming statelessness;

In Kosovo, most persons at risk of statelessness are members of the Roma, Ashkali and Egyptian communities. They are faced with obstacles in registration of their birth in Civil Status Records due to lack of documentation, abandonment from the parents, inter-generationql non-registration ect.

Although Kosovo authorities faced many challenges during the process of creating the legal framework, which fully covers the field of registration in Kosovo, they were able to provide the protection safeguards for the prevention and reduction of situations leading to statelessness.

In this context, great progress towards prevention of statelessness in Kosovo was achived with the adoption of Administrative Instruction no 05/2015 for the Procedure and Criteria of Determining the Status of the Stateless person, the manner of Acquisition of the Citizeship by the Stateless Person and the Person with Refugee Status, and Administrative Instruction no 07/2015 on the Late Registration in Civil Status Records.

Recommendations:

Relevant Kosovo authorities should focus on gathering more comprehensive data on stateless people and the causes of their statelessness, since this will help to better address this issue, and assist in undertaking necessary steps to prevent it;

Institutions in Kosovo should be encouraged to ensure that stateless persons acquire a legal status and a nationality through government procedures. This will create opportunities for stateless persons to have the necessary protection and access to at least those rights which cannot be delayed and which are a precondition of the right to a better life and human dignity;

The commitment of Kosovo Institutions towards raising the awareness on importance of civil status registration should continue with an aim to supporting all communities, with aspecific focus on the most vulnerable members from the Roma, Ashkali and Egyptian communities.

MONTENEGRO

NGO Legal Center
Author: Sanja Cadjenovic

PRAVNI CENTAR
LEGAL CENTER

Statistics and situation in the country

Statistical data:
Number of stateless persons (apatrides): 4,312

Number of persons at risk of statelessness: 2,900

Ethnic origin of the interest group: Roma (mainly)

These results are outcome of the Census of Population, Households, and Dwellings conducted in Montenegro in the period from 1 April until 15 April, 2011. The Census was conducted according to the state on 31 March, 2011. The Census covered citizens of Montenegro, foreign citizens and stateless persons who have residence (permanent or temporary) in Montenegro, regardless of whether they were in Montenegro or abroad at the moment of Census, regardless of whether they possess personal identification documents, and regardless of whether they live in a dwelling, other facilities or in public areas.

Brief explanation of the legal frame of citizenship and statelessness in Montenegro

At the legislative level, Montenegro has taken a series of significant activities and measures in the field of prevention and reduction of statelessness. In December 2013, the Republic of Montenegro ratified the 1961 Convention on the Reduction of Statelessness. The Ratification took place after many years of talks between UNHCR and Legal Center representatives with the MoI and the Ministry of Foreign Affairs and European Integration of Montenegro. Previously, the 1954 UN Convention Relating to the Status of Stateless Persons, the 1997 European Convention on Nationality, and the 2006 Convention on the Avoidance of Statelessness had been adopted. Thus, Montenegro is the only country from the region that is signatory to all four conventions on the topic of statelessness.
The 1961 Convention on the Reduction of Statelessness specifies protection measures against statelessness by establishing rules for the granting and withdrawal of citizenship in order to prevent people remaining stateless. The Convention begins with protection measures from Article 1-4 with the aim of preventing statelessness among children who would otherwise be stateless at birth. These measures occupy a prominent place in the Convention and fall within its most significant provisions, emphasizing a number of instruments for human rights, including the Convention on the Rights of the Child and the International Covenant on Civil and Political Rights. Article 5-9 of the 1961 Convention also requires taking of appropriate measures to avoid statelessness due to loss, renunciation of citizenship or deprivation of citizenship. Article 10 deals with the specific context of succession of states, requiring the states to include provisions which would enable prevention of statelessness in each contract concerning the transfer of territory.

With respect to national legislation, Montenegro has adopted:
The Montenegrin Citizenship Act ("The Official Gazette of Montenegro", No. 13/08 from 26.02.2008, 40/10 from 22.07.2010, 28/11 from 10.06.2011, 46/11 from 16.09.2011). The Law confirmed the prin-

ciple of continuity of citizenship in Article 39: "A person shall be considered Montenegrin citizen if he or she acquired Montenegrin citizenship in accordance with the current regulations, if he or she is registered in the citizenship registry book in Montenegro".
The Law on Personal Registries, the official Gazette of Montenegro, No. 47/2008 from 07.08.2008 (the procedure of registration in the birth registry book is not precisely defined).
The Law on Non-Contentious Proceedings, the Official Gazette of Montenegro, No. 27/2006 and 20/2015.

Causes of statelessness in Montenegro

In the past 20 years, Montenegro has gone through two dissolutions of the state union, experiencing four changes in national framework. It was followed by the adoption of new laws on nationality and the change of state policy in this area. Experience from other similar situations shows that these changes put people at risk of statelessness. Also, conflicts since 1990 led to mass displacement of population from Croatia, Bosnia and Herzegovina, and Kosovo, as well as to the loss or destruction of personal documents and registry books. This prevented many people from establishing their nationality.
For many citizens, the greatest problem concerning statelessness in Montenegro is the lack of ability to prove their citizenship. This problem is mostly faced by Roma displaced from Kosovo. One aspect of the problem is related to disappearance of documents and municipal registry books during the conflict in 1998 and 1999. For a number of displaced persons from Kosovo, the problem of the provision of evidence dates back before 1999, as they were never registered at birth and never had any evidence of citizenship. Children born in Montenegro of parents who were displaced from Kosovo face similar situations. Although they should be granted citizenship by origin, these children (whether they were born in hospital or outside it) are not registered in the registry books and have problems providing evidence of their citizenship status.
One of the causes which puts people at risk of statelessness is the omission of birth registration in the registry books. Namely, parents (due to low level of education and lack of knowledge of legal regulations, non-possession of ID documents) fail to register their child in the registry books within the statutory deadline, after which the procedure for registration in the registry books becomes more complicated and time-consuming. The biggest problem are children born outside health facility whose parents, due to the lack of written medical evidence of the circumstances of delivery, have a problem proving the child's birth. Hopefully, the new Law on Non-Contentious Proceedings, providing the establishment (by a court) of time and place of birth of a person who was not registered in the birth registry book, as well as of a child who was born outside health institution, will significantly contribute to easier and faster registration of children who were born outside a health institution, thus helping reduce statelessness.

Acquisition of citizenship for stateless persons in Montenegro

In accordance with the Montenegrin Citizenship Act ("The Official Gazette of Montenegro", No. 13/08 from 26.02.2008, 40/10 from 22.07.2010, 28/11 from 10.06.2011, 46/11 from 16.09.2011), the following are able to acquire citizenship:

- foundlings (children that were found abandoned on the territory of the state)
- children born on the territory of the state if both parents are unknown or of unknown citizenship
- children born on the territory of the state if both parents are stateless
- children born on the territory of the state if they would otherwise become stateless.

Article 7 of the Law on Montenegrin Citizenship provides that:
"Montenegrin citizenship is acquired by a child born or found on the territory of Montenegro, if both parents are unknown or of unknown citizenship or stateless or if a child is left without citizenship".
Legal continuity of Montenegrin citizenship is regulated in transitional provisions of the law, so any person may be considered a Montenegrin citizen if theyacquired Montenegrin citizenship in accordance with the regulations that were in force until the adoption of a new law, if they are registered in the citizeship registry books in Montenegro.
In addition, Montenegrin citizens who, apart from Montenegrin citizenship, also held a citizenship of another country until the independence of Montenegro 3 June, 2006 (The Decision on Declaration of Independence of the Republic of Montenegro and The Declaration of Independent Republic of Montenegro, the Official Gazette of Montenegro, No. 36/06), have the right to retain Montenegrin citizenship as well. A different solution is provided for Montenegrin nationals who acquired some other citizenship after 3 June 2006, because they were also able to retain Montenegrin citizenship until signing of a bilateral agreement with the country the citizenship of which they had acquired, but no later than one year from the date of the adoption of Montenegrin Constitution. (Article 39).
The Law also enables the acquisition of Montenegrin citizenship by application for citizens of the former SFRY who had reported residence in Montenegro before 3 June 2006, provided they have a release from citizenship of another country or submit evidence that they do not possess citizenship of another country. Acquisition of Montenegrin citizenship is eased for these persons, with no requirement to have legally resided in Montenegro uninterrupted for 10 years before the application, nor is there a requirement to know the Montenegrin language. The deadline for submission of applications for Montenegrin citizenship on this basis expired on 31 July, 2012 (Article 41).
Citizens of the republics of former Yugoslavia, who registered their residence in Montenegro at least two years before 3 June 2006 and possess an ID card issued in accordance with the Law on Identity Card, are able to acquire Montenegrin citizenship by application without renouncing other citizenship, effectively allowing dual citizenship. These persons' children, who have not been issued an ID card, also have the right to acquire Montenegrin citizenship under the same conditions. On this basis, the request could be submitted by 31 January, 2012. (Article 41v)
In a situation when, at the registration of birth in the registry book, there is an indisputable legal basis for the child to possess Montenegrin citizenship (e.g. where at least one parent possessed Montenegrin citizenship at the moment of a child's birth, and the child was born in Montenegro), citizenship is automatically granted upon registration in the birth registry. In many other cases, when there is no direct legal basis for the acquisition of citizenship (e.g. if one of the parents acquired Montenegrin citizenship by application after the child's birth) a special procedure is needed. The procedure is initiated by at least one of the parents, submitting an application for Montenegrin citizenship for his/her child.

According to the provisions of Article 40 of the Law on Montenegrin Citizenship, if a person meets conditions for the acquisition of Montenegrin citizenship but is not registered as a Montenegrin citizen, or isregistered outside Montenegro, he/she is able to apply to the relevant authority to establish Montenegrin citizenship.

The greatest problem appearing in relation to Article 40 of the Law on Montenegrin Citizenship is the limited deadline within which a request for establishing Montenegrin citizenship could be submitted. The request must be submitted within one year of the day the application of the law commenced. The relevant authorities differentiate between persons who were born in the territory of former Yugoslav republics but were registered in the birth registry as Montenegrin citizens, and persons who were born on the territory of Montenegro but were not registered as citizens at the time of their birth. This differentiation requires different evidence and documentation for establishing Montenegrin citizenship. Difficulties in establishing Montenegrin citizenship also arise for persons who, at the time of the existence of a joint state, were registered as both Montenegrin citizens and Yugoslav citizens or citizens of Serbia and Montenegro.

- **Naturalization of stateless persons**

The Law provides for facilitated naturalization of stateless persons, removing the requirements concerning accommodation, guaranteed income of a level which enables material and social security and knowledge of an official language (Article 14).

However, stateless persons will not have access to this facilitated naturalization if they do not have legal residence on the territory of Montenegro as prescribed by the Decision on the Criteria for Determining the Conditions for the Acquisition of Montenegrin Citizenship by Admission. ("The Official Gazette of Montenegro", No. br.47/08).

Article 8 of the Montenegrin Law on Citizenship prescribes conditions which must be met by a foreigner in order to acquire Montenegrin citizenship by admission:

- that a person has reached 18 years of age;
- that a person will avoid dual citizenship by renouncing any other citizenship, or proving that he/she will renounce it upon acquisition of Montenegrin citizenship. For a stateless person or a person who, in accordance with the law of the relevant state, will lose their citizenship upon acquisition of Montenegrin citizenship, a renunciation is not required. This is in accordance with Article 16 of the European Convention;
- hat a person has been legally residing in Montenegro uninterrupted for 10 years prior to the submission of an application for Montenegrin citizenship. This is in line with Article 6 paragraph 3 of the European Convention, in that detailed conditions for legal und uninterrupted residence are prescribed by the Government;
- that a person has a guaranteed residence and a guaranteed permanent source of income in Montenegro, of an amount that enables material and social welfare, but more detailed conditions concerning accommodation and income are prescribed by the Government;
- that a person has not been sentenced in Montenegro or a foreign state to a prison term longer than one year, including for criminal offences prosecuted "ex officio", or where legal consequences of such a sentence have ceased;
- that a person possesses active command of the Montenegrin language to a level which allows basic communication. A professional organization that establishes criteria for verification and performs verification is determined by the Government;

- that a person poses no threat to the security and defense of Montenegro;
- that a person has discharged his/her tax obligations.

The condition from paragraph 1, item 2 of this Article, does not refer to a person who submitted the request if:

- he or she is a stateless person or a person who presents proof that, in accordance with the law of the state whose citizenship he or she has, shall lose its citizenship by being granted Montenegrin citizenship, or
- his request for the release from citizenship of another state has been rejected due to the fact that he did not complete military service, under condition that he signs a statement on renunciation from citizenship of another state in the case that he acquires citizenship.

The Law prescribes facilitated (privileged) acquisition of Montenegrin citizenship by application for certain categories of foreigners:

- A spouse of a Montenegrin citizen; no requirement for renunciation of citizenship of another country or knowledge of the Montenegrin language, if a person has been married to a Montenegrin citizen for at least three years and has legal and uninterruped residence in Montenegro for at least five years before the submission of request, instead of 10 years as otherwise required by the law concerning residence for admission into citizenship; (Article 11)
- Persons whose admission into Montenegrin citizenship is to the benefit of the state for scientific, economic, cultural, economic, sports national or similar reasons, on which the Government shall decide; (Article 12)
- A person with recognized refugee status in Montenegro, who does not have to meet requirements regarding accommodation, guaranteed source of income and knowledge of an official language; (Article 13)

- **Procedure for determination of the status of stateless persons**

The process for identification of stateless persons has not yet been established in Montenegro.
Apart from the lack of specifically established procedure for identification and registration of stateless persons, there is no any special authority within the public service which specifically deals with stateless persons. Consequently, there are no publicly available guidelines provided by the state authority for determining the status of stateless persons.
Article 79 of the Law on Foreigners ("The Official Gazette of Montenegro", No. 82/08) provides for the issuing of travel documents for stateless persons. A travel document is issued by the Ministry of Interior, with a validity of 1 year. A request for the issuance of a travel document is submitted on a special form. More details on the manner of issuing travel documents, the form of a request, and the form of a travel document are prescribed by the Rulebook on procedures for granting temporary and permanent residence and issuing travel and other documents to foreigners ("The Official Gazette of Montenegro", No. 58/09). These regulations do not define detailed procedure or necessary evidence. The form of the request for issuing the travel document for a stateless person requires information about unique ID number, date, place, and the state of birth, information about parents and their unique ID numbers, data on residence, statement on the accuracy of data entered, and his/her consent for electronic data processing. So far, the greatest progress has been made during 2015, when three travel documents were issued for stateless persons in Montenegro.

Protection of stateless persons

State and non-state systems of free legal aid

The Assembly of Montenegro enacted the Law on Free Legal Aid on 5 March, 2011 (The Official Gazette of Montenegro, No. 20/11 from 15.04.2011).
The Law on Free Legal Aid was put into effect on 1 January, 2012. In accordance with Article 12 of the mentioned Law, the right to free legal aid could be exercised by:

- Montenegrin citizens;
- stateless persons (apatrides) who legally reside in Montenegro, and persons seeking asylum in Montenegro;
- a foreigner with permanent residence or approved temporary residence, and other persons who legally reside in Montenegro;
- other persons in accordance with ratified and published international treaties.

In order to meet conditions for exercising the right to free legal aid, a person must be:

1. a beneficiary of the family allowance (MOP), or of some other social welfare, in accordance with the law regulating social and child protection,
2. a child without parental care,
3. a person with special needs,
4. a victim of domestic or family violence, or a victim of human trafficking,
5. a person of low income.

The authority in charge of approving free legal aid is the President of the Basic Court or a judge authorized by him on whose territory an applicant has residence or habitual residence.
Professional and administrative tasks in the procedure for approving free legal aid are performed by:

- The Service for free legal aid (formed in basic courts where functions are performed by ten or more judges)
- The Office for free legal aid (formed in basic courts where functions is performed by less than ten judges).

National legislation does not contain a legal definition of a stateless person in accordance with Article 1 of the Convention. Although the Law on Montenegrin Citizenship provides for the acquisition of Montenegrin citizenship by stateless persons, it does not provide a definition or meaning. According to the Article 6 of the Law on Foreigners ("Official Gazette of Montenegro", No. 82/08) "a foreign citizen means any citizen of another state or a stateless person". The eaning of Article 4 of the Law on Asylum is identical ("Official Gazette of Montenegro", No. 45/06), according to which "an alien is a person who is not a Montenegrin citizen, irrespective of whether he or she is a citizen of another state or stateless".
According to the Law on Foreigners, provisions of the ratified and published international treaties and generally accepted rules of international law are applied to stateless persons, if it is more favorable to them. Apart from this provision, national legislation generally does not contain individual or specifically listed rights guaranteed to stateless persons as contained in the 1954 Convention. The only rights which are individually specified and recognized in domestic legislation is ability of a stateless person to acquire Montenegrin citizenship and travel documents.

Although the Law on Montenegrin Citizenship allows for the acquisition of Montenegrin citizenship by a stateless person, in practice, this right cannot be exercised by the stateless person. The problem is the attainment of a residence permit, which requires the stateless person to have legally resided in Montenegro for 10 years before submission of a request. According to the Decision on the Criteria for Determining the Conditions for the Acquisition of Montenegrin Citizenship by Admission ("The Official Gazette of Montenegro", No. 47/08), legal residence is only held by a person who has habitual residence, permanent residence, recognized refugee status, i.e.: recognized status as a displaced person from the republics of former Yugoslavia on the territory of Montenegro.
A residence permit is a necessary condition for acquisition of Montenegrin citizenship. A stateless person must legally and uninterruptedly reside in Montenegro for 10 years before the submission of a request on the basis of an approval by a state body competent for the issuance of temporary and permanent residence. The Decision on the Criteria for Determining the Conditions for the Acquisition of Montenegrin Citizenship by Admission ("The Official Gazette of Montenegro", No. 47/08) specifies what is considered legal and what is considered uninterrupted residence.
As for the non-state system of free legal aid in Montenegro, NGO Legal Center, as UNHCR's partner, is the only organization which has been providing free legal aid to stateless persons since its founding in March, 2007.

Judicial and quasi-judicial protection

The Administrative Court of Montenegro has jurisdiction to provide judicial protection to persons who receive a negative decision in an administrative dispute with the Ministry of Interior of Montenegro, which is in charge of regularizing the status of stateless persons.
As for persons at risk of statelessness due to the lack of registration in the birth registry, judicial protection in registration, and also in the procedure for determining the time and place of birth, is provided in administrative disputes before the Administrative Court of Montenegro, basic courts of Montenegro, as well as on appeal before the Higher Court of Montenegro.
Quasi-judicial protection in Montenegro is provided by the Institution of Ombudsman, as well as through implementation of the recommendations of the UN committees.
The Protector of Human Rights and Freedoms of Montenegro (Ombudsman) is an independent and autonomous institution, entrusted with protecting and promoting human rights and freedoms which have been violated by an enactment, act or failure to act by the state authorities, local self-government authorities, public services and other holders of public power. The Ombudsman's functions also include raising awareness of the importance of the rule of law and consistent protection of human rights and freedoms. Generally, the Ombudsman works towards bringing about legal certainty and the lawful and impartial functioning of state authorities before which citizens exercise their rights, freedoms, duties and legal interests.
Human rights include not only those guaranteed by the Constitution and national law, but also those guaranteed by ratified international human rights treaties and generally recognized rules of international law.
The Institution of the Human Rights and Freedoms of Montenegro (Ombudsman) was established by a Law which was passed by the Assembly of Montenegro on 10 July 2003. The Ombudsman performs

his duties on the basis of the Constitution and laws and adheres to the principles of justice and fairness in the course his work.
Montenegro has ratified many international documents of importance for legislative regulation of the state. This has obliged Montenegro to bring its legislation into line with accepted international standards for the protection of human rights.

Conclusions and recommendations

Montenegro has undertaken significant work on preventing and reducing statelessness, primarily through accession to the Convention relating to statelessness. However, Montenegro still has a problem in the implementation of international standards in this area. There are no precise and clear mechanisms for identifying and registering stateless persons. Although it is possible for a stateless person to acquire Montenegrin citizenship, in practice, nobody has yet exercised this right. This means that there is still a lack of special mechanisms to implement the provisions of the signed conventions. Legal Center has been conducting talks for many years, and will continue to conduct talks, in order to introduce a formal procedure for determining statelessness.
The main area requiring improvement is the national framework for registration in the registry books, the national framework for the acquisition of permanent residence and/or citizenship for foreigners, as well as allowing greater access to personal documents.
Children whose parents do not possess documents, or possess expired documents, should have the right to be completely registered in the birth registry book. In addition, protective mechanisms should be established in order to ensure that the appropriate procedure is initiated for children whose citizenship was not determined at birth, allowing them to obtain a birth certificate or acquire citizenship.
Establishment of the Regional Technical Working Group (a member of which is Montenegro) for the simplification of procedures for collecting documents has led to the elimination of a series of problems faced by displaced persons in regularizing their status in Montenegro.
Through the provision of legal aid for internally displaced and stateless persons, Legal Center's activities are aimed at creating good practice, protecting these persons' rights, abolishing discriminatory provisions in access to rights, all with the aim of creating the conditions for integration into Montenegrin society.

BOSNIA AND HERZEGOVINA

Association "Vaša prava BiH"
Authors: Edita Avdibegović and Bakir Mrkonja

VAŠA PRAVA BiH
Legal Aid Network

Country specific statistics

Number of stateless persons: 2

Number of persons at risk of statelessness: about 100

Ethnic background of the persons of concern: mostly Roma

During years of work on statelessness procedures, we have established that the Roma, as an ethnic group, are at the highest risk of statelessness due to their traditional way of life (frequent migrations), low level of education and lack of understanding of regulations, lack of identification documents of parents, and the costs of different procedures.

Type of population in concern (in situ or stateless in migration context)
From our experience, we determined that both interest groups are included: those who are at risk of statelessness due to migration, as well as cases where the local population have trouble with exercising citizenship rights because of non-registration in the registers.

Brief legal framework on nationality and statelessness in Bosnia and Herzegovina

On 1 September 1993, Bosnia and Herzegovina announced accession into the Convention relating to the Status of Stateless Persons. Additionally, Bosnia and Herzegovina has ratified a number of international conventions for the protection of human rights, such as the International Covenant on Civil and Political Rights and its two Optional Protocols, the International Covenant on Economic, Social and Cultural Rights, the Convention on the Elimination of Racial Discrimination, the Convention on the Elimination of All Forms of Discrimination against Women with Optional Protocol, the Convention on the Rights of the Child with two Optional Protocols and the Convention on the protection of the Rights of All Migrant Workers and Members of Their Families. These international documents are fully integrated into the legislation of BiH and are contained in Annex I of the Constitution.
The Republic of Bosnia and Herzegovina signed the UN Convention on the Rights of Child on 6 March 1992, and that Convention is an integral part of the Dayton Peace Agreement – Agreement no. 13.
The Convention on the Elimination of All Form of Racial Discrimination 1965 is an integral part of the Dayton Paece Agreement – Agreement no.6.
The Republic of Bosnia and Hercegovina signed the International Covenant on Civil and Political Rights, which is an integral part of the Deyton Peace Agreement – Agreement no.7.
Bosnia and Herzgovina ratified the European Convention on Citizenship in October 2008.
Bosnia and Herzegovina still has not ratified the Council of Europe Conventions on the avoidance of statelessness in relation to state succession.
In regards to national legislation, and considering the complex constitutional structure of BiH, a number of regulations have been adopted in this field:
Law on Citizenship of BiH (Official Gazette of BiH no. 4/97,13/97,41/02,6/03,14/03,87/13).

Law on Citizenship of FBiH (Official Gazette of FBiH no. 43/01,22/09,14/11)
Law on Citizenship of RS (Official Gazette of RS no.59/14)
Law on Citizenship of Republic of BiH (Official Gazette of RBiH no. 18/92, 11/93, 27/93, 13/94, 15/94, 26/96 and 30/96)
Instruction on subsequent registration in the register of birth of persons who aquire citizenship of RBiH in accordance with the Law on Citizenship of RBIH (Official Gazette of BiH, no 27/00).
Law on Registers in FBiH (Official Fazette of FBiH, no. 37/12, 80/14)
Law on Registers in RS (Official Gazette of RS, no. 111/09, 43/13)
Law on Registers of Brčko District (Official Gazette of BD, no. 58/11)

Causes of statelessness in Bosnia and Herzegovina

One of the main reasons why some persons are at risk of statelessness is non-registration in the Registers. Specifically, some parents, due to a lack of education,, lack of documents, and the complexity and cost of procedure, missed the opportunity to enroll their child in the Registers within 30 days of birth. After 30 days, the procedure for enrollment becomes longer and more difficult.
In situations like this, it is necessary to run at least two or more administrative procedures for a person to acquire citizenship and identification documents. Especially difficult and complex are the procedures for the enrollment of persons born at home, as well as persons born in the territory of another state who currently reside in BiH but are not enrolled in the register of birth.
We have to emphasize that RS, Brčko District and FBiH have their own Laws on Registers that are not harmonized in certain provisions. RS adopted Law on Registers in 2009 and Brčko District and FBiH did the same in 2011 and 2012. Statistics show that most of the persons at risk of statelessness (Roma) come from the territory of FBiH. Thus, adopting the new Law on Registers in FBiH is of high importance.
„Vaša prava BiH" and UNHCR have actively participated in drafting the new Law on Registers of FBiH and subordinate regulations proposing simpler procedures for enrollment and subsequent registration in the register of births. Also, we have argued that socially vulnerable persons and ethnic minorities not have to pay fees, as costs are one of the biggest obstacles for enrollment in the register of births. Recently, Association „Vaša prava BiH", has successfully completed the procedures for subsequent registration of birth and citizenship for 1419 people, as well as regular registration in registers for 224 beneficiaries who recieved a legal identity for the first time.
The New Law on Registers prescribed certain new solutions in the a way that enrollment procedures (as well for subsequent registration and correction of data) are performed at municipalities and not at Police Departments as in the past. Beside this, the new law imposes obligations on all persons, regardless to age, to be enrolled in the registers. The new law provides for free legal aid and exemption from fee payments and procedural costs during enrollment in the register of birth and deaths for minorities and the socially vulnerable. Besides making procedures easier and relieving beneficiaries from costs for registration of births and deaths, it's evident that the aforementioned solutions have not yet come into practice, and that officials who run these procedures did not accept lawful solutions to provide easier enrollment in registers.
Regarding loss of citizenship in the case of states succession it is evident that persons who have been born and reside on the territory of one of the former Yugoslavian republics (e.g. Republic of Croatia)

and whose parents had citizenship of different republics (e.g. Serbia, BiH) are under biggest risk of statelessness. According to the laws on citizenship of the former Yugoslavian republics, these person had to submit applications for acquisition of the citizenship of one parent before the age of 23, and were this deadline is missed there is a high risk of statelessness.

Acquisition of nationality for stateless persons in Bosnia and Herzegovina

The Law on citizenship BiH adopted in December 2013 allows for the acquisition of BiH nationality for recognized refugees and stateless persons under certain conditions. However, it is worrying that the FBiH, after almost two years since the adoption of the state law, has not adopted amendments to the Law on Citizenship of FBiH, bringing it into compliance with the Law on Citizenship of BiH. Due to this situation, the requirements of persons eligible for citizenship of BiH and submitted to the territory of the Federation will be rejected as premature.

Specifically, Article 11 a. of the Law on Citizenship of BiH prescribes:
Stateless persons and recognised refugees can acquire citizenship of BiH, without fulfilling conditions from Article 3, paragraph 1, items 2, 3, 6, 9 and 10. (2. to have approved permanent residence at the territory of BiH for at least 3 years; 3. to know the language of one of the constituant peoples of BiH; 6. to give up or otherwise lose their former citizenship before acquiring citizenship of BiH, unless a bilateral agreement referred to in Article 14 provides otherwise. The loss of the former citizenship is not required if this is not permitted or cannot be reasonably required; 9. that they have provided a steady source of income in an amount that allows for existence, or that they are able to provide reliable proof of financial resources for their own subsistence; 10 to meet all tax, or other financial liabilities) only if:

1. they have had continuous residence in the territory of Bosnia and Herzegovina, with the status of stateless persons or refugees, for a period of five years preceding the application.
2. a minor child of a person who acquired BiH citizenship based on paragraph 1 of this Article shall be entitled to citizenship of BiH without meeting the requirements of Article 9, paragraph 1, items 1, 2, 3, 6, 9 and 10, if they have refugee status or have been granted temporary residence on the territory of Bosnia and Herzegovina, regardless of the length residence.
3. if the child is older than 14 years, his consent is necessary.

- **Facilitated naturalization procedures**

Stateless persons and refugees can acquire citizenship of BiH, without fulfilling conditions from Article 3, paragraph 1, items 2, 3, 6, 9 and 10 only if they have had continuous residence in the territory of Bosnia and Herzegovina with the status of a stateless person or refugee for a period of five years.
A minor child of a person who acquired BiH citizenship based on paragraph 1 of this Article shall be entitled to citizenship of BiH without meeting the requirements of Article 9, paragraph 1, items 1, 2, 3, 6, 9 and 10, if they have refugee status or have been granted temporary residence on the territory of Bosnia and Herzegovina, regardless of the length of residence.

If the child is older than 14 years, his consent is necessary.

The spouse of a BiH citizen - foreigner, shall acquire citizenship of BiH under following conditions:

1. marriage to have lasted at least 5 years before application and still lasts in the moment of submitting of request;
2. to give up or otherwise lose their former citizenship before acquiring citizenship of BiH, unless a bilateral agreement referred to in Article 14 provides otherwise. The loss of the former citizenship is not required if this is not permitted or cannot be reasonably required;
3. to have approved permanent residence on the BiH territory;
4. to not represent a threat to the national security of BiH.

An underage child, whose parent acquired citizenship of BiH, has the right to acquire citizenship of BiH by naturalization if residing in BiH all the time.

The following persons have the right to acquire citizenship of BiH by application, without meeting the requirements from Article 9, paragraph 2:

1. immigrants who return to BiH,
2. first and second generations of descendants of the persons mentioned in paragraph 1 who return to BiH,
3. spouses of persons referred to in paragraph 1 of this Article shall be entitled to acquire BiH citizenship by application without meeting the requirements of Article 9, paragraph 2, provided that the marriage lasted at least five years before application and that it still lasts at the moment of submission of request and to give up or otherwise lose their former citizenship before acquiring citizenship of BiH, unless a bilateral agreement referred to in Article 14 provides otherwise. Withdrawal or termination of the former citizenship is not required if it is not permitted or cannot be reasonably required;

If naturalization is of high importance for BiH citizenship, a person shall acquire citizenship of BiH without meeting the requirements of Article 9, paragraphs 1,2,6.

- **Statelessness determination procedure**

Article 58 of of the Law on foreigners of BiH (Official Gazette of BiH, 88/15) prescribes that temporary residence on humanitarian grounds may be granted to an alien who fails to meet the general requirements if that persons is without citizenship.
There is no procedure in BiH for the determination of statelessness. The MoS, conducting approval of temporary residence on humanitarian grounds, shall determine whether the applicant is a stateless person. If granted temporary residence, the stateless applicant will receive a certificate of identity. There is no possibility for the statelessness of the applicant be established by any procedure other than granting temporary residence.
One of the obstacles for a residence permit on humanitarian grounds is a fee of 100 BAM which must be paid at the time of submission of the application for a residence permit.

Protection of stateless persons

State and non- state legal aid systems in specific country

An efficient system for providing of free legal aid has not been established on the territory of BiH nor other levels of government, despite its importance for vulnerable people on the territory of BiH. However, BiH issued a series of laws that directly regulate the matter of free legal aid in RS, Brčko District, and Tuzla, Sarajevo, Zenica - Doboj, Una - Sana, Bosnia - Podrinje, Posavina, HNK and West Herzegovina Canton. Laws which would regulate the matter of free legal aid have not yet been adopted in the Central Bosnia Canton and Canton 10, and where they are adopted they do work at full capacity, institutions have not yet begun their work or have a shortage of employees able to effectively respond to the challenges on the field.

Most of the laws limit the exercise of the rights related to residence to the relevant canton / entity, or the possibility of extra-territorial representation. Some laws do not account for the provision of assistance to foreigners or asylum seekers, refugees, persons under subsidiary or temporary protection, stateless persons and victims of human trafficking, which in addition to being in violation of international obligations, may result in the denial of legal aid to the citizens of Bosnia and Herzegovina abroad in cases where aid is conditional on reciprocity. Some laws emphasize status and financial situation as cumulative conditions, significantly limiting the number of potential beneficiaries of legal aid. At the same time, the laws on determining the relevant status and assets are different. The laws of individual cantons governing the last question, problematically leave considerable discretion to the competent authorities. There is inconsistency about exemptions from court and administrative fees between laws.

As for the non-state legal aid system in BiH, there are many NGOs that provide free legal aid, and their field of operation is different depending on the primary focus, priorities and mandates of the organization. As for providing free legal aid to persons who are at risk of statelessness, Vaša prava BiH are the only NGO that continuously provides free legal assistance to this category of people. All these activities are conducted in partnership with the UNHCR.

Judicial and quasi-judicial protection

Considering the fact that, in BiH, the relevant section of the Ministry of Security (Service of Foreigner's Affairs shall determine whether the applicant is a stateless person) in the procedure of granting temporary residence on humanitarian grounds, judicial protection in these procedures is made in administrative proceedings before the Court of Bosnia and Herzegovina.

Regarding people who are at risk of statelessness due to lack of registration, legal protection in the procedures of registration is provided by administrative proceedings before the cantonal courts in the FBiH, District Courts in the RS and the Basic Court of Brčko District.

Quasi-judicial protection in Bosnia and Herzegovina is realized through the work of the BiH Ombudsmen institutions as well as the execution of recommendations of UN committees.

The Ombudsmen for Human Rights is an independent institution that deals with the protection of the rights of individuals and legal entities, in accordance with the Constitution and international agreements. The Institution of the Ombudsman considers cases related to poor functioning or violation of human rights committed by any of the authorities of Bosnia and Herzegovina, entities or Brčko District. The Institution of Ombudsman acts upon complaints of individual and legal entities or ex officio, and after conducted investigation issues authoritative but legally non-binding recommendations.

In addition to the recommendations, the BiH Ombudsman drafts annual and special reports on particular areas of human rights.
When it comes to the registration of births in the registers, the Ombudsman in their reports and recommendations to the authorities in BiH emphasize the problems that follow when a child's birth is not registered.
For example, the Ombudsman recommended to the relevant section of Internal Affairs that, with the consent of the Ministry of Civil Affairs, a mother and her two children should be reistered. Specifically, during the process of research, it was found that the mother of the children has been in an institution since mid-2009, and the children are not enrolled in the Register of citizens of BiH, and have no identity documents. A problem arose when one child did not have the necessary documents for enrollment in school. The Ombudsman's recommendation in this case has been fulfilled completely.
Bosnia and Herzegovina as a member of the UN and as a member of the Council of Europe, has ratified a number of documents of importance to legislative regulation. At international level, it has created an obligation on BiH to harmonize its legislation with accepted international standards for the protection of human rights and obliges the state to periodically report to the competent authority (Committee) about the state of human rights.
Thus, the UN Committee for Human Rights, during reconsideration of the last periodic report on BiH'se implementation of the Covenant on Civil and Political Rights, emphasised the obligation of the State related to enrollment of children in the Registers and issuance of the birth certificates. This is because, as a consequence of non-enrollment, these children cannot exercise basic human rights such as the right to health and social insurance, right to education and other rights. In this regard, the state should make efforts in order to ensure civil registration of all children, especially the Roma, through specific interventions such as raising public awareness of the need for birth registration and issuance of birth certificates.

Conclusions and recommendations

Take steps towards the establishment of an effective and sustainable system of free legal aid and enable equal access to justice for all citizens, including persons at risk of statelessness, in line with the duties arising from international - legal obligations;
Adopt the Framework Law on Free Legal Aid in BiH in order to create a coherent, effective and sustainable system of free legal aid;
Harmonise existing Laws on the Registers of the FBiH, RS and the Brčko District of BiH with special emphasis on the exemption from payment of fees and costs of registration, and providing free professional help in these procedures;
Urgently adopt the Law on Citizenship of FBiH so stateless persons would have an opportunity to apply for citizenship;
With Amendments to the Law on Movement and Stay of Aliens establish effective procedures for determining the status of stateless persons and prescribe exemption from payment of fees and expenses in these proceedings;
Ensure efficient application of the provisions for acquisition of citizenship for a child born on the territory of BiH whose parents' citizenship is unknown;
Ensure the right to free health care during pregnancy as well as free childbirth for all pregnant women through the efficient application of regulations (provisions, laws) in relation to health care;

It is necessary to bring the phenomenon of statelessness to the attention of all relevant institutions in Bosnia and Herzegovina, emphasizing the importance of registration through continuous training and education of civil officials and through informing the public.

CROATIA

Information Legal Center
Author: Marina Baric-Gacic

Country specific statistics

Number of stateless persons: According to the official data, (census of 2011) 749 persons declared themselves as stateless persons.

Number of persons at risk of statelessness: 2137

Ethnic background of the persons of concern: In the majority of cases. persons of concern are members of the Roma ethnic minority.

Type of population in concern (in situ or stateless in migration context)
The persons who became stateless or who are at risk of statelessness in most cases are members of the Roma community who, during frequent migrations inside former SFRY, neglected toregister the birth of their children in the relevant registry offices. After the breakdown of the SFR Yugoslavia, a large number of Roma who had permanent residence in the Republic of Croatia (RoC) have not had easy access to Croatian citizenship as they did not previously possess citizenship of the former SR Croatia. Besides Roma, who are the most vulnerable group due to their way of life, another group of persons who find themselves at risk of statelessness are persons to whom Croatian citizenship was registered erroneously by officials in the registry offices. Without being notified of the initiation of proceedings by the registry offices, they were deprived of Croatian citizenship after revisions, and instead of Croatian citizenship, were given the citizenships their parents had at the time of their birth.

Brief legal framework on nationality and statelessness in Croatia

Republic of Croatia is signatory to the crucial UN conventions (1954 UN Convention relating to the Status of Stateless Persons, 1961 UN Convention on the Reduction of Statelessness and the 1951 European Convention for the Protection of Human Rights and Fundamental Freedoms which provisions have been comprised in the laws of the RoC).
Legal provisions that are in effect in the RoC, and according to which status issues are being resolved, are the Croatian Citizenship Act (Official Gazette of the Republic of Croatia no. 53/91, 70/91, 28/92, 113/93, 4/94, 130/11) and the Foreigners Act (Official Gazette of the Republic of Croatia no. 130/11, 74/13).
In specific cases, provisions of the General Administrative Procedure Act (Official Gazette of the RoC no. 74/09), Act on Public Registers (Official Gazette of the RoC no. 96/93,76/13) and the Family Act (Official Gazette of the RoC no. 116/03, 17/04,136/04, 107/07, 57/11, 61/11, 25/13, 05/15) are used for resolving individual cases.
There is no formal national procedure for the determination of statelessness in Croatia. It is determined on a case by case basis. For each individual case, the MoI takes into account all relevant facts and, inter alia, requests a document from the country of origin to verify that the foreigner is not listed in the national registry of citizenship. There is no specific deadline foreseen if the government concerned fails to reply, but there are deadlines foreseen in the General Administrative Procedures Act of 30 or 60 days from completing the file. In practice, this can be extended. The Croatian authorities rely

on a formal reply from the government of a State with which person/applicant has a link. If the applicant has links to multiple states, the MoI will check the citizenship status with the country in which the applicant would qualify for citizenship. In case of doubt, the MoI will check the citizenship status with governments of those countries with which the applicant for Croatian citizenship has links. The burden of proof in the first instance on the applicant; however, as per legislation, the burden of proof is also on the government if it is about data which are officially and easily available to the relevant Croatian authority. In the context of the Citizenship Act, Croatia recognizes statelessness as de jure statelessness only.
Statelessness is determined through the administrative procedure under the Croatian Citizenship Act, although there are no specific provisions for the verification of citizenship.

The person can also be identified as stateless through the national asylum procedure in accordance with the Asylum Act (now Act on International and Temporary Protection OG 70/15) provisions, covering both refugee status and subsidiary protection if a person has applied for asylum.
According to the article 3 of the Croatian Citizenship Act, citizenship can be acquired: by origin; by birth within the Republic of Croatia; by naturalization; and according to international treaties.
In case when a child is born or found in the Republic of Croatia, and his parents are unknown or of unknown citizenship, a child will acquire Croatian citizenship in accordance with article 7 of the Croatian Citizenship Act. The child's Croatian citizenship will cease if by his fourteenth birthday it is confirmed that both of his parents are foreign citizens.
The stated children are considered Croatian citizens from the moment of issuance/takeover of the decision on acquisition of the citizenship.
The procedure is as follows: when the finding of a child is reported to the competent police station/department, it is investigated in cooperation with social welfare centre in order to find his/her parents. In the event the investigation is fruitless, it is then determined that the child has no identity, social welfare centre determines his/her identity and he/she goes through the procedure for determination of Croatian citizenship.

Causes of statelessness in Croatia

The most common reasons of statelessness or risk of statelessness are: loss of citizenship in case of succession of states, lack of registration of birth in the birth registry books and incorrect entry of Croatian citizenship in the registry.
As already mentioned, majority of persons who are in the risk of statelessness or are deprived of citizenship status are members of the Roma community.
The majority of Roma who were living in the area of former SFRY did not register childbirth in the respective registry offices in the area where they had been living, so children became legally invisible and without any rights.
In case they did register childbirth in respective registry of births, the parents had not taken into account neither were they warned which republic's citizenship their child would acquire.
While the former SFRY existed, the absence of registration of republican citizenship in the birth certificate was not considered a status issue; that became an issue after the breakdown of the former SFRY.

According to the Croatian Citizenship Act, all citizens who had registered Croatian republican citizenship on 8 October 1991 were considered to be citizens of the Republic of Croatia. Furthermore, ethnic Croats who had registered permanent residence in the RoC but did not possess Croatian republican citizenship, could acquire citizenship by written statement submitted to the relevant police department that they consider themselves to be Croatian citizens.

Despite having residence on the territory of the RoC at the moment of declaration of independence, a certain number of individuals, mostly members of the Roma community, had no ability to acquire Croatian citizenship by facilitated naturalization because they had citizenship of another ex-Yugoslav republic.
Although a certain number of these persons have regulated stay in the RoC and Croatian authorities treat them as foreign citizens, they are de facto stateless since their birth has never been registered in the books of citizens in their states of origin. In order to acquire Croatian citizenship, all of these persons must subsequently register into the books of citizens of their states of origin, and upon obtaining a guarantee of acceptance to Croatian citizenship, they have to request a dismissal of citizenship from their states of origin.
A similar situation exists for children of foreigners who were born in the RoC, but whose birth has not been reported on time to the relevant registry office. Where the registration is conducted subsequently in the registry of births, it is necessary to conduct subsequent registration in the registry of births and the book of citizens in the states of origin of their parents because all these children are considered to be foreigners in the RoC and in order for them to achieve particular rights they have to regulate their stay in the RoC pursuant to the Foreigners Act.
There is a certain number of persons who acquired Croatian citizenship by mistake of officials in the registry offices. They acted as Croatian citizens in legal desaings by using Croatian official documents. Persons who mistakenly acquired Croatian citizenship have not been acquainted with the revision procedures that took place in the registry offices and with administrative proceedings that lead to deprivation of Croatian citizenship.
The majority of them have been considered Croatian citizens for at least 10 years and their children acquired Croatian citizenship on the basis of origin. However, upon conducted revisions they were deprived of their citizenship status, so they had or still have to regulate their status as foreigners.

Acquisition of nationality for stateless persons in Croatia

- **Facilitated naturalization procedures**

The Croatian Citizenship Act does not provide for the facilitated naturalization of stateless persons. In case a child is born or found in the RoC territory, and his/her parents are unknown or of unknown citizenship or without citizenship, a child will not be stateless and will acquire Croatian citizenship according to the Article 7 of the Croatian Citizenship Act.
The regular manner of acquisition of Croatian citizenship is prescribed by Article 8, Paragraph 1 of the Croatian Citizenship Act. According to the stated article of the Act, a foreigner who submitted the request for admission to Croatian citizenship can acquire Croatian citizenship by naturalization, if he/she fulfils the following assumptions:

- if he/she is 18 years old and his legal capacity has not been taken away from him;

- that he/she has the release from the foreign citizenship or that he/she provides evidence that he/she will be released if admitted to the Croatian citizenship;
- that he/she lives in the Republic of Croatia with the registered permanent residence at least 8 years continuously before submitting the request and that he/she has approved status of a foreigner in the permanent residence;
- that he/she knows the Croatian language and Latin alphabet, Croatian culture and social system;
- that it can be concluded from his behaviour that he/she respects the legal order and customs of the Republic of Croatia.

Facilitated naturalization for the purpose of acquiring Croatian citizenship applies to foreign citizens who are married to Croatian citizens and who havepermanent residence in the RoC.
According to the Article 10 of the Croatian Citizenship Act, foreigners who are married to Croatian citizens can acquire Croatian citizenship even if they do not fulfil the requirements from the Article 8, Paragraph 1, and Points 1-4 of this Act.
In case of determination of Croatian citizenship, the request for determination is submitted in person or through a proxy in the relevant police station or department in the place of temporary residence or the last permanent residence of the submitter in the territory of the Republic of Croatia. If the submitter of the request has permanent or temporary residence abroad, the request is submitted to the closest diplomatic mission / consular department of the Republic of Croatia. The request can be submitted by persons who are not registered in the books of citizens of the Republic of Croatia, and acquired the possibility in line with the regulations being force at the moment of adoption of the Croatian Citizenship Act.
The fulfilment of the legal assumptions for subsequent registration in the books of citizens is determined on the basis of regulations valid at the moment of birth of the submitter of the request.

The following documents need to be enclosed to the request:

1. Valid identification document;
2. a certificate that a person is not registered in books of citizens in a registry office in the place of the registration or permanent residence of their parents at time of birth, or that the books were destroyed/went missing;
3. Citizenship certificate of one or both parents;
4. Birth certificate and marriage certificate for married persons;
5. evidence of citizenship status (citizenship certificate clearly stating when and on which ground the submitter of request acquired foreign citizenship, and if possible to enclose the certified copy of the decision of the competent body on the acquisition of foreign citizenship);
6. Certificates (birth, marriage and death) for parents of the applicant if they are available;
7. for persons who moved out of the Republic of Croatia (out of the territory of former Federal People's Republic of Yugoslavia / Socialist Federal Republic of Yugoslavia), the evidence on former Yugoslav citizenship (old passport, citizenship certificate, military records, employment booklet, etc.).

Procedures for the determination of Croatian citizenship are conducted for persons who acquired Croatian citizenship based on regulations in force on the day the Croatian Citizenship Act came into force (8 October 1991) and were not registered in the book of citizens by mistake.
Facilitated naturalization has been provided for a foreigner who, by the day of the submission of request for permanent residence has 3-years uninterrupted temporary residence, and had a refugee status for at least 10 years.

Then, in accordance with the new Law on Foreigners, the status of a foreigner with permanent residence under the milder conditions can be acquired by persons who have permanent residence in the Republic of Croatia on 8 October 1991, and who are the beneficiaries of the programme for return and housing care, and for which it has been determined that they returned to the Republic of Croatia with an intention to permanently reside there. The Law does not require previous regulation of temporary residence for that category of foreigners, as was the case with the previous regulation.
Also, more favourable conditions are applied to children whose parents / single parent have the status of permanent residence in the Republic of Croatia.

- **Statelessness determination procedure**

There is no statelessness determination procedure in the RoC. If a person claims to be stateless, Croatian legislation permits them to regulate their residence on humanitarian grounds according to the Foreigners Act.
In exceptional cases, after multiple verifications of stateless persons by the MoI, stateless persons who are born and who have been living in the RoC, can aquire Croatian citizenship if it can be proved that these persons were not registered in the birth register and book of citizens by mistake of their parents.

Protection of stateless persons

State and non- state legal aid systems in Croatia

Legal assistance to stateless persons is mainly provided by civil society organisations through different projects.
Information Legal Centre (ILC) has been implementing the project "Legal Assistance to Stateless and at Risk of Stateless Persons" for the 4th year as UNHCR's implementing partner.
During the project implementation, ILC has provided assistance to many stateless or at risk of statelessness persons in resolving their citizenship status.
Moreover, ILC has been providing legal assistance to displaced persons living in neighbouring countries by obtaining necessary documents on their behalf for regulating their status in their countries of residence.
Considering the fact that during the Homeland War certain state registries were destroyed, people displaced in other republics of ex-Yugoslavia run the risk of statelessness if the procedures of subsequent entries into the state registries are not implemented.
Furthermore, ILC has been conducting subsequent registration in the state registries for legally invisible persons who are born and who have been living in the RoC, and who have not been registered in the registry of birth within the legal deadline.
Since there is no statelessness determination procedure in the RoC, all persons of undetermined/unknown or stateless status can regulate their residence according to the Foreigners Act.

According to Article 47, Paragraph 1 of the Foreigners Act, temporary residence is approved to a foreigner who intends to reside or resides in the Republic of Croatia for the purpose of:

- family reunification,
- high school education and studying,
- scientific research,
- humanitarian reasons,

- employment and
- temporary employment.

According to the Article 65, Paragraph 1 of the Foreigners Act, temporary residence for humanitarian reasons will be granted to a foreigner in the following cases:

- if he/she as a victim of human trafficking and has accepted a program of help and protection,
- if he/she is a minor who has been left or he/she is a victim of organized crime or he/she was left without parental protection, guardianship or unaccompanied for any other reason,
- to a foreigner who has had refugee status for at least 10 years before applying, or he/she is included in the programme of the return and housing care of refugees from the Republic of Croatia, which is proved by the confirmation of the competent state body for refugees,
- if he/she cooperates with competent bodies and his/her participation is necessary in criminal proceedings conducted against the employer who employed him/her unlawfully,
- for serious justified reasons of a humanitarian nature.

In accordance with Article 54, Paragraph 1 in relation to article 65, Paragraph 2 of the Foreigners Act, temporary residence for humanitarian reasons will be granted to a foreigner is he/she:

- proves the purpose of temporary residence,
- has a valid travel document,
- has no prohibition of entrance and residence in the Republic of Croatia,
- does not represent a danger to the public order, national security or public health.

The Article 52, Paragraph 3 of the Foreigners Act stipulates that a decision on granting temporary residence is issued to a foreigner without a valid travel document who has submitted a request for temporary residence in the Republic of Croatia.

All persons who do not possess valid travel documents are instructed to submit a request for temporary residence at the relevant police station/department in the place of intended residence, for serious justified reasons of a humanitarian nature.

The Foreigners Act provides a definition of a stateless person – a foreigner not considered a citizen of any state, in accordance with the national legislations of respective states.

Where a person claims to be stateless, he/she needs to enclose certain proof to that effect, such as documents from the potential countries of origin in which it is specifically stated that a person is not that country's citizen.

Additionally, MoI conducts its official investigations in order to determine the citizenship status of an individual. Investigation on possession of documents and blood origin is conducted so that MoI can determine a person's identity and/or his/hers parents identities according to the places of their birth. Namely, in the competent registries of birth it is determined if there is an entry for a person whose stateless status is being determined.

The Foreigners Act provides for the issuing of travel documents for stateless persons. In order for a person to obtain such documents, their stateless status has to be confirmed. According to ILC's findings, only one person in RoC obtained travel documents as a stateless person.

The Free Legal Aid Act, which is in force in the RoC, does not enable free legal assistance to stateless persons. According to Article 5, free legal aid beneficiaries according to the Act are as follows:

- Croatian citizens,
- Unaccompanied minors - child who does not have Croatian citizenship and is found in the RoC without a legally responsible adult (legal guardian),
- Foreigners who have temporary residence under condition of reciprocity, foreigners holding permanent residence,
- Foreigners under temporary protection,
- Foreigners in illegal residence and foreigners in a short-term stay, in procedures of deportation or return,
- Asylum-seekers, and foreigners under subsidiary protection and members of their families who legally reside in the RoC, in procedures where legal assistance has not been provided by a separate law.

Judicial and quasi-judicial protection

As already mentioned, in order to prevent statelessness only a child who is born or found in the RoC and whose parents are of unknown citizenship or without citizenship, will acquire Croatian citizenship according to the Croatian Citizenship Act.

Ex parte proceedings in order to determine motherhood and fatherhood are initiated in case these persons/children are not registered in the registry of birth. In case a child is not registered, CSW is able to initiate procedure and a mother's statement provided before the court is taken as a proof of motherhood. Since the new Family Act will soon come into effect, mother's statements will not be sufficient anymore and motherhood will be proved exclusively by DNA test.

In line with the General Administrative Procedure Act, a proof of motherhood by DNA test is already requested in cases of adults who are not registered in the registry of births within the legal deadline.

Persons whose birth is not reported to the competent registry offices belong for the most part to the most vulnerable groups of population who do not have sufficient financial means to pay for DNA tests in order to become legally visible. Moreover, neither does the State have the financial means to pay for DNA analysis, leaving these groups of citizens in a very difficult situation.

Conclusions and recommendations

Despite the existence of certain provisions stipulated in the Croatian Citizenship Act and the Foreigners Act which enable facilitated regulation of residence and acquiring of Croatian citizenship for persons who have undetermined citizenship or persons who are without citizenship, we consider that suggested legal solutions are insufficient and inadequate for all persons who are faced with problems of acquiring citizenship.

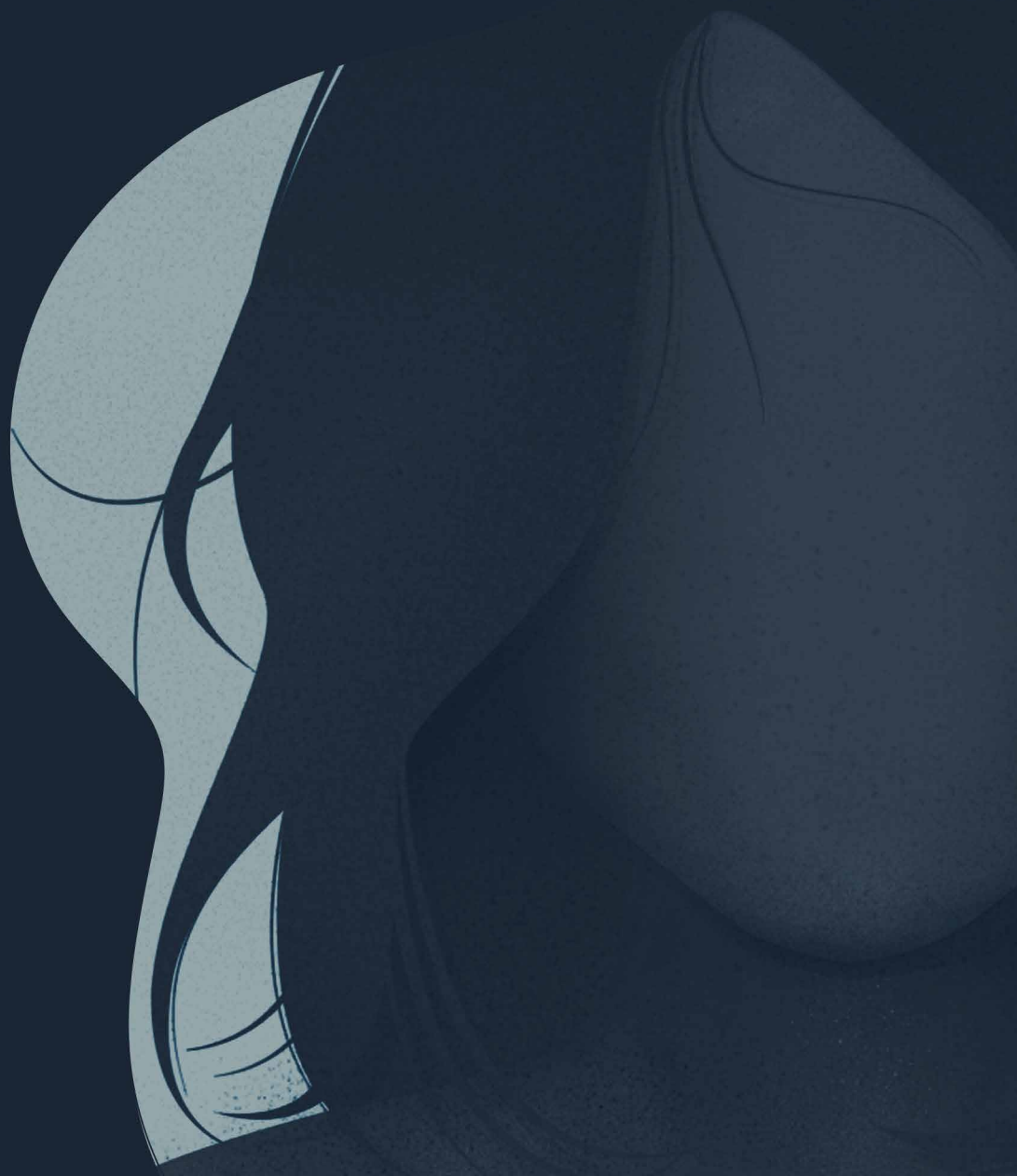
According to the current rules and regulations in force in the RoC, all persons who have undetermined citizenship or are without citizenship or at risk of citizenship status deprivation, can regulate their residence in the RoC exclusively on the basis of provisions stipulated in the Foreigners Act.

Particulsrly, these are persons who have been residing for years or are born on the territory of RoC and are originally from neighbouring countries. Taking into account that these persons are not registered in the registry of births and the book of citizens in the countries of origin of their parents and have no actual connection with these countries, ILC suggested changes of particular provisions in the Citizenship Act and complementary Rulebook such as not to require subsequent registration in the registry of births and the book of citizens in the state of origin of their parents. Suggested amendments would be related to obtaining documentation (citizenship and birth certificate) which are enclosed during submission of the request for acquiring Croatian citizenship.

Moreover, in our recommendations we also mentioned persons who are born on the territory of the RoC and whose birth was not registered within the legal deadline in the registry of births. Since there is no uniform practice in the State Administration Offices in such cases, ILC proposed to the Ministry of Public Administration to issue an instruction or directive related to the subsequent registration in the registry of births and not to request DNA testing during these procedures.

Additionally, ILC has been advocating for years for the adoption of statelessness determination procedures according to international conventions which the RoC has signed and ratified. With that aim, ILC and UNCHR organized two round tables (in 2014 and 2015) with eminent experts from the area of statelessness in order to present the statelessness determination procedures implemented in some EU member countries to their Croatian colleagues which will hopefully result in their implementation in Croatian legislation.

Since there is no possibility of facilitated naturalization for persons without citizenship in the Croatian Citizenship Act that is currently in force, ILC suggested the adoption and embedding of such provisions in Croatian legislation, with the aim of decreasing statelessness and addressing the large number of persons of undetermined citizenship status.



SHORT BIOGRAPHY OF THE ORGANIZATIONS AND THE AUTHORS

Short biography of the organizations and the authors

Macedonian Young Lawyers Association

MYLA is nongovernmental, nonprofit and nonpolitical organization founded in 2004 as a professional NGO, established with the aim of promoting the full implementation of the rule of law, and enforcement of the contribution of young lawyers in the development of the legal profession in Macedonia through projects and activities. MYLA works on: Representing the interests of young lawyers and their continuous education and networking; Legal protection of stateless persons, refugees and asylum seekers; Access to justice and improving the effectiveness of the Law on legal aid; Prevention of discrimination and un-equal treatment; Monitoring of the implementation of the laws relating to human rights protection and the judiciary.

Aleksandra Efremova graduated from the Faculty of law Justinian Primus in Skopje.
For seven years she has been working as an attorney in her own private practice.
Since 2010 she has been working for the Macedonian Young Lawyers Association, first on the UNHCR Project for Legal assistance and representation of persons of concern, and since 2011 on the project for the Prevention and reduction on statelessness.

Praxis

Praxis is an NGO from Belgrade, Serbia, that protects human rights by providing legal protection and advocating for the 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. In addition to providing free legal aid, Praxis achieves its goals through the monitoring of public policies, research, analysis and advocating for systemic solutions, by raising awareness of the problems faced by marginalized and socially excluded communities attempting to integrate, educational outreach, publishing of reports, and providing expert support for reforms, as well as through networking and cooperation.

Milijana Trifkovic graduated at the Faculty of Law, University of Belgrade, where she also completed her Master's thesis. She has been working for Praxis since 2008, in the position of legal analyst. Her interests are especially focused on the problems of stateless persons and the rights of Roma.

Civil Rights Program in Kosovo

The (CRP/K) was founded by The Norwegian Refugee Council (NRC) 1999. CRP/K continued with its activities within NRC until 2002 when it got registered as an independent non-governmental organization. As of this year, CRP/K conducts its activities as a non-governmental human rights based organization and is an implementing partner of the United Nations High Commissioner for Refugees (UNHCR) in implementation of the all projects related to free legal assistance, information and counseling in the territory of Kosovo.

CRP/K is an organization that provides free legal assistance and counseling for returnees, refugees, asylum-seekers, IDPs, persons at risk of statelessness and to persons who are considered to be vulnerable in realization of their civil rights.
CRP/K's objective is to enhance the protection of human rights and freedoms, to address legal obstacles through representation of the interests of its beneficiaries, to facilitate access to gender and diver-

sity sensitive information and necessary documentation with the aim of promoting equal access to services for all communities in Kosovo.
Yll Zajmi graduated from the Faculty of Law, South East European University in Tetovo – Republic of Macedonia. Since 2007, he is working for CRP/K, in the position of Senior Statelessness Officer. His interest is especially focused on the problems faced by persons at risk of statelessness.

Legal Center

Legal Center is a non-governmental organization the mandate of which is to provide free legal aid, counseling, and representation before courts and other administrative authorities to asylum-seekers, persons at risk of statelessness, and displaced persons from Kosovo, Bosnia and Herzegovina, and Croatia, as well as to members of minority peoples and groups, in order to ensure their rights in the country/area of their origin and to provide them with legal assistance in Montenegro.
Legal Center operates through three offices: the main office in Podgorica and two other offices in Bar and Berane, antenna offices in Niksic, Budva, Herzeg Novi, Plav, and Kolasin, as well as the office in Camp Konik, the largest refugee camp in Montenegro, employing one Roma assistant.
Legal Center staff consist of lawyers with extensive experience working with vulnerable populations, through projects with the UNHCR, CRS, UNICEF, UNDP, and the American Embassy.

Luka Kovacevic is a Graduated Lawyer (with bar exam passed). He has the position of Senior Legal Adviser in Legal Center. He is in charge of the provision of free legal aid to displaced persons from the Republic of Croatia, displaced persons from Bosnia and Herzegovina, internally displaced persons from Kosovo, asylum seekers, stateless persons, and victims of domestic violence.

Vaša Prava Bosnia and Herzegovina

Vaša Prava is a Bosnian non-governmental organization that provides legal assistance on civil matters to refugees, displaced people, and other poor and disadvantaged Bosnians, as well as the stateless. Vaša Prava's core mission is to promote civil, socioeconomic, cultural and human rights and to provide fair access to justice for the realization of those rights. It also helps to build an active civil society and a culture of rights by playing a vital role in making recovery-oriented legal reforms a reality for Bosnia's disadvantaged, dispossessed and disenfranchised populations. Vasa Prava BiH is the only legal service organization operating in the country.

Edita Avdibegović graduated at the Faculty of Law, University of Sarajevo. She has been working for Vaša prava BiH since June 2004, as a legal advisor. She has been working on a project for the Prevention of statelessness and assistance to the Roma population since 2009.

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Information Legal Centre

ILC is a non-governmental organisation founded in 2002. It continues the work of the Legal Centre of International Rescue Committee, American humanitarian organisation, which started its work in Slavonski Brod in 1998.

Our purpose is to promote and protect human rights and civil liberties, to provide support to the most vulnerable members of our society through provision of direct services and strengthening society of tolerance, and also to provide support to the development of civil society, active citizens and volunteering.
In order to accomplish our aims, ILC: provides free legal assistance to marginalised groups, with special emphasis on members of the Roma community, elderly persons, women, youth and disabled persons; works actively on the protection of minorities by fostering interethnic and interreligious communication and mutual acceptance; protects the right to equal treatment for victims of discrimination; informs and counsels citizens, NGOs and other non-profit organisations in order to enhance their capacities for responsible participation in positive social change; and develops cooperation with governmental offices specialized for ensuring the equality of citizens before state administration offices.

Marina Baric-Gacic has been employed by ILC as a legal adviser since 2012. She graduated in 2010 from the Faculty of Law, University of Osijek, and in 2014 she passed her civil service examination. Marina has been providing free legal aid to beneficiaries of primary legal aid according to the Free Legal Aid Act, and to the members of Roma national minority.