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за људска права
Босне и Херцеговине

Special report

**regarding the prevention of the risk of statelessness
in Bosnia and Herzegovina**

Banja Luka, 2024

BOSNIA AND HERZEGOVINA
Institution of the Human Rights
Ombudsman/Ombudsmen
of Bosnia and Herzegovina



SPECIAL REPORT REGARDING THE PREVENTION OF THE RISK OF STATELESSNESS IN BOSNIA AND HERZEGOVINA

Banja Luka, 2024

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I INTRODUCTION

All persons have the right to belong to a particular state through the institution of citizenship and the right to enjoy the protection of at least one state and thus exercise their civil and political rights. Persons without citizenship are called *stateless persons*. Statelessness has a real and devastating impact on the lives of individuals, their families, and ultimately on communities. In everyday life, stateless persons cannot exercise the basic rights that citizenship implies such as employment, marriage, crossing the state border, or the use of the healthcare and pension system. Such persons rarely or never encounter the institutions of the state in which they live, and are forced to live outside the system, usually on the edge of existence.

Statelessness arises as a result of major changes in international relations, such as wars, changes in state borders, intrastate political conflicts, inconsistencies in laws, and legal and administrative disparities in practices between states, legal gaps in citizenship laws, discriminatory laws and practices, as well as the act of deprivation and renunciation of citizenship.

There is no legal definition of persons at risk of statelessness in international law. The causes of the risk of statelessness vary from state to state. The most common cause is the lack of birth registration in the appropriate records, i.e. registration of birth in the Births Register, as a birth certificate is the evidence of the place of birth of a child and a child's parents, which are key elements for acquiring citizenship.

During the preparation of the Special Report on the prevention of the risk of statelessness in Bosnia and Herzegovina (hereinafter: Special Report), several of the most vulnerable categories were identified, which, according to the assessment of the Ombudsmen of Bosnia and Herzegovina, can be said to be persons at risk of statelessness:

- persons who are not registered in the Register of Births, because the registration in the Register of Births proves the facts that are decisive for acquiring citizenship of Bosnia and Herzegovina by origin or birth, especially for children born abroad whose

- at least one parent is a citizen of Bosnia and Herzegovina, and who do not have evidence of birth prescribed by the laws and regulations on the Registers of Births
- persons who do not possess proof of citizenship of any country, and who have a connection with several countries on the basis of origin, birth or residence;
 - citizens of the former SFRY who have been continuously residing in Bosnia and Herzegovina for a longer period of time, and who are unable to acquire citizenship in accordance with the applicable legislation in Bosnia and Herzegovina (due to the lack of identification documents, unregulated residence, documents issued in Kosovo (1244/1999)¹);
 - in a migratory context, children of foreigners born in Bosnia and Herzegovina whose parents do not have regulated residence status, proof of identity or citizenship of parents.

The 1954 Convention on the Legal Status of Stateless Persons is the basic/central legal document on which the international system of protection of stateless persons relies, to ensure that those who find themselves in a situation of statelessness are not condemned to live without dignity and security. The Convention establishes a universal definition of “stateless person” and lays down the basic principles of treatment of such persons.

The 1961 Convention on the Reduction of Statelessness² (hereinafter referred to as the 1961 Convention) provides for a number of guarantees for the eradication of statelessness, i.e. the Convention provides for measures to protect persons from becoming stateless in several different contexts. First of all, this refers to preventing statelessness of children at birth, then actions that prevent people at a later age from becoming stateless. Protection measures under the Convention shall be activated only in cases where otherwise persons would be rendered stateless. The instrument of accession of the Government of Bosnia and Herzegovina to this Convention was deposited with the Secretary-General of the United Nations on 13 December 1996. For Bosnia and Herzegovina, the Convention entered into force on the ninetieth day following the date of deposit of the instrument, i.e. on 13 March 1997. The Constitution of Bosnia and Herzegovina, in Annex I - Additional Human Rights Agreements to be applied in Bosnia and Herzegovina, lists the Convention on the Reduction of Statelessness (1961).

At the high-level meeting on statelessness within the 70th Plenary Session of the Executive Board of the United Nations High Commissioner for Refugees, held on 7 October 2019, the delegation of Bosnia and Herzegovina, consisting of representatives of the Ministry of Civil Affairs, the Ministry of Human Rights and Refugees and the Ministry of Security, Bosnia and Herzegovina committed to undertake activities and measures aimed at ending statelessness in Bosnia and Herzegovina by 2024 in accordance with the UNHCR Global Action Plan to End Statelessness³. The given commitments include, among other things, the improvement of registration of births for all persons regardless of their status or their parents’ status, and regardless of the lack of personal documents, as well as the commitment to create a mechanism

1 *All references to Kosovo, whether to territory, institutions or population, should be understood in full compliance with United Nations Security Council Resolution 1244/1999.

2 <https://www.unhcr.org/hr/wp-content/uploads/sites/19/2018/11/1961-konvencija.pdf>

3 Results of the High-Level Segment on Statelessness (unhcr.org).

to regulate the status of persons displaced for a long time in Bosnia and Herzegovina and who did not have a registered residence. Following the “OSCE-UNHCR Regional Conference on Access to Civil Documentation and Prevention of Statelessness in South-Eastern Europe” held in October 2023 in Skopje, North Macedonia, Bosnia and Herzegovina made a new commitment registered within the Second Global Refugee Forum⁴ to make all necessary efforts to resolve all known cases of statelessness in its territory without delay, including by granting citizenship or confirming the citizenship of the existing *in situ*⁵ stateless population, when the legal conditions provided for by the conventions in the field of statelessness are met, and by making legislative amendments if necessary, to ensure that no child is born without citizenship.

The Global Action Plan to End Statelessness 2014-2024 sets out a guiding framework consisting of 10 actions to be taken by States with the support of UNHCR⁶ and other actors to:

- resolve the existing most massive statelessness situations;
- prevent the emergence of new cases of statelessness;
- better identify and protect stateless populations.

The Global Action Plan to End Statelessness encourages States to take one or more actions to meet action targets by 2024. UNHCR, other UN agencies and international agencies, regional organizations, civil society and stateless persons have a role to play in supporting the authorities in order for the competent authorities to take relevant actions, such as:

- Resolve the existing most massive statelessness situations;
- Ensure that no child is born stateless;
- Eliminate gender-based discrimination from citizenship law;
- Prevent the denial, loss or deprivation of citizenship due to discrimination;
- Prevent statelessness in the event of succession of states;
- Grant legal protection to stateless migrants and facilitate their naturalization;
- Ensure registration in the Register of Births in order to prevent statelessness;
- Issue documents proving nationality/citizenship to those entitled;
- Access the United Nations conventions on statelessness;
- Improve quantitative and qualitative data on stateless populations;

4 The Global Refugee Forum is a framework for more predictable and equitable sharing of responsibilities for sustainable solutions to refugee situations that, while respecting international cooperation, provides a blueprint for governments, international organizations, and other stakeholders to ensure that host communities receive the support they need and that refugees can lead productive lives. The Global Refugee Forum has a digital platform mechanism to record the commitments of countries, organizations and other stakeholders made at the Global Refugee Forum including those concerning statelessness.

5 The Latin phrase “in place” in this context means no moving out of the country.

6 The UN Refugee Agency (UNHCR) is tasked with identifying and protecting stateless persons and preventing and reducing statelessness worldwide. UNHCR works together with States, other UN agencies and civil society to end the injustice of statelessness, with the aim of ensuring that every person has citizenship. In BiH, UNHCR is working with institutions to resolve all known cases of statelessness. See also page How UNHCR Helps Stateless People | UNHCR

Each State prescribes its own rules governing citizenship issues, especially those on which depends which persons and under what conditions will be considered its citizens, or under what conditions individual persons cease to be its citizens, and which must be in accordance with international standards. Thus, the 1997 European Convention on Nationality stipulates in its Article 3 that each state will determine who its citizens are by its own legal regulations. The BiH citizen is also provided with adequate consular protection abroad.

The conditions for the acquisition and termination of nationality of Bosnia and Herzegovina, in accordance with the Constitution of Bosnia and Herzegovina, are regulated by the Law on Citizenship of Bosnia and Herzegovina⁷, which also harmonizes the provisions of the Entity Citizenship Laws.⁸

In the period from 2010 until today, six mechanisms for the protection of human rights of the United Nations⁹ issued 21 Recommendations to Bosnia and Herzegovina and observations regarding progress or the need for further improvement in the field of registration in civil registers.¹⁰

Despite the significant level of progress made in the adoption of legal regulations (laws and by-laws) in the field of citizenship at the level of Bosnia and Herzegovina, entities, permanent and temporary residence, the establishment of a system of central records, civil registers, free legal aid, amendments to the Law On Extrajudicial Proceedings, in terms of their compliance with international standards, there are still certain obstacles and shortcomings, both in the content and in the application of regulations that need to be eliminated in order to establish an effective system of prevention and elimination of the phenomenon of statelessness.

In view of the importance of this issue for the realization of human rights and the rule of law, the Human Rights Ombudsmen of Bosnia and Herzegovina adopted the Decision, Conclusion number: Oi-K-BL-548-2.7/23 of 17 July 2023, on the preparation of a Special Report on the prevention of the risk of statelessness in Bosnia and Herzegovina.

Purpose and aim of the Report

The purpose of the Report is to provide an understanding of the problems relating to the situation of stateless persons and persons at risk of statelessness. The aim is to determine the actual situation when it comes to the position of stateless persons and persons at risk of statelessness, based on a comprehensive analysis of the relevant legal framework, information and data collected in communication with the competent institutions.

7 "Official Gazette of BiH", number: 22/16

8 "Official Gazette of the Federation of BiH", number: 34/16; "Official Gazette of Republika Srpska", number: 59/14

9 Universal Periodic Review, Committee on the Rights of the Child, Committee on Human Rights, Committee on the Elimination of Racial Discrimination, Committee on the Elimination of Discrimination against Women, Committee on the Rights of Migrant Workers.

10 Reports and recommendations of United Nations bodies (mhrr.gov.ba)

The Report identifies key directions for institutional action to address the problems identified in this area. By their actions and recommendations, the Ombudsmen of Bosnia and Herzegovina strive to contribute to the creation of policies and practices for the protection of the best interests of stateless persons and persons at risk of statelessness.

Obstacles in the application of relevant regulations and shortcomings are presented in the Special Report. The subject of consideration are the Law on Citizenship of Bosnia and Herzegovina, the Law on Citizenship of the Federation of Bosnia and Herzegovina, the Law on Citizenship of Republika Srpska, the Laws on Civil Registers of the Federation of Bosnia and Herzegovina and Republika Srpska, related by-laws on the application of these laws, the Law on Extrajudicial Proceedings of the Federation of Bosnia and Herzegovina and Republika Srpska, the Laws on free legal aid in Bosnia and Herzegovina, and in this regard the compliance of domestic relevant legislation with international standards.

Methodology

In order to objectively consider the situation of stateless persons and persons at risk of statelessness in Bosnia and Herzegovina, especially from the aspect of avoiding statelessness, the following methods were used in the preparation of the Special Report:

- mapping of legal regulations, both international documents governing the issue of protection of stateless persons ratified by Bosnia and Herzegovina and being a part of the legal system of the state, as well as relevant legislation of Bosnia and Herzegovina at all levels of government related to persons without nationality (stateless persons) and persons at risk of statelessness.
- official visits of members of the Working Group to ministries at the level of BiH, entities and the Brčko District of Bosnia and Herzegovina, Social Welfare Centres¹¹, Registry Offices. Information was obtained through written responses from the institute for the provision of free legal aid, basic/municipal courts in the territory of Bosnia and Herzegovina, on the basis of which selection and analysis were made and conclusions drawn.
- analysis of the situation in the field was carried out during November and December 2023, as well as January and February 2024., based on official visits. All official visits were announced, interviews were conducted on the basis of a pre-prepared methodology with a list of issues of interest to the relevant area within the competence of the relevant authorities.

1.2. Terminological definitions

A person without nationality (stateless person) within the meaning of the Convention Relating to the Status of Stateless Persons (1954): ***“is a person who is not considered as a national by any State under the operation of its law.”***

11 PI Centre for Social Work of Sarajevo Canton, Bijeljina, Brcko District, Zenica, Doboј, Banja Luka, Bihać, Gradiška, Mostar, Tuzla, Živinice, Lukavac;

Nationality within the meaning of the European Convention on Nationality (Article 2)¹²:

- a. “nationality” means the legal relationship between one person and one state and does not indicate that person’s ethnic origin;
- b. “multiple nationality” means the parallel possession of two or more nationalities by the same person;
- c. “child” means any person under the age of 18 unless, under the law applicable to that child, the age of majority is attained earlier;
- d. “domestic law” means all types of provisions of the national legal system, including the constitution, legislation, regulations, decrees, precedent law, customary rules and practice as well as rules derived from binding international instruments.

According to the Law on Foreigners of Bosnia and Herzegovina ¹³

- **foreigner means a person who is not** a national of Bosnia and Herzegovina;
- **stateless person means a foreigner who is** not considered a national by any State in accordance with its domestic legislation;

Persons at risk of statelessness as mentioned above.

12 CETS 166 - European Convention on Nationality (coe.int)

13 “Official Gazette of BiH” no. 88/2015, 34/2021 and 63/2023; Article 6

II LEGAL FRAMEWORK

2.1. International standards

During the preparation of this Special Report, the Ombudsmen of Bosnia and Herzegovina analysed the relevant human rights standards of the United Nations and the Council of Europe ratified by Bosnia and Herzegovina.

2.1.1. United Nations Standards

The **Universal Declaration of Human Rights**¹⁴ stipulates in Article 1 that “*all human beings are born free and equal in dignity and rights. They are endowed with reason and awareness and should act towards each other in a spirit of fraternity.*”

Article 15

1. Everyone has the right to nationality

2. No one shall be arbitrarily deprived of his or her nationality or denied the right to change his or her nationality.

International Covenant on Civil and Political Rights

The International Covenant on Civil and Political Rights provides¹⁵

14 Adopted by United Nations General Assembly Resolution 217 (II) of 10 December 1948

15 Adopted by Resolution 2200A (XXI) of the General Assembly of 16 December 1966, entered into force on 23 March, 1976

Article 16... everyone shall have the right to recognition everywhere as a person before the law....

Article 24... every child immediately after birth must be registered in the Register of Births and bear a name, every child has the right to acquire a nationality..

Article 26

All persons are equal before the law and have the right to equal legal protection without any discrimination. In this regard, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against any discrimination on any ground, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or any other circumstance

Convention on the Legal Status of Stateless Persons

Article 1 of the Convention on the Legal Status of Stateless Persons:¹⁶

Definition of the term “stateless person”

1. For the purpose of this Convention, the term “stateless person” means a person who is not considered as a national by any State under the operation of its law.

The 1961 **Convention on the Reduction of Statelessness** contains provisions on the granting of nationality (Articles 1, 2, 3 and 4), provisions on the loss or renunciation of nationality (Articles 5, 6 and 7), provisions on the withdrawal of nationality (Articles 8 and 9), provisions on the transfer of territories (Article 10), international agency (Article 11) and on the settlement of disputes (Article 14).

Article 1 of the Convention on the Reduction of Statelessness¹⁷

“1. A Contracting State shall grant its nationality to a person born in its territory who would otherwise be stateless. Such nationality shall be granted:

(a) at birth, by operation of law, or

(b) upon an application being lodged with the appropriate authority, by or on behalf of the person concerned, in the manner prescribed by the national law. Subject to the provisions of paragraph 2 of this Article, no such application may be rejected.

A Contracting State which provides for the grant of its nationality in accordance with sub-paragraph (b) of this paragraph may also provide for the grant of its nationality by operation of law at such age and subject to such conditions as may be prescribed by the national law.

16 Adopted by Resolution 526 A (XVII) of 28 September 1954, entered into force on 6 June 1960

17 Adopted in New York on 30 August 1961, entered into force on 13 December 1975

2. A Contracting State may make the grant of its nationality in accordance with sub-paragraph (b) of paragraph 1 of this Article subject to one or more of the following conditions:

- (a) that the application is lodged during a period, fixed by the Contracting State, beginning not later than at the age of eighteen years and ending not earlier than at the age of twenty-one years, so, however, that the person concerned shall be allowed at least one year during which he may himself make the application without having to obtain legal authorization to do so;
- (b) that the person concerned has habitually resided in the territory of the Contracting State for such period as may be fixed by that State, not exceeding five years immediately preceding the lodging of the application nor ten years in all;
- (c) that the person concerned has neither been convicted of an offence against national security nor has been sentenced to imprisonment for a term of five years or more on a criminal charge;
- (d) that the person concerned has always been stateless.

3. Notwithstanding the provisions of paragraphs 1 (b) and 2 of this Article, a child born in wedlock in the territory of a Contracting State, whose mother has the nationality of that State, shall acquire at birth that nationality if it otherwise would be stateless.

4. A Contracting State shall grant its nationality to a person who would otherwise be stateless and who is unable to acquire the nationality of the Contracting State in whose territory he was born because he has passed the age for lodging his application or has not fulfilled the required residence conditions, if the nationality of one of his parents at the time of the person's birth was that of the Contracting State first above mentioned. If his parents did not possess the same nationality at the time of his birth, the question whether the nationality of the person concerned should follow that of the father or that of the mother shall be determined by the national law of such Contracting State. If application for such nationality is required, the application shall be made to the appropriate authority by or on behalf of the applicant in the manner prescribed by the national law. Subject to the provisions of paragraph 5 of this Article, such application shall not be refused." Article 2

"A foundling found in the territory of a Contracting State shall, in the absence of proof to the contrary, be considered to have been born in that territory of parents possessing the nationality of that State."

Article 9

"A Contracting State may not deprive any person or group of persons of their nationality on racial, ethnic, religious or political grounds."

Article 10

"1. Every treaty between Contracting States providing for the transfer of territory shall include provisions designed to secure that no person shall become stateless as a result of the

transfer. A Contracting State shall use its best endeavors to secure that any such treaty made by it with a State which is not a party to this Convention includes such provisions.

2. In the absence of such provisions a Contracting State to which territory is transferred or which otherwise acquires territory shall confer its nationality on such persons as would otherwise become stateless as a result of the transfer or acquisition..”

International Convention on the Elimination of All Forms of Racial Discrimination

Article 5 of the International Convention on the Elimination of All Forms of Racial Discrimination¹⁸ “...Contracting States undertake to prohibit and to eliminate racial discrimination in all its forms and to guarantee the right of everyone to equality before the law without distinction as to the enjoyment of civil rights including the right to nationality...”

Convention on the Elimination of All Forms of Discrimination against Women

Article 9 of the Convention on the Elimination of All Forms of Discrimination against Women¹⁹ “...State Parties shall grant women equal rights with men to acquire, change or retain their nationality... as well as equal rights with respect to the nationality of their children...”

The Convention on the Rights of the Child is the first international document, of universal character, which designates the child as a subject of law and not just a person in need of special protection. The obligations under the Convention apply not only to the obligations of adults in relation to the child, but also to the obligations of numerous social entities in terms of the protection of the rights of the child.

The fundamental principles on which all rights covered by the Convention on the Rights of the Child²⁰ are based are:

- **the principle of non-discrimination** according to which children must not suffer discrimination “irrespective of race, colour, sex, language, religion, political or other opinion, national, ethnic or social origin, ownership, developmental difficulties, birth or other status of the child, his or her parents or legal representatives”;
- **children have the right to life and development** in all aspects of life (physical, emotional, psychosocial, cognitive, social and cultural);
- when making all decisions or executing decisions that affect the child or children as a group, the **best interests of the child** must be paramount. The best interest of the child is a principle that must encompass all decisions relating to children and which are made by government bodies, administrative bodies or according to the **principle of participation in decision-making** on issues related to their lives, and enabling the freedom of expression of opinions.

18 Adopted by Resolution 2106 A (XX) of the General Assembly of 21 December 1965, entered into force on 4 January 1969

19 Adopted by Resolution 34/180 of the General Assembly of 18 December 1979, entered into force on 3 September, 1981

20 Convention on the Rights of the Child adopted by the United Nations General Assembly on 20 November 1989

Article 7 of the Convention

“1. The child shall be registered immediately after birth and shall have the right from birth to a name, the right to acquire a nationality and, as far as possible, the right to know and be cared for by his or her parents.

2. States Parties shall ensure the implementation of these rights in accordance with their national law and their obligations under the relevant international instruments in this field, in particular where the child would otherwise be stateless.”

International Convention on the Protection of the Rights of Migrants and Members of Their Families

Article 29 of the International Convention on the Protection of the Rights of Migrants and Members of Their Families²¹ proscribes that “... *every child of a migrant worker is entitled to a name, registration in the Register of Births and nationality...*”

Convention on the Rights of Persons with Disabilities

Article 18.2. of the UN Convention on the Rights of Persons with Disabilities²²says... States Parties shall recognize the rights of persons with disabilities to liberty of movement, to freedom to choose their residence and to a nationality, on an equal basis with others, and that children with disabilities shall be registered immediately after birth and shall have the right from birth to a name, the right to acquire a nationality...”

2.1.2. Standards of the Council of Europe

European Convention on Human Rights and Fundamental Freedoms

The European Convention on Human Rights and Fundamental Freedoms applies to a limited extent to *ratione materiae* in relation to migration and nationality. The Convention stipulates that “*no one shall be subjected to torture, or to inhuman or degrading treatment or punishment*”. Within the meaning of the Convention, everyone has right to liberty of person, and may not be deprived of his/her liberty except in the case of “lawful arrest or detention of a person to prevent his effecting an unauthorized entry into the country or of a person against whom action is being taken with a view to deportation or extradition.”

Article 8 Right to respect for private and family life

1. Everyone has the right to respect for their private and family life, home and correspondence.

21 Adopted by General Assembly resolution 45/158 of 28 December 1990. BiH ratified the Convention in 1996. It entered into force in 2003.

22 In 2010, BiH ratified the Convention on the Rights of Persons with Disabilities, which entered into force in the same year

2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others

Article 14 Non-discrimination

The enjoyment of the rights and freedoms set forth for in this Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property status, birth or other status.

Protocol No. 4 to the European Convention stipulates in Article 2 *“that everyone is free to leave any country, including his or her own”*.

European Convention on Nationality²³

Article 6 *“...each State Party should provide in its internal law that its nationality is acquired by law by children one of whose parents possesses, at the time of the birth of these children, the nationality of that State Party and foundlings found on its territory who would be otherwise stateless, and that nationality can be acquired by children born on its territory who do not acquire any other nationality at birth and to facilitate the acquisition of nationality by stateless persons and recognized refugees legally residing on its territory...”*

2.2 Legislation of Bosnia and Herzegovina

The Constitution of Bosnia and Herzegovina ensures...*“BiH and both Entities ensure the highest level of internationally recognized human rights and fundamental freedoms”*..., that the rights and freedoms provided for in the European Convention for the Protection of Human Rights and Fundamental Freedoms and its protocols are directly applied in Bosnia and Herzegovina. These acts take precedence over all other laws (Article II 1 and 2 of the Constitution of Bosnia and Herzegovina - Human Rights and International Standards). The enjoyment of these rights and freedoms shall be ensured to all persons in BiH, without discrimination on any grounds, such as sex, race, colour, language, religion, political or other opinion, national or social origin, membership of a national minority, property, birth or other status.

Article I.7. of the Constitution of Bosnia and Herzegovina defines *“There is nationality of Bosnia and Herzegovina, which is regulated by the Parliamentary Assembly, and nationality of each Entity, which is regulated by each Entity”*, and after that, entity laws on citizenship were adopted, which have been amended several times. The Constitution of Bosnia and Herzegovina further stipulates *that no person may be arbitrarily deprived of the nationality*

23 Adopted in Strasbourg on 6 November 1997

of Bosnia and Herzegovina or the Entities or otherwise be left without the nationality of Bosnia and Herzegovina. No person may be deprived of nationality of Bosnia and Herzegovina on any grounds, such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.”

The Constitution of the Federation of Bosnia and Herzegovina stipulates in Article II.2: “Human Rights and Freedoms” - The Federation shall ensure the application of the highest level of internationally recognized rights and freedoms set out in the documents listed in the Annex to this Constitution, and in particular the prohibition of any discrimination based on race, colour, sex, language, religion or belief, political or other affiliations, national or social origin. Article II.A.5. stipulates that the acquisition and termination of citizenship of the Federation of Bosnia and Herzegovina is prescribed by Federal law, under the following conditions: a) no person may be arbitrarily deprived of citizenship, or in a way that would leave him or her stateless, b) no person may be deprived of citizenship of the Federation on the basis of sex, race, colour, language, religion, political or other belief, national and social origin, membership of a national minority, property, birth or any other status, c) all citizens of the Federation are, in accordance with the Constitution of Bosnia and Herzegovina, citizens of Bosnia and Herzegovina, and depending on the conditions of citizenship determined by the Constitution of Bosnia and Herzegovina, also have the right to citizenship of another state.”

The Constitution of Republika Srpska stipulates that citizens of Republika Srpska are equal in freedom, rights and duties, equal before the law and enjoy the same legal protection regardless of race, gender, language, national affiliation, religion, social origin, birth, education, property status, political and other beliefs, social position or other personal capacity. Article 6 stipulates that citizens of Republika Srpska have the citizenship of Republika Srpska. A citizen of Republika Srpska cannot be deprived of citizenship.

The Statute of the Brčko District of Bosnia and Herzegovina stipulated: “Everyone has the right to enjoy all rights and freedoms guaranteed by the Constitution and laws of BiH, this Statute and the laws of the District, without discrimination on any grounds, including discrimination on grounds of sex, race, sexual orientation, colour, language, religion, national or social origin, political or other opinion, membership of a national minority, property status, birth or other status (Article 13)....Also the Statute says: “All persons in the territory of the District shall enjoy the rights and freedoms granted to them by the European Convention on Human Rights and Fundamental Freedoms. These rights and freedoms shall have greater legal force than any law which is contrary to the Convention. All District institutions shall respect these rights and freedoms....”

Law on Human Rights Ombudsman of Bosnia and Herzegovina

Article 1 says:

“1. The Human Rights Ombudsman of Bosnia and Herzegovina is an independent institution established in order to promote good governance and the rule of law, protect the rights and freedoms of natural and legal persons, as guaranteed in particular by the Constitution

of BiH and international agreements contained in the appendix to that Constitution, which will in this regard supervise the activities of the institutions of BiH, its Entities and the Brčko District, in accordance with the provisions of this Law.

Article 2

1. The institution shall consider cases related to poor functioning or violations of human rights and freedoms committed by any authority in BiH.

2. The institution shall act upon receipt of a complaint or ex officio..."

At the level of Bosnia and Herzegovina, the following laws apply:

1. Law on Citizenship of Bosnia and Herzegovina ("Official Gazette of Bosnia and Herzegovina" no. 22/16),
2. Law on Residence and Stay of Citizens of Bosnia and Herzegovina ("Official Gazette of Bosnia and Herzegovina", nos. 32/01, 56/08, 103/11 and 58/15),
3. Law on Identity Card of Citizens of Bosnia and Herzegovina ("Official Gazette of Bosnia and Herzegovina", nos. 30/01, 16/02, 32/07, 53/07, 56/08 and 58/12)
4. Law on Personal ID Number ("Official Gazette of Bosnia and Herzegovina", nos. 32/01, 63/08, 103/11, 87/13 and 84/15);
5. Law on Travel Documents of Bosnia and Herzegovina ("Official Gazette of Bosnia and Herzegovina", nos. 4/97, 1/99, 9/99, 27/00, 32/00, 19/01, 47/04, 53/07, 33/08, 39/08 and 60/13).
6. Law on Central Records and Data Exchange ("Official Gazette of Bosnia and Herzegovina", nos. 32/01, 16/02, 32.07, 44/07).

Based on these laws, thirteen (13) by-laws have been adopted, which further clarify the procedures related to the registration of permanent residence, temporary residence/stay, issuance of personal documents, documents for refugees and stateless persons, keeping records, etc.

By-laws governing this issue, related to law enforcement at the level of Bosnia and Herzegovina:

- a) Rulebook on Issuing a Guarantee in the Procedure of Acquiring Citizenship of Bosnia and Herzegovina ("Official Gazette of Bosnia and Herzegovina", no. 7/14)
- b) Rulebook on specifying evidence of fulfilment of conditions for acquiring citizenship of Bosnia and Herzegovina by naturalization and facilitated naturalization ("Official Gazette of Bosnia and Herzegovina", no. 7/14)
- c) Rulebook on Keeping Records on Acquisition and Termination of Citizenship of Bosnia and Herzegovina ("Official Gazette of Bosnia and Herzegovina", no. 7/14)
- d) Rulebook on the procedure of registration and deregistration of permanent and temporary residence of citizens of Bosnia and Herzegovina, forms and records of permanent and temporary residence ("Official Gazette of Bosnia and Herzegovina", nos. 39/02, 2/09)

- e) Rulebook on Supervision of Implementation of the Law on Permanent and Temporary Residence of Citizens of Bosnia and Herzegovina ("Official Gazette of Bosnia and Herzegovina", nos. 39/02, 2/09)
- f) Rulebook on Supervision of Implementation of the Law on Identity Card of Citizens of Bosnia and Herzegovina ("Official Gazette of Bosnia and Herzegovina", nos. 39/02, 2/09)
- g) Rulebook on Forms, Method of Determining, Issuing, Annuling and Replacing Personal Identification Number, Records and Method of Registering Personal Identification Number in Registers ("Official Gazette of Bosnia and Herzegovina", nos. 39/02, 2/09)
- h) Rulebook on the Manner of Determining Personal Identification Number of Foreign Citizens ("Official Gazette of Bosnia and Herzegovina", nos. 39/02, 2/09)
- i) Rulebook on Supervision of the Implementation of the Law on Personal Identification Number ("Official Gazette of Bosnia and Herzegovina", no. 39/02)
- j) Rulebook on Supervision of the Implementation of the Law on Travel Documents of Bosnia and Herzegovina ("Official Gazette of BiH", no. 55/09)
- k) Rulebook on the Travel Document for a Stateless Person ("Official Gazette of Bosnia and Herzegovina", no. 65/16)
- l) Instruction on the Subsequent Registration of the Fact of Birth and the Fact of Citizenship in the Registers of Persons Who Acquired Citizenship of BiH According to the Regulations of the Republic of Bosnia and Herzegovina ("Official Gazette of Bosnia and Herzegovina", no.: 30/16).

Legislation of the Federation of Bosnia and Herzegovina, Republika Srpska and Brčko District of Bosnia and Herzegovina;

- Law on Citizenship of the Federation of Bosnia and Herzegovina (Official Gazette of the Federation of Bosnia and Herzegovina no. 34/2016),
- Law on Citizenship of Republika Srpska (Official Gazette of Republika Srpska no. 59/2014).
- Law on Civil Registers of the Federation of Bosnia and Herzegovina (Official Gazette of the Federation of Bosnia and Herzegovina, nos. 37/12 and 80/14),
- Law on Civil Registers of Republika Srpska (Official Gazette of Republika Srpska, nos. 111/2009, 43/2013 and 66/2018),
- Law on Civil Registers of Brčko District of Bosnia and Herzegovina (Official Gazette of Brčko District of Bosnia and Herzegovina, no. 58/2011).
- Law on Personal Name of the Federation of Bosnia and Herzegovina (Official Gazette of the Federation of Bosnia and Herzegovina No. 7/12)
- Law on Personal Name of Republika Srpska (Official Gazette of Republika Srpska nos. 27/93 and 15/00)
- Law on Personal Name of Brčko District of Bosnia and Herzegovina (Official Gazette of Brčko District of Bosnia and Herzegovina, nos. 8/01 and 29/05).
- Rulebook on Forms for Reporting the Birth of a Child and Confirmation of Death in the Federation of Bosnia and Herzegovina (Official Gazette of the Federation of Bosnia and Herzegovina, no. 68/12),

- Rulebook on the Procedure, Evidence and Manner of Registration of Citizenship of the Federation of Bosnia and Herzegovina in the Register of Births and Register of Citizens (Official Gazette of the Federation of Bosnia and Herzegovina no. 85/2016),
- Instruction on the Manner of Keeping Civil Registers of the Federation of BiH (Official Gazette of the Federation of Bosnia and Herzegovina, nos. 51/2013, 55/2013, 82/2013 and 6/2015),
- Instructions on Keeping Civil Registers (Official Gazette of Republika Srpska, no. 55/10),

III INSTITUTIONAL MECHANISMS

This chapter contains information on the competent institutions for acting in the field of citizenship and civil registers in BiH.

The Ministry of Civil Affairs of Bosnia and Herzegovina (hereinafter: MoCA) is responsible for citizenship, registration and records of citizens, personal data protection, registration of permanent and temporary residence, personal documents, travel documents and vehicle registration procedures and demining. This Ministry includes the Agency for Identification Documents, Records and Data Exchange of Bosnia and Herzegovina and the Commission for Demining in Bosnia and Herzegovina as independent services whose rights and duties are determined by special regulations. The MoCA has nine sectors in the organizational structure, namely: the Health Sector, the Education Sector, the Citizenship and Travel Documents Sector, the Labour, Employment, Social Protection and Pensions Sector, the Science and Culture Sector, the Sports Sector, the Geodesy, Geology and Meteorology Sector, the Legal, Personnel and General Affairs Sector, the Financial and Material Operations Sector. (Article 15 of the Law on Ministries and Other BiH Administrative Bodies)²⁴

The MoCA Citizenship and Travel Documents Sector is responsible for: preparing and executing international multilateral and bilateral agreements (international conventions in the field of citizenship and travel documents, dual citizenship agreements, etc.); tasks related to the preparation and execution of laws and by-laws in the field of citizenship and travel documents, conducting the procedure of reviewing decisions on the naturalization of foreign citizens naturalized between 6 April 1992. and 1 January 2006. and preparing appropriate decisions and conclusions; preparing responses to lawsuits, requests for review of court decisions and responses to claims of appeals, administrative and other professional tasks related to the admission to citizenship of Bosnia and Herzegovina, renunciation of citizenship of Bosnia and Herzegovina, deprivation of citizenship of Bosnia and Herzegovina, control of the

24 "Official Gazette of Bosnia and Herzegovina", nos. 5/2003, 42/2003, 26/2004, 42/2004, 45/2006, 88/2007, 35/2009, 59/2009, 103/2009, 87/2012, 6/2013, 19/2016 and 83/2017

legality of the procedure of subsequent registration in Registers of Births, determination and cancellation of personal identification number (JMB) for foreigners, etc.; keeping records of the acquisition and termination of citizenship of Bosnia and Herzegovina in accordance with the Law on Citizenship of Bosnia and Herzegovina, issuance of official travel documents and official visas, issuance of shipping and maritime booklets of Bosnia and Herzegovina, supervision of the application of regulations within the competence of the Sectors, cooperation with the competent bodies of the Entity and Brčko District of Bosnia and Herzegovina performing tasks relevant to the field of citizenship and travel documents.

The Ministry of Human Rights and Refugees of Bosnia and Herzegovina (hereinafter: MHRR) is responsible for monitoring and implementing international conventions and other documents in the field of human rights and fundamental freedoms, promoting and protecting personal and collective human rights and freedoms. The MHRR is responsible, inter alia, for provision of care to refugees and displaced persons, for readmission and housing policy, ensure access to human rights, emigration, reconstruction, development, monitoring and regional centres (RCs). (Article 12 of the Law on Ministries and other BiH Administrative Bodies)

The Federal Ministry of Internal Affairs is competent to perform, in accordance with the Law on Internal Affairs of the Federation of Bosnia and Herzegovina, the prevention and detection of acts of international crime and terrorism, unauthorized drug trafficking and organized crime, finding and apprehending the perpetrators of these acts and bringing them to the competent authorities, affairs related to citizenship of the Federation of BiH, protection of certain persons and buildings in the Federation of Bosnia and Herzegovina, protection of human rights and civil liberties in the field of internal affairs. The Federal Ministry of the Interior consists of the following organizational units: Cabinet of the Minister, Legal Affairs Sector, Police Academy, Inspectorate for Supervision of the Work of Agencies for the Protection of Persons and Property and Fire Protection, Material and Financial Affairs Sector, General and Common Affairs Sector, Internal Audit Unit, Federal Police Administration. The Department for Citizenship and Civil Registry has been established in the organizational structure of the Federal Ministry of the Interior, to perform the following tasks: resolves administrative matters and procedures, established by the federal law, in the field of citizenship, personal name and civil records and civil registries; prepares analytical-informative and other materials in the field of citizenship, civil registers and personal name, keeps records on the acquisition of citizenship of the Federation and termination of citizenship of the Federation of Bosnia and Herzegovina by release, submits decisions on the acquisition and termination of citizenship by release for the purpose of granting consent by the MoCA. In the event of a dispute between the competent authorities of the Federation and Bosnia and Herzegovina, it submits the cases to the Constitutional Court of Bosnia and Herzegovina for the final decision. It also provides expert opinions and interpretations on the issue of the implementation of the Law on Citizenship of the Federation of Bosnia and Herzegovina, the Law on Personal Name and the Law on Registry Books, prepares responses to lawsuits in administrative disputes to decisions passed by the Ministry in accordance with the Law on Citizenship of the Federation of Bosnia and Herzegovina, the Law on Registry Books and the Law on Personal Name; resolves as the second-instance body appeals filed against the first-instance decisions made on the basis of the Law on Registry Books, the Law on Personal Name and the Law on Citizenship of Bosnia and Herzegovina and the Federation of Bosnia

and Herzegovina; decides on appeals filed against decisions of federal inspectors issued on the basis of inspection supervision under the Law on Civil Registers and by-laws adopted on the basis of that Law; organizes and conducts the taking of a special professional examination of registrars on the basis of the Rulebook on the Procedure of Taking and the Content Of The Special Professional Examination For Registrars, as well as professional training and training of registrars in accordance with the Rulebook On The Content Of Professional Training And Training Of Registrars For Keeping Civil Registers and prepares appropriate plans and programmes for these tasks; manages the Central Register of Civil Registry in accordance with the Rulebook on the Organization and Functioning of the Uniform Structure of the Electronic Database of Civil Registry in the Field of Registry Books.

The Ministry of the Interior of Republika Srpska has competencies in the protection against endangering the constitutionally established order and endangering the security of Republika Srpska, protection of life and personal security of citizens, human rights and freedoms, protection of all forms of property, prevention of crime and misdemeanours, detection of crime and misdemeanours, finding, depriving of liberty and surrendering of perpetrators of criminal acts and misdemeanours to the competent authorities, maintaining public order and peace, protection of persons and facilities that are specifically protected, identification of persons, objects and traces through criminalistic and technical methods, safety and control of traffic on roads and safety in other areas of traffic, providing assistance to eliminate the consequences that endanger the safety of persons or property on a larger scale, in providing assistance to other authorities within the right to public gathering of citizens in accordance with the law, in control of transportation of explosive substances and flammable liquids, fire protection, control of transport of dangerous substances and control of the movement of weapons and military equipment. In addition to the listed police affairs (under which we consider operational and professional police affairs in both the narrow and broad sense), the Law also states other internal affairs. (Article 20 of the Law on Republic Administration of Republika Srpska)

The Law on Police and Internal Affairs of Republika Srpska²⁵ regulates the competence, scope and basis of organization and management in the Ministry of Internal Affairs of the Republika Srpska, police and other internal affairs within the competence of the Ministry, police authorities, as well as the basic principles of the application of authority, rights and duties from employment relations, ranks and promotions of police officers, training and professional disciplinary responsibility and liability for damage of director and deputy director, police and professional training of employees in the Ministry, control and publicity of the work of the Ministry, and other related issues.

The Ministry of Administration and Local Self-Governance of Republika Srpska is responsible for administrative, professional and other tasks related to the exercise of competences of the entity in the following areas: system and organization of state administration, public service system, salaries of employees in entity administrative bodies, entity citizenship affairs, personal status of citizens, study-analytical and analytical-personnel affairs, providing expert opinions, inspection supervision affairs in the field of administration,

25 "Official Gazette of Republika Srpska", nos. 57/2016, 110/2016, 58/2019, 82/2019, 18/2022 - Decision of the CC and 55/2023)

administrative resolution affairs in the second degree, preparing submissions in court and other proceedings, public administration reform coordination affairs, administrative fees, central clerk's office affairs and correspondence for the needs of the republic administrative bodies, political-territorial organization of the entity, organization and improvement of the political-territorial and electoral system of the entity, the assembly system, political organizations, citizens' associations, foundations, study-analytical and statistical-recording affairs related to local self-government, preparation of reports on the implementation of the policy of local self-governance units for the previous year, suspension of execution of decisions of local self-governance bodies, administrative supervision of the work of local self-governance bodies and the legality of acts, administrative and professional affairs, including informational and documentation that enables planning, monitoring and execution of the Ministry's programmes, affairs related to the European integration strategy and policy in the field of administration and local self-governance, harmonization of regulations with European Union legislation in the field of administration and local self-governance and other tasks determined by law. (Article 16 Of the Law on Republic Administration of Republika Srpska)²⁶

Registry Offices

In the territory of Bosnia and Herzegovina, the keeping of civil registers is at the entity level and is regulated by the Law on Civil Registers of the Federation of Bosnia and Herzegovina, the Law on Civil Registers of Republika Srpska and the Law on Civil Registers of the Brčko District of Bosnia and Herzegovina.

The Law on Civil Registers of the Federation of Bosnia and Herzegovina regulates the jurisdiction for keeping civil registers, types and content of civil registers, civil indexes, entry of data in civil registers, entry of facts in civil registers on the basis of documents of foreign authorities, keeping and maintaining civil registers, issuing certificates and excerpts from the civil registers, access to civil registers and use of data from civil registers, renewal of civil registers, administrative supervision, resolution of complaints and misdemeanour liability and other issues related to civil registers in the Federation of Bosnia and Herzegovina. The Law stipulates that the activities of keeping civil registers are organized and performed by local self-governance units (city and municipality) through the competent department for the administration of the municipality and city designated to perform these activities (hereinafter: the administrative body of the municipality and city responsible for civil registers). The administrative body shall perform activities related to the keeping of civil registers, the civil index, the issuance of extracts from civil registers and certificates of facts entered in civil registers and other activities related to civil registers in accordance with this Law, the territorial jurisdiction of which shall be determined according to the residence of citizens, except in cases for which this Law provides otherwise.

The Law on Civil Registers of Republika Srpska regulates the types and content of civil registers; has competence for their keeping and resolution in administrative proceedings; determines conditions for performing the activities of a civil registrar; manner of keeping, maintaining and renewing civil registers; entry in civil registers on the basis of documents of a foreign

²⁶ "Official Gazette of Republika Srpska", nos. 115/18, 111/21, 15/22 and 56/22, "Official Gazette of BiH", no. 84/22-Decisions of the BiH CC and "Official Gazette of RS", no. 132/22 and 90/23."

authority; inspection of civil registers; defines types of excerpts and issuance of excerpts and certificates on the basis of civil registers; supervise implementation of regulations on civil registers and other issues related to the conduct of proceedings preceding the entry in civil registers.

The Law stipulates that the keeping of civil registers and the resolution in the first instance administrative procedure in the field of civil registers are under the jurisdiction of the local self-governance unit. These tasks are performed by the competent body of the local self-governance unit. The competent body which decides upon the request of citizens to establish facts and data kept in civil registers, shall inspect *ex officio* the data on facts necessary for decision-making on which it maintains official records or obtain evidence of these facts from the competent authority of the local self-governance unit in Republika Srpska that maintains registers on these data.

The Law on Civil Registers of Brčko District of Bosnia and Herzegovina prescribes the types and contents of civil registers, keeping, maintaining and renewal of civil registers, excerpts, certificates and other issues related to civil registers of Brčko District of BiH. The Department for the Public Register of the Government of the Brčko District is responsible for keeping civil registers, registry books and for resolving the first instance administrative proceedings in the field of registry books. The Department performs professional, administrative and other tasks within the competence of the Government related to: the implementation of laws and regulations of competent bodies and institutions of Bosnia and Herzegovina and the District in the field of public registers under supervision, as well as all other tasks related to updated records of personal status of citizens. The Subdivision for Registries performs the following activities: keeping registers (regular and subsequent registrations, corrections and changes in registers), recording all entries and changes in registry books into the database in electronic form, issuing excerpts and certificates on facts entered in the official records, issuing certificates on facts on which no official records are kept, conducting administrative procedures in the field of civil status and acquisition of citizenship, etc.

Social Welfare Centres

The **competence of the Social Welfare Centre of the Federation of Bosnia and Herzegovina** is defined by the following laws: Law on the Basics of Social Welfare, Protection of Civilian Victims of War and Protection of Families with Children²⁷, Family Law of the Federation of Bosnia and Herzegovina²⁸, Law on Protection against Domestic Violence²⁹, Law on Gender Equality in Bosnia and Herzegovina³⁰, Criminal Code of the Federation of Bosnia and Herzegovina³¹, Law on Criminal Procedure of the Federation of Bosnia and Herzegovina³², Law on Execution of Criminal Sanctions of the Federation of Bosnia and Herzegovina³³, Law

27 ("Official Gazette of the Federation of Bosnia and Herzegovina", nos. 36/99, 54/04, 39/06, 14/09 and 45/16)

28 ("Official Gazette of the Federation of Bosnia and Herzegovina", no. 35/05, 41/05 and 31/14)

29 ("Official Gazette of the Federation of Bosnia and Herzegovina", no. 20/13)

30 ("Official Gazette of Bosnia and Herzegovina"; nos. 16/03, 102/09 and 32/10)

31 ("Official Gazette of the Federation of Bosnia and Herzegovina"; nos. 36/03, 37/03, 21/04, 69/04, 18/05, 42/10, 42/11, 59/14 and 76/14)

32 ("Official Gazette of the Federation of Bosnia and Herzegovina", nos. 35/03, 37/03, 56/03, 78/04, 28/05, 55/06, 27/07, 53/07, 9/09 and 12/10)

33 ("Official Gazette of the Federation of Bosnia and Herzegovina", nos. 44/98, 42/99, 12/09 and 42/11)

on Personal Data Protection³⁴, Law on Protection of Persons with Mental Disabilities³⁵, Law on Freedom of Access to Information³⁶, Law on Registries³⁷, Law on Personal Name of the Federation of BiH³⁸, Law on Protection and Treatment of Children and Minors in Criminal Proceedings³⁹, Law on Residence and Stay of Citizens of Bosnia and Herzegovina⁴⁰, Law on Extrajudicial Proceedings of the Federation of Bosnia and Herzegovina⁴¹ and other regulations.

The competence of the social welfare centres of Republika Srpska is defined by the following laws: the Law on Social Welfare⁴², the Family Law⁴³ and the Law on the Public Service System of Republika Srpska⁴⁴. In addition to the aforementioned laws, the General Administrative Procedure Act⁴⁵, the Criminal Procedure Code⁴⁶, the Criminal Code⁴⁷, the Law on Protection and Treatment of Children and Minors in Criminal Proceedings⁴⁸, the Law on Protection against Domestic Violence⁴⁹, the Law on Extrajudicial Proceedings⁵⁰ and other laws as well as by-laws (rulebooks, decrees, decisions, etc.). In addition to the legally defined functions, the centres also perform their activities on the basis of the decisions of the founders: the Decision on the Establishment and other legal acts, statutes, programmes and the applicable social welfare strategy of Republika Srpska (2023-2029).

The Social Welfare Subdivision the Social Welfare Centre of the Government of the Brčko District of Bosnia and Herzegovina performs child protection, social and psychosocial welfare, i.e. through the application of the Law on Social Welfare⁵¹, the Child Protection Act⁵² and the Family Law⁵³, the Law on Protection and Treatment of Minors in Criminal Proceedings⁵⁴, the Law on Protection Against Domestic Violence⁵⁵, provide assistance to the citizens of the Brčko District of Bosnia and Herzegovina in resolving issues of social, children's and family rights.

34 ("Official Gazette of Bosnia and Herzegovina"; nos. 49/06, 76/11 and 89/11)

35 ("Official Gazette of the Federation of Bosnia and Herzegovina", nos. 37/01, 40/02 and 52/11)

36 ("Official Gazette of the Federation of Bosnia and Herzegovina", nos. 32/01 and 48/11)

37 ("Official Gazette of the Federation of Bosnia and Herzegovina", nos. 37/12 and 80/14)

38 ("Official Gazette of the Federation of Bosnia and Herzegovina", no. 7/12)

39 ("Official Gazette of the Federation of Bosnia and Herzegovina", no. 7/14)

40 ("Official Gazette of Bosnia and Herzegovina"; nos. 32/01, 56/08 and 58/15)

41 "Official Gazette of the Federation of BiH, nos. 2/98, 39/04, 73/05, 80/14-other law and 11/21

42 ("Official Gazette of Republika Srpska, nos. 37/12, 90/16, 94/19, 42/20- other Regulation and 36/22)

43 ("Official Gazette of Republika Srpska", no. 17/23))

44 ("Official Gazette of Republika Srpska", nos. 68/07, 109/12 and 44/16)

45 ("Official Gazette of Republika Srpska", nos. 13/2002, 87/2007 - corr., 50/2010 and 66/2018)

46 ("Official Gazette of Republika Srpska", nos. 53/12, 91/17, 66/18 and 15/21)

47 ("Official Gazette of Republika Srpska", nos. 64/2017, 104/2018 - Decision of the CC, 15/2021, 89/2021, 73/2023 and "Official Gazette of BiH", no. 9/2024 - Decision of the BiH CC)

48 ("Official Gazette of Republika Srpska", nos. 13/10, 61/13 and 68/20)

49 ("Official Gazette of Republika Srpska", nos. 102/12, 108/13, 82/15 and 84/19)

50 "Official Gazette of Republika Srpska", nos. 36/09, 91/16 and 16/23

51 "Official Gazette of Brčko District of BiH", nos. 1/03, 4/04, 19/07, 2/08, 21/18 and 32/19

52 "Official Gazette of Brčko District of BiH", nos. 18/20-consolidated text, 29/20, 41/20, 13/21 and 17/23

53 "Official Gazette of Brčko District of BiH", no. 23/2007

54 "Official Gazette of Brčko District of BiH", no. 44/2011

55 "Official Gazette of Brčko District of BiH", no. 7/2018

IV SITUATIONAL ANALYSIS

For the purpose of drafting the Special Report, the working group requested information from the competent institutions in order to determine the situation in practice. Official visits were carried out, and the competent authorities also provided written answers to the questions asked, which can be found in the Annex to the Report.

The Ministry of Civil Affairs⁵⁶ (MoCA) points out that Bosnia and Herzegovina has made significant progress in resolving the issue of statelessness. Legislation in the field of citizenship and civil registers is harmonized with international standards, which results in a small number of stateless persons in the territory of Bosnia and Herzegovina. The Law on Citizenship of BiH, the Law On the Temporary and Permanent Residence of Citizens of Bosnia and Herzegovina, the Law on Travel Documents, and by-laws harmonized with the 1948 Universal Declaration of Human Rights, the 1954 Convention Relating to the Status of Stateless Persons and the 1961 Convention on the Reduction of Stateless Persons, the 1997 European Convention on Citizenship and the 1989 Convention on the Rights of the Child were adopted.

The Law on Citizenship of Bosnia and Herzegovina contains provisions that prevent the occurrence of statelessness:

- citizenship of Bosnia and Herzegovina shall be granted to a child born or found in the territory of Bosnia and Herzegovina after the entry into force of the Constitution and whose both parents are unknown or of unknown nationality or stateless, or if the child is stateless (Article 7).
- a stateless person and a person who has the status of a refugee may acquire the citizenship of Bosnia and Herzegovina only if they have a continuous temporary residence/stay in the territory of Bosnia and Herzegovina for a period of 5 years (Article

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- 12), while Article 15 stipulates that citizenship cannot be lost if the person concerned would thus remain stateless, except in special cases determined by law.
- in the procedure of renouncing the citizenship of Bosnia and Herzegovina, a person may renounce the citizenship of Bosnia and Herzegovina only if he/she has, or is guaranteed, the citizenship of another country and lives abroad (Article 19).
 - in the event that a person who renounces the citizenship of Bosnia and Herzegovina, and in the meantime does not acquire the citizenship of a foreign state, the decision on renunciation shall be annulled as soon as possible (Article 20).
 - in the case of succession of States, Article 42 of the Law stipulates the acquisition of citizenship for citizens of one of the Republics of the former SFRY residing in the territory of Bosnia and Herzegovina for a certain period as well as for the children of these persons. Pursuant to this provision, the Instruction on the subsequent registration in the Registers of Births of persons who have acquired citizenship of Bosnia and Herzegovina under the regulations of the Republic of Bosnia and Herzegovina (Official Gazette of Bosnia and Herzegovina, no. 30/16) was adopted, on the basis of which the registration of persons who were born before the entry into force of the Constitution of Bosnia and Herzegovina and the Law on Citizenship of Bosnia and Herzegovina and its Entities was performed and which has been applied in the territory of Bosnia and Herzegovina since 2000.

The cooperation of MoCA with lower authorities, entity ministries of internal affairs and Brčko District, registry offices and other authorities appearing in the procedures for resolving statelessness issues in individual cases was assessed as extremely good.

The problems pointed out by the representatives of the MoCA and encountered in their work are the non-recognition of documents of persons from Kosovo*, the acquisition of documents from abroad, and certain inconsistencies in entity regulations and different applications by the competent authorities. As stated, the regulations in the field of registries of the Entities and the Brčko District of Bosnia and Herzegovina are not harmonized because the method of registering newborn children in Republika Srpska and the Brčko District of BiH is performed according to the place of birth of the child while in the Federation of Bosnia and Herzegovina it is performed according to the residence of the mother.

The Law on Non-litigation Procedure in the Federation of Bosnia and Herzegovina and Republika Srpska enabled the procedure to be conducted in order to determine the time and place of birth, which contributed to the resolution of a number of cases and the resolution of status issues. In these court proceedings, the problem is the payment of court fees, as these are most often vulnerable categories of persons with poor financial status.

Also, the largest number of cases for which the parties address or file complaints to the MoCA relates to the cancellation of residence that has not been reported in accordance with the law.

MoCA representatives point out that the status of stateless person is approved by the Ministry of Security of BiH/Service for Foreigners' Affairs. The MoCA keeps records for

persons who have been granted subsequent registration in the Register of Citizens of Bosnia and Herzegovina.

When it comes to the application of the Law on Permanent and Temporary Residence of Citizens of Bosnia and Herzegovina, the issue of the category of persons who are unable to obtain documents because they have no place to register their residence, and the role of social welfare centres in these cases, was pointed out. In this regard, they point out that the ministries of interior in the territory of Bosnia and Herzegovina have, for a reasonable period of time, in order to prevent statelessness for persons who could not register in BiH, in connection with the provision of Article 42 of the Law on Citizenship of Bosnia and Herzegovina, established permanent residence on 6 April 1992, and that this MoCA did not dispute such decisions.

The Ministry of Human Rights and Refugees of Bosnia and Herzegovina⁵⁷ points out that reports on the situation of human rights in Bosnia and Herzegovina are done according to the recommendations of the UN bodies after the list of issues is submitted and that the issue of statelessness is within the competence of the MoCA. The MHRR does not have any information regarding the establishment of a system for collecting reliable information on stateless persons, because it is outside the competence of the Ministry.

4.1. Federation of Bosnia and Herzegovina

In the Federation of Bosnia and Herzegovina, a survey was conducted according to the following competent authorities: Federal Ministry of Internal Affairs, Registry Offices and Social Welfare Centres.

Federal Ministry of the Interior

According to the answer received on 20 February 2024, it is stated that when it comes to collecting information on the number of persons whose request for registration in the Register of Births/ Citizens was rejected, and information on the number of persons located in the territory of the Federation of Bosnia and Herzegovina who are not registered in the Register of Births (on the grounds of readmission or other grounds), the Federal Ministry of the Interior points out that the Law on Civil Registers and by-laws in the field of registers regulate that the competent registry offices in the Federation of Bosnia and Herzegovina keep records of registers of births, marriages and deaths of citizens. When it comes to the requested data, and especially data related to the registration of persons on the basis of readmission, the competence of the MoCA of Bosnia and Herzegovina, which, in accordance with the Law on Citizenship of Bosnia and Herzegovina, keeps records on citizenship of Bosnia and Herzegovina, is emphasized. Bearing in mind that the proposal to determine the place and time of birth of persons who are unable to prove the fact of birth on the basis of the Law on Civil Registers is submitted to the competent court, in accordance with the provisions of the Law on Non-Contentious Proceedings, this Ministry does not have data on the number of rejected and dismissed applications.

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Regarding the issue of providing professional legal assistance and counselling in the event of rejection or dismissal of the application for subsequent registration in the Register of Births (hereinafter: RoB) to the category of persons in a state of social need and national minorities ex officio, the Federal Ministry of the Interior points out that Article 52 of the Law on Registers of Births stipulates that the municipality, i.e. the city, cantons and the Federation of Bosnia and Herzegovina are obliged to organize the provision of free professional assistance for the registration of persons in the Register of Births and the Register of Deaths who have the status of a socially disadvantaged person or a national minority and to create conditions for all these persons to be registered in the Register of Births and the Register of Deaths. These persons are exempt from the obligation to pay the costs and fees provided for entry in Register of Births and the Register of Deaths. The guardianship authority should appoint a special guardian for the subsequent registration of these persons in the registers. In this regard, municipalities and cities in the Federation of Bosnia and Herzegovina have established special departments for providing free legal assistance in the field of municipal services, where all interested persons, and especially the Roma population, are provided oral and written legal advice (pleas, complaints, lawsuits, proposals, requests, objections, petitions, powers of attorney and other submissions).

The Registry offices of municipalities and cities, in accordance with the provisions of the Administrative Procedure Act⁵⁸, which is subsidiarily applied in procedures in the field of civil registers, apply the basic principles of administrative procedure, which also applies to the assistance to an ignorant party and the protection of citizens' rights and the protection of the public interest.

The Federal Ministry of the Interior points out that the Federation of Bosnia and Herzegovina prescribes ways and mechanisms to ensure that every child must be registered or recorded in the civil registers after birth and that from birth they have the right to a personal name and the right to acquire citizenship, as well as other rights prescribed by the 1989 Convention on the Rights of the Child. In accordance with the Convention on the Rights of the Child, the obligation of the state is established to provide assistance and protection in the event that the child is deprived of some or all of the elements of his or her identity in order to establish the child's identity as soon as possible. All these obligations are precisely regulated by the Law on Civil Registers, the basic solution of which refers to the obligation that every child must be registered within 30 days from the date of birth in the Register of Birth regardless of the place of birth (in a healthcare institution or outside a healthcare institution, found or stillborn). This obligation under the Law on Civil Registers is valid from the birth of the child and lasts from the moment it is entered in the Register of Births until its death. The Rulebook on the Forms for Registering the Birth of a Child and the Certificate of Death ("Official Gazette of the Federation of Bosnia and Herzegovina", nos.: 68/12 and 83/14) unifies the manner of registering the birth of a child in such a way that the form for registering the birth of a child in a healthcare institution and the form for registering the birth of a child outside a healthcare institution are prescribed.

Article 15 of the Law on Civil Registers stipulates that the birth of a child in a healthcare institution (alive or dead) must be reported by the healthcare institution on the reporting

58 (Official Gazette of the Federation of Bosnia and Herzegovina, Nos. 2/98, 48/99 and 61/22),

form, the content of which is determined by the Rulebook on the Forms for Registering the Birth of a Child and the Certificate of Death. The birth of the child outside the healthcare institution shall be reported by the child's father, and if he is unable to do so or if he is unknown, the birth of the child shall be reported by another member of the household, or by the person in whose apartment the child was born or by the mother when she is able to do so or by the midwife or doctor if they were present at birth, and if these persons are absent or unable to report the birth of the child, the birth shall be reported by the person who learned about the birth of the child on the reporting form, the content of which is determined by the Rulebook On the Forms for Registering the Birth of a Child and the Certificate of Death. The Law on Civil Registers applies to all persons registered in civil registers in the territory of the Federation of Bosnia and Herzegovina. The Federal Ministry emphasizes the positive aspects of the Law on Amendments to the Law on Non-Contentious Proceedings, which prescribes the procedure of "Determination of Place and Time of Birth." Namely, the entry of the fact of birth, marriage or death that occurred abroad in the registers in the Federation of BiH shall be made in the manner regulated in the provisions of Articles 54 to 56 of the Law on Civil Registers and the provisions of items 125a to 138a of the Instructions On How to Keep Civil Registers, but by adopting these changes, the mechanism of registration in the Register of Births of persons who are not able to prove the fact of birth on the basis of the Law on Civil Registers, i.e. do not possess a document of a foreign authority (birth certificate of a foreign authority), is ensured. These amendments stipulate that a proposal to determine the time and place of birth may be submitted to the court by: a person who is not registered in the Register of Births, and the time and place of his birth cannot be proved in the manner provided for by the regulations governing the keeping of registers, the guardianship authority and any person who has a legal interest in doing so. They also point out that the Rulebook on Personal Status and Registration of Facts of Birth, Marriage and Death of Persons Granted International Protection in Bosnia and Herzegovina ("Official Gazette of BiH", no. 54/10) prescribes the manner and special conditions under which the competent authorities are guided in the procedure when registering facts arising from the personal status (birth, marriage, death) of persons under international protection in Bosnia and Herzegovina, the conditions and manner in which administrative assistance is provided to these persons in BiH, and the recognition of the personal status acquired in the country of origin or habitual temporary residence/stay. The said Rulebook was adopted by the Ministry of Human Rights of Bosnia and Herzegovina in cooperation with the MoCA and the Ministry of Security of Bosnia and Herzegovina.

Regarding the issue of the application of the Rulebook on Procedure, Evidence and Manner of Entry of Citizenship of the Federation of Bosnia and Herzegovina in the Registers of Births and Registers of Citizens which enables the application of the Law on Citizenship of Bosnia and Herzegovina and the Law on Citizenship of FBiH (Article 38 Acquisition of Nationality of FBiH on the Basis of Residence for Citizens of the Former SFRY, the Administrative Procedure Act of FBiH, the Federal Ministry of Interior points out the following:

The provisions of Article 47 of the Law on Citizenship of the Federation of Bosnia and Herzegovina stipulates:

- (1)** All persons who are citizens of BiH in accordance with Article 37 of the Law on Citizenship of Bosnia and Herzegovina and who on 6 April 1992 resided in the territory that now belongs to the Federation shall be considered citizens of the Federation,

unless they have their residence in Republika Srpska, which is in accordance with Article 38 paragraph 1 of the Law on Citizenship of Bosnia and Herzegovina.

- (2)** All persons who are citizens of BiH in accordance with Article 37 of the Law on Citizenship of Bosnia and Herzegovina and who lived abroad on the date of entry into force of that Law (1 January, 1998) shall be considered citizens of the Federation if they resided in the territory that now belongs to the Federation before 6 April, 1992, if they did not permanently settle in Republika Srpska or chose citizenship of Republika Srpska, which is in accordance with Article 38, paragraph 2 of the Law on Citizenship of Bosnia and Herzegovina.
- (3)** All persons who were citizens of the former SFRY and who, in the period from 6 April, 1992 until the date of entry into force of the Law on Citizenship of Bosnia and Herzegovina (1 January, 1998), permanently resided in the territory of the Federation and who have permanent residence or temporary residence/stay in that territory for a period of two years after the entry into force of the Law on Citizenship of Bosnia and Herzegovina (1 January, 1998), will acquire citizenship of the Federation after submitting an application.
- (4)** All persons who were citizens of the former SFRY and who, in the period between the date of entry into force of the Law on Citizenship of Bosnia and Herzegovina (1 January, 1998 and 31 December, 2000), permanently resided in the territory of the Federation and who have had permanent residence or temporary residence/stay in that territory for a period of three years, will receive citizenship of the Federation after submitting an application.
- (5)** Residence of children within the meaning of the provisions of Article 27 of this Law and paragraph (1) of this Article, who were minors and did not have a registered residence, shall be determined on the basis of the parents' residence and other evidence.

The provisions of Articles 33 and 34 of the Rulebook on the Procedure, Means of Evidence and Manner of Registration of Citizenship of the Federation of Bosnia and Herzegovina in the Register of Births and Register of Citizens "Official Gazette of the Federation of Bosnia and Herzegovina", nos. 85/16 and 38/22) stipulate the following:

Article 33

A person referred to in Article 47, paragraph (3) of the Law, who was a citizen of the former SFRY and who, in the period from 6 April, 1992 until the date of entry into force of the Law on Citizenship of BiH (1 January, 1998), permanently resided in the territory of the Federation, in order to acquire citizenship of the Federation of Bosnia and Herzegovina, should enclose the following evidence with the application:

- a) Certificate from the cantonal ministry of permanent residence in the territory of the Federation of Bosnia and Herzegovina (in the period from 6 April, 1992 to 1 January, 1998) and that he or she has continuous permanent residence or temporary residence/stay for two years, starting from 1 January 1998;
- b) Birth certificate for the applicant;
- c) Proof of citizenship of the former SFRY (citizenship certificate, passport, identity card and military booklet);

- d) Certificate that he or she is not registered in the Register of Citizens for the area of those municipalities where he or she had permanent or temporary residence/stay in the territory of Bosnia and Herzegovina until the submission of the application;
- e) Proof of paid federal administrative fee.

Article 34

A person referred to in Article 47, paragraph (4) of the Law, who was a citizen of the former SFRY and who, in the period between the date of entry into force of the Law on Citizenship of Bosnia and Herzegovina (1 January 1998 to 31 December 2000), permanently resided in the territory of the Federation of Bosnia and Herzegovina, for acquiring citizenship of the Federation of Bosnia and Herzegovina, should enclose the following evidence with the application:

- a) Certificate from the Cantonal Ministry of permanent residence in the territory of the Federation (between 1 January 1998 and 31 December 2000) and that he or she has a continuous permanent residence or temporary residence/stay for a period of three years;
- b) Birth certificate for the applicant;
- c) Proof of citizenship of the former SFRY (citizenship certificate, passport, identity card and military record booklet);
- d) Certificate that he or she has not been entered in the register of citizens for the area of those municipalities where he or she had permanent residence or temporary residence/stay in the territory of Bosnia and Herzegovina until the submission of the application;
- e) Proof of paid federal administrative fee.

Practice of Registry Offices

For the purpose of collecting the necessary information, official meetings were held, letters were sent regarding the submission of answers to the questionnaire to the following Registry Offices in the Federation of Bosnia and Herzegovina: Municipality Centar Sarajevo, Municipality Novi Grad Sarajevo, City of Zenica, City of Mostar, Registry Offices of Municipality Stari Grad and Mostar Southwest, City of Živinice, City of Lukavac and City of Tuzla.

During the meeting, the representatives of the Registry Office of the **Municipality Centar Sarajevo** pointed out that civil registers are kept in accordance with the Law on Civil Registers, that regarding the issue of citizenship they act in accordance with the Law on Citizenship of the Federation of Bosnia and Herzegovina and Bosnia and Herzegovina, and that they strictly adhere to and act in accordance with the by-laws of the Federal Ministry of the Interior, and that there are no unresolved cases of registry records, nor unresolved cases of statelessness.

The General Administration Service and the Department for Civil Status, Civil Registers, Certification of Transcripts and Legalization of Signatures of the **Municipality Novi Grad Sarajevo** state that they, ex officio, very often make contacts with other registry services/

offices in Bosnia and Herzegovina, in order to determine certain facts relevant to registry entries, that registry records are kept in accordance with the Law on Civil Registers, that they act in accordance with the Law on Citizenship of the Federation of Bosnia and Herzegovina and Bosnia and Herzegovina, that they act in accordance with the by-laws of the Federal Ministry of the Interior and that there are no unresolved cases of registry records, nor unresolved cases of statelessness.

The Registry Office in the **City of Zenica** cites non-contentious court proceedings in which a Decision was issued ordering the entry of children born in the Syrian Arab Republic. In accordance with the above, this registry office states that all persons have been successfully registered in the Register of Births and Register of Citizens in the area of the City of Zenica.

In the statements of the Registry Offices of **Stari Grad and Mostar Southwest**, it is stated that no records are kept on persons who addressed the registry offices that did not have a completed request because the law does not prescribe obligations of this type. Furthermore, it is stated that the Registry Offices are unique in the responses related to the actions of the registrar in the procedures of registration in the Register of Births orally and directly in contact with the client, to provide instructions for registration in the Register of Births. Instructions are given in writing, by e-mail, although in most offices the position of providing legal assistance is not systematized or filled. The regional Registry Offices Stari Grad and Mostar Southwest have employed persons according to the systematization in the positions of senior expert associate for legal assistance. In other regional offices in Mostar, there are no specially systematized positions for legal assistance. The Registry Office in Mostar states that the consulates of Bosnia and Herzegovina submit the cases to the registry offices according to the place of birth of the party, for which reason they forward the received documentation to the registry offices in the Federation of Bosnia and Herzegovina further to the competent registry offices in accordance with the Law on Registry Books of the Federation of Bosnia and Herzegovina.

The Registry Offices of the Municipality Centar Sarajevo, the City of Živinica and the City of Lukavac point out that the registries are kept in accordance with the Law on Registries, that regarding the issue of citizenship they act in accordance with the Law on Citizenship of the Federation of Bosnia and Herzegovina and Bosnia and Herzegovina, and that they comply with and act in accordance with the by-laws of the Federal Ministry of the Interior and that there are no unresolved cases of registry records, nor unresolved cases of statelessness.

The Registry Office in the City of Tuzla states that from some countries (e.g. Romania) a diplomatic note was received to issue birth certificates only at the personal request that the parties may submit in their diplomatic and consular mission. The case of registration of the fact of the birth of a child born in BiH whose parents do not have a status resolved in any way was recorded in Tuzla, which ended with the participation of CSR Tuzla. The entry is made in accordance with the provisions of the Instructions on the Manner of Keeping Civil Registers and the available identification documents, issued in accordance with the applicable regulations, shall be used. The Registry Office in Tuzla currently has seven cases in which no personal name has been determined for the children of BiH citizens (2021-2024 period). Registry offices point to the slowness in the functioning of international legal assistance, and

insufficient professional competence of employees in diplomatic and consular missions of BiH in matters related to civil registers.

The general conclusion is that the registry offices in the Federation of Bosnia and Herzegovina act in accordance with the relevant laws and by-laws, that proper records are kept, that there are no unregistered persons in the registries, and if such cases occur, that in accordance with the Law and in cooperation with the MoCA of Bosnia and Herzegovina, they undertake activities to resolve statelessness cases on the territory of Bosnia and Herzegovina.

Registry offices have no legal obligation to inform the Social Welfare Centre or parents that the child has not been identified as a citizen, except when it comes to the fact of determining a personal name. In such cases, oral and written instructions shall be given for the procedures of acquiring nationality.

International legal assistance implies the overall communication of the judicial authorities of Bosnia and Herzegovina with judicial authorities abroad. The Ministry of Justice of Bosnia and Herzegovina is the central body for communication with other countries in providing international legal assistance in criminal and civil matters. Civil matters in the sense of providing international legal assistance include family as well as other legal matters and relations. The Ministry performs overall communication between judicial authorities in BiH and those abroad.

The Mostar Registry Office states that the consulates of Bosnia and Herzegovina submit the cases to the registry offices according to the place of birth of the party, for which reason they forward the received documentation to the registry offices in the Federation of Bosnia and Herzegovina in line with the Law on Registries of the Federation of Bosnia and Herzegovina where the entry in the register is done in the last place of residence. In this way, as they point out, they further forward the received documentation according to the place of residence, which all creates unnecessary confusion and additional burden for the registry offices in the Federation of Bosnia and Herzegovina.

Practice of social welfare centres

In order to obtain the information necessary for the preparation of this Special Report, a questionnaire was sent to the social welfare centres and official meetings were held with the representatives of: Zenica Social Welfare Centre, Bihać Social Welfare Centre, Sarajevo Canton Social Welfare Centre, Mostar Social Welfare Centre, Lukavac Social Welfare Centre, Živinice Social Welfare Centre and Tuzla Social Welfare Centre.

The social welfare centres state that cases of statelessness are rare, and if individual cases occur, they are resolved immediately. The Bihać, Lukavac and Mostar Social Welfare Centres state that they were not approached by persons without documents for assistance in the procedure of registration in Registers of Births. The Zenica, Tuzla, Živinice Social Welfare Centres and the Sarajevo Canton Social Welfare Centre state that only a negligible number of such persons (from one to three persons) addressed them, but that they immediately initiated resolving of these cases.

The Centres generally state that no ex officio, non-contentious or administrative proceedings have been initiated regarding the determination of the place and time of birth or subsequent registration in the Register of Births for persons without nationality (stateless persons). Exceptionally, the Sarajevo Canton Social Welfare Centre states that in the reporting period it initiated nine administrative proceedings ex officio and one at the request of the “Vaša prava Bosne i Hercegovine” Association, as well as one non-contentious proceedings related to determining the place and time of birth or subsequent registration in the Register of Births.

It follows from most of the answers that the Centres did not ex officio initiate the procedure for supplementing citizenship data when they find out that the child has not been established the fact of citizenship or there have been no such cases in which it was necessary to initiate the procedure for supplementing citizenship data. The exception is the Sarajevo Canton Social Welfare Centre and the Tuzla Social Welfare Centre, which ex officio initiate procedures to supplement citizenship data when it comes to the aforementioned information from persons or legal entities.

Most of the answers of the Social Welfare Centres point to the fact that there were no cases in which administrative and non-contentious proceedings were initiated based on the knowledge of the Centre or they were not familiar with the number of cases in which administrative and non-contentious proceedings were initiated. The exception is the Tuzla Social Welfare Centre, which states that in the reporting period four proceedings were initiated based on the knowledge of this Centre, and the Živinice Social Welfare Centres, which states that based on the knowledge of the Centre, one non-contentious procedure was initiated to determine the place and time of birth, and that the preparation of a proposal for initiating another non-contentious procedure to determine the time and place of birth is underway.

The Centres refer clients to institutions for free legal assistance and the “Vaša prava Bosne i Hercegovine” Association, if necessary. It was stated that the Centres have good cooperation with the Institute for Free Legal Assistance and with the “Vaša prava Bosne i Hercegovine” Association, especially regarding the aforementioned issues.

Social Welfare Centres are exempt from court fees and expert opinions in ex officio proceedings, in accordance with the provisions of Article 385 of the Family Law of the Federation of Bosnia and Herzegovina. The answers of the Social Welfare Centres on special items for the needs of court proceedings are different, so some centres point out that there are special items in the budgets for the needs of court proceedings (fees, expert opinions), while some point out that funds for the purposes of court fees, costs of proceedings and expert opinions are planned in a special budget line of the centre.

In order to obtain information on the entry in the Register of Births of foreign children, which was indicated by the mechanisms for the protection of human rights of the United Nations, information was obtained from the “Vaša prava” Association. The Instruction on the Manner of Keeping Registers of the Federation of BiH strictly prescribes evidence, i.e. identification documents submitted by certain categories of foreigners in the procedure of registration in the Register of Births of a foreigner born in BiH. However, persons who express

the intention to submit an asylum application in the absence of identification documents shall have only a certificate of the expressed intention to submit an asylum application, which is not prescribed by the Instruction on the Manner of Keeping Registers of the Federation of BiH as one of the documents submitted by parents in the procedure of registration in the Register of Births of a foreigner born in Bosnia and Herzegovina. The Rulebook on the Forms for Registering the Birth of a Child and Confirmation of Death in the Federation of Bosnia and Herzegovina stipulates that the registrar may exceptionally, in the event that the parents do not possess the prescribed documents, take the parents' statement on the record in the manner provided for by the Administrative Procedure Act. However, according to the findings of the "Vaša prava Bosne i Hercegovine" Association, this provision does not apply in practice in the procedure of registration of a child of a foreigner born in Bosnia and Herzegovina whose parents do not possess the prescribed documents.

This causes delayed registration in the Register of Births with the necessary engagement of social welfare centres and prevents timely registration in the Register of Births immediately after birth, which is not in accordance with international standards in this field. Additional postponement of birth registration in such cases is also conditioned by proving the temporary residence/stay of the mother in one of the reception centres.

4.2. Republika Srpska/

In Republika Srpska, a survey was conducted in accordance with the competent authorities: the Ministry of Administration and Local Self-Government⁵⁹, the Ministry of the Interior of Republika Srpska, registry offices and social welfare centres.

The Ministry of Administration and Local Self-Government of Republika Srpska points out that in the previous practice of this Ministry, one application was submitted for acquiring nationality of a person without nationality, a stateless person, which was resolved positively. Other cases of statelessness are not known and, according to the available information, there are no recorded persons with statelessness status who were approved stay in the territory of Republika Srpska, which leads to the conclusion that statelessness in the territory of Republika Srpska is not widespread and does not pose a problem that would require further activities in the form of reform of the legal framework.

Acquisition of citizenship in accordance with Article 38 or 39 of the Law

Regarding the question of valid evidence regarding the applicant's uninterrupted place of permanent residence or temporary residence, if a person applies for citizenship of Republika Srpska, the competent ministry shall refer to the provisions of Article 38 of the Law on Citizenship of Republika Srpska, which stipulates that all persons who were citizens of the former SFRY and who permanently settled in the territory of Republika Srpska in the period from 6 April, 1992 to 1 January, 1998 and who have permanent residence or temporary residence in that territory for a period of two years after that date may acquire

⁵⁹ Answer number: 10.2.2 2041092 93 of 30. November, 2023; A meeting of the Working Group with the representatives of the Ministry was held on 30 November, 2023

citizenship of Republika Srpska. The provision of Article 39 of the Law on Citizenship stipulates that all persons who were citizens of the former SFRY and who, in the period from 1 January, 1998 to 31 December, 2000 permanently resided in the territory of Republika Srpska and have a continuous permanent residence or temporary residence in that territory for a period of three years may acquire citizenship of Republika Srpska.

Considering that the issues of permanent residence or temporary residence of persons who were citizens of the former SFRY in the periods referred to in the provisions of Article 38 and 39 of the Law on Citizenship of Republika Srpska under the 1993 Law on Residence and Stay, was under the jurisdiction of the Ministry of the Interior, as valid evidence regarding continuous permanent residence or temporary residence when deciding on applications for acquisition of citizenship of such persons, certificates issued, on the basis of official records, by the organizational services of the Ministry of the Interior of Republika Srpska, which, under the Law on Foreigners, apart from the Service for Foreigners' Affairs, are responsible for controlling the movement and temporary residence of foreigners, as well as issues of their temporary residence, residence or change of residence address, are accepted. As these are cases when the applicant is a foreign national who is unable to obtain a certificate of continuous residence, because in accordance with the applicable legislation, he or she cannot establish the continuous residence before the Ministry of the Interior of Republika Srpska or the Ministry of Security of Bosnia and Herzegovina, the Service for Foreigners' Affairs, the competent Ministry refers to the provisions of the Law on Republic Administration⁶⁰ where the competencies of the institutions in Republika Srpska are determined. The provision of Article 16 of the aforementioned Law stipulates that the Ministry of Administration and Local Self-Government, among other things, performs citizenship issues, personal status of citizens and administrative and other professional tasks of the Republican Administration that are not provided by this Law under the jurisdiction of other Republican Administrative Bodies and, by their nature, cannot be classified into the scope of tasks of those bodies. Issues of permanent and temporary residence of citizens, according to Article 20 of the same Law, are the responsibility of the Ministry of Interior of Republika Srpska.

If the applicant for citizenship in accordance with Article 38 or 39 of the Law on Citizenship of Republika Srpska in non-contentious court proceedings proves continuous temporary/permanent residence, the Ministry of Administration and Local Self-Government will accept final and binding court decisions on continuous residence. However, experience shows that case law on this issue is different. The Ministry is of the opinion that it is necessary for judicial authorities to harmonize their positions on this. Bearing in mind that these are foreigners, in addition to the court decision on the established temporary residence/stay, they should also have proof that at the time of applying for citizenship they have a legal approved temporary residence in the territory of Republika Srpska issued by the Service for Foreigners' Affairs, field office in the place of temporary residence/stay, which at the same time will be a guarantee that the foreigner has not been imposed a security measure of expulsion from Bosnia and Herzegovina.

If the person is a citizen of another country and does not possess a valid identity document, he or she shall submit an application for citizenship under the provision of Article

60 "Official Gazette of Republika Srpska", nos. 115/18, 111/21, 15/22, 56/22, 132/22 and 90/23

31 para. 2 and 3 of the Law on Citizenship of Republika Srpska to this Ministry, through the municipal or city authorities in whose territory the applicant resides or stays or through the diplomatic and consular mission of Bosnia and Herzegovina abroad, if the applicant lives abroad.

Past experience and practice show that there were no obstacles in establishing the identity of such persons when applying under Articles 38 and 39 of the Law on Citizenship of Republika Srpska, and that the applicants, in addition to the residence certificates issued by the Ministry of the Interior, also enclosed ID cards issued in the previous period or valid documents issued in the country of origin.

Acquisition of citizenship in accordance with Article 16 of the Law

When the applicant is a refugee (this is a case of citizenship of Republika Srpska in accordance with Article 16 of the Law on Citizenship of Republika Srpska), in order to prove the refugee status, the position of the Ministry of Administration and Local Self-Government of Republika Srpska is as follows:

The provision of Article 16 of the Law on Citizenship of Republika Srpska stipulates that a person who has the status of a refugee may acquire citizenship of Republika Srpska without fulfilling the conditions referred to in Article 11, para. 1, items b) v) dj) z) an i) only if he or she has continuous residence in the territory of Republika Srpska in the status of a stateless person or refugee for five years before submitting the application.

The provision of Article 38, para. 3 of the Law on Asylum stipulates that a refugee is obliged to register residence with the competent organizational unit of the Service for Foreigners' Affairs or the police administration within eight days from the date of acquiring the status. In the event of a change of residence address, the refugee is obliged to report this change to the organizational unit of the Service or the police administration within eight days from the date of the change of residence address.

Evidence that the stateless person or refugee meets the condition of continuous residence in the territory of Republika Srpska for a period of five years before submitting the application is issued by the Service for Foreigners' Affairs with which they are registered and to such persons, according to the Law on Foreigners and the Law on Asylum, an identification document can be issued, so that the question of their identity in procedures for acquiring citizenship according to Article 16 of the Law on Citizenship of Republika Srpska has not proved to be a problem, because practice shows that the Ministry of Security issues a Refugee Card with a photo and a validity period of three years.

- Good practice through the development of electronic services

The Ministry of Administration and Local Self-Government states that the development of electronic services has facilitated access of citizens and institutions to services based on data from civil registers:

- In cooperation with the Ministry of the Interior, a service was developed that enabled the registry offices to receive electronically, in the process of entry the birth, marriage or death registration, data on the residence of the person for the purpose of entering data in the civil registers.
- The second service was developed with the aim of accelerating the process of issuing identity documents, i.e. identity cards and travel documents for citizens of Republika Srpska who are registered in the civil registers in Republika Srpska. The improvement of the procedure is reflected in the fact that the manual verification of data by civil servants has been replaced by an automatic one.
- Cooperation has been established with the Ministry of the Interior of Republika Srpska since 2017 in readmission procedures, then since 2018 in determining a personal identification number for newborn children and sending notifications about the change of the spouse's surname after the marriage, as well as sending notifications about the death of a person after registration in the register of deaths.
- The third service supported the project of the Ministry of Education and Culture - e_enrolment of pupils in the first grade of primary school, the results of which are visible in the enrolment of pupils in the school year 2023/2024. They enable schools, with the consent of parents and through the Ministry of Education and Culture, to obtain data from registry records in Republika Srpska necessary for the enrolment of the child in school.
- The development and implementation of the e-baby service was carried out, through which the parents of the newborn, in the maternity hospital, can register their child without additional administrative procedures and going to institutions, and the result of all this is that the birth certificate and citizenship certificate for the child are received by the parents at their home address. Data from the Registry Office are further submitted, electronically, to the Ministry of the Interior and the Health Insurance Fund, for the purpose of determining the personal identification number of the child, registration of residence and registration of health insurance.
- The Law on Amendments to the Law on Administrative Fees facilitates access to administrative services, since all persons registered in the Republika Srpska are exempt from paying the fee for issuing birth certificates and Register of Births certificates.

Ministry of Interior of Republika Srpska

The submitted answer⁶¹ states that the competence of the Ministry of the Interior of Republika Srpska, i.e. organizational units by line of work, as well as the scope of authorization is prescribed primarily by the provisions of the Law on Permanent and Temporary Residence of Citizens of Bosnia and Herzegovina ("Official Gazette of BiH", nos. 32/01, 56/08 and 58/15) and by-laws adopted on the basis of this Law. The provisions of the said Law (Article 1, Article 5, etc.) clearly specify that the competent authority, within its competence, registers and deregisters the permanent residence, temporary residence/stay and address of the permanent residence of BiH citizens and the temporary residence of displaced persons. Since the persons to whom the inquiry refers are citizens of the Republic of Croatia, that is, foreigners, the resolution of their status is the responsibility of the authority for residence issues and registration of foreign citizens residing in Bosnia and Herzegovina. It is also noted

61 Answer number: CM-1-053-54/24 of 14 March 2024

that these regulations stipulate that the authority will, at the request of a person, issue a certificate of facts exclusively from the existing records at its disposal and that there is no legal possibility for the Ministry of the Interior to carry out a special administrative procedure that would determine facts outside the official records, and therefore it is not even competent for the assessment of any attached evidence, because the assessment of them should be carried out by the authority conducting the procedure for acquiring citizenship. According to the records of this Ministry, in the previous period, only one request for determining continuous temporary residence/stay was sent to the Banja Luka Police Station and it was rejected by a conclusion due to lack of jurisdiction, and the procedure for the said person was continued in non-contentious proceedings before the competent court.

Practice of Registry Offices

According to the information received from the Registry Offices⁶², there is no record of persons who addresses them for registration in the Register of Births, and who did not have the necessary documents at the time of the address (children born in healthcare institutions in BiH, children born outside healthcare institutions in BiH, children born abroad - who are children of BiH citizens), because there is no obligation established by regulations. Parties who do not have the necessary documentation are given legal advice on how to obtain the documentation. Ex officio, for the purpose of exercising the rights of the parties, registry offices establish good cooperation with other registry services in Bosnia and Herzegovina.

The Registry Office of the City of Banja Luka, Gradiška and Doboј have systematized and filled positions for employees who provide professional legal assistance in procedures of registration in Registers of Births.

The provision of international legal assistance is carried out through line ministries. The largest number of cases in Gradiška concerned the collection of evidence for registration in Registers of Births from the Republic of Serbia or the Republic of Croatia for the Roma population.

Registry Offices state that international legal assistance should be much more up-to-date because it is a personal matter that requires urgency.

When it comes to procedures of registration in Registers of Births of children born in Bosnia and Herzegovina whose parents are foreigners and who do not have a resolved status in Bosnia and Herzegovina in any way, do not have personal documents from the country of origin, nor from the authorities of Bosnia and Herzegovina, the registry offices state that in practice they had no recorded cases.

The registration of children whose parents are foreigners and who were born in the territory of Republika Srpska is performed regularly because there are no restrictions in the positive regulations on the registration of persons in the RoB who do not have RS/BIH

62 Banja Luka, Gradiška, Doboј, Bijeljina

citizenship (the citizenship section remains empty) and parents are instructed to contact the nearest diplomatic and consular mission in BiH or in the region to regulate the child's status.

There are very few incomplete registrations in the registries of the City of Banja Luka, mostly from earlier decades (and most often these are registrations for children whose parents did not have permanent residence in Banja Luka and who made registrations for their children in incompetent registry offices in smaller rural areas).

Practice of Social Welfare Centres

The Social Welfare Centres⁶³ state that no persons without nationality (stateless persons) approached them during the reporting period.

The Centres are unified in their replies that no ex officio, non-contentious or administrative proceedings have been initiated regarding the determination of the place and time of birth or subsequent entry in the Register of Births for persons without nationality (stateless persons) or such proceedings have been initiated in small numbers. The Social Welfare Centre Bijeljina states that one case was conducted ex officio in connection with determining the place and time of birth or subsequent registration in the Register of Births and Register of Citizens. On this issue, the Social Welfare Centre Doboj and the Social Welfare Centre Gradiška point out that they instructed the parties to initiate court proceedings.

The Centres do not initiate ex officio the procedure for supplementing citizenship data when they learn that the fact of citizenship has not been established for the child or there were no such cases in which it was necessary to initiate the procedure for supplementing citizenship data. The exception is the Social Welfare Centre Doboj, which in practice had cases when it initiated ex officio procedures to supplement citizenship data directly and indirectly through guardians. For the most part, the Centres refer clients to free legal assistance if necessary and have good cooperation. It is also stated that consultations are very often carried out with the office for providing free legal assistance and for certain tasks within the competence of the Centre.

The Centres pointed out that they have budget line intended for the costs of expert opinions (e.g. deprivation of legal capacity, etc.).

4.3. Brčko District of Bosnia and Herzegovina

Practice of the Public Register Department

The Department does not keep statistical records of persons who addresses them for entry in the Register of Births and who did not have the necessary documentation at the time they were addresses, because there is no legal obligation to do so. Parties who do not have

63 Banja Luka, Bijeljina, Gradiška, Doboj

the necessary documentation are given legal advice. Evidence through international legal assistance shall be obtained as required. This collaboration was assessed as not up-to-date.

The Department does not inform the Social Welfare Centre or the parent that the child has not been identified as a citizen because they do not have a legal obligation, only when it comes to the name of the child. There are no incomplete entries in Registers of Births.

When it comes to the procedures for registration of children born in BiH whose parents are foreigners and who do not have a status in Bosnia and Herzegovina in any way, nor do they have personal documents from the country of origin, nor from the authorities of Bosnia and Herzegovina, the Department states that in practice they have not had such cases.

Practice of the Subdivision for Social Protection of Brčko District of Bosnia and Herzegovina

The Subdivision for Social Protection – the Social Welfare Centre points out that in the reporting period no person without citizenship - stateless person - applied. For the stated period, the Subdivision for Social Protection did not initiate ex officio non-contentious or administrative proceedings regarding the determination of the place and time of birth or subsequent registration in the Register of Births for stateless persons.

The Subdivision does not ex officio initiate the procedure for supplementing citizenship data when it comes to the knowledge that for the child the fact of citizenship has not been established. The Subdivision for Social Protection as part of the organizational unit of the administrative body of the Department of Health and Other Services does not use the services of the Office for the Provision of Free Legal Aid. The budget of the Brčko District of Bosnia and Herzegovina is a document available to the public, and the Subdivision for Social Protection, as the guardianship authority, has planned funds for expertise in the procedures of deprivation of legal capacity and deprivation of parental care.

V RIGHT TO FREE LEGAL ASSISTANCE

The principles of equality and non-discrimination, which imply equality of all persons before the law, form the basis of international human rights legislation. To ensure compliance with these principles, countries around the world are obliged to provide effective legal protection to the most vulnerable, socially disadvantaged categories of the population in cases where the interests of justice so require. Citizens of poor financial status, who do not have the means to pay for the services of a legal representative, represent a vulnerable category that is unable to adequately protect their rights and interests before the competent authorities. Their right of access to court and other bodies is significantly limited by their material capabilities. Ensuring equality before the court and other bodies is most often enabled by the application of the institute of free legal assistance. It implies the provision of such mechanisms that will, under certain conditions, enable persons whose financial circumstances jeopardize the possibility of protecting their rights to exercise these rights, whether they are courts or other state administration bodies. In this way, the negative effect that material conditions would have on the most vulnerable categories of the population is reversed. Also, without its application, they would be brought into even more difficult material conditions. Therefore, a functional and efficient system of free legal assistance is a guarantee of equal access to the court for vulnerable categories for the protection of their rights and interests, especially returnees, displaced persons, stateless persons and persons at risk of statelessness, children who are not registered in Registers of Births, asylum seekers, refugees and persons granted subsidiary protection, and certainly citizens of poor financial status.

According to international conventions on the protection of human rights and fundamental freedoms, Bosnia and Herzegovina is obliged to provide effective legal protection to the most vulnerable, socially vulnerable groups of the population.

The Strategy for Justice Sector Reform, which was adopted in 2008 by the BiH Ministry of Justice, Entity Ministries of Justice and the Brčko District Judicial Commission, envisages the establishment of a system of free legal assistance in all proceedings and at all levels of Bosnia and Herzegovina. The Draft Strategy for Justice Sector Reform in Bosnia and

Herzegovina (SRSP in Bosnia and Herzegovina) for the period from 2023 to 2027 (which has not yet been adopted by the Council of Ministers of Bosnia and Herzegovina) in reform area 3 - International legal assistance and judicial cooperation and legal assistance and care of court users are defined operational objectives, with the aim of resolving the most important issues identified through conducted research and consultations. In this regard, one of the operational objectives relates to the improvement of the legal assistance system in Bosnia and Herzegovina, i.e. the adoption or amendment of the Law on Legal Aid in BiH, after a comprehensive analysis of the current situation in this area and the strengthening of human and material capacities in legal assistance offices in Bosnia and Herzegovina. An assessment should also be made of the extent to which current criteria and financial thresholds prevent access to justice for those whose funds are above established thresholds but are unable to pay a lawyer to defend or represent them, and the ways of ensuring long-term funding of legal assistance by NGOs and how best to provide legal assistance service in a cost-effective manner with different service providers.

The need to improve the free legal assistance system was also highlighted in the European Commission's last report of 2023, which recommended that: *"The legal framework should be completed by adopting laws in the Federation of Bosnia and Herzegovina and the Central Bosnia Canton, as well as by operationalizing the Legal Aid Office in the Herzegovina-Neretva Canton. Conducting a needs assessment would help identify the main shortcomings and ensure effective and equal access to justice for all regardless of where they reside."*

Free legal assistance in Bosnia and Herzegovina is organized as follows:

- the Office for the Provision of Free Legal Assistance based in Sarajevo was established as part of the Ministry of Justice of BiH
- in the Federation of Bosnia and Herzegovina, cantonal institutes with headquarters in the capitals of the cantons are envisaged (currently, the cantonal institute for free legal assistance is not in operation in the Herzegovina-Neretva Canton)
- centres for providing free legal assistance in Istočno Sarajevo, Banja Luka, Trebinje, Doboј and Bijeljina have been established in the territory of Republika Srpska
- The Office for the Provision of Free Legal Assistance was established in Brčko District of Bosnia and Herzegovina

Laws on the provision of free legal assistance at the level of Bosnia and Herzegovina, cantons (except the Central Bosnia Canton), Republika Srpska and the Brčko District of Bosnia and Herzegovina have been adopted on the territory of BiH.

In Bosnia and Herzegovina, the following laws in the field of free legal assistance apply:

- Law on the Provision of Free Legal Aid ("Official Gazette of Bosnia and Herzegovina", no. 83/2016);
- Law on Exercising the Right to Free Legal Assistance in Republika Srpska ("Official Gazette of Republika Srpska", no.: 67/2020);
- Law on Legal Aid Office of Brčko District of Bosnia and Herzegovina ("Official Gazette of Brčko District of BiH", nos. 19/07 and 23/19);

- Law on the Provision of Free Legal Aid (“Official Gazette of the Una-Sana Canton”, nos. 22/2012 and 03/2016 and 7/2024) for Una-Sana Canton;
- Law on the Provision of Free Legal Aid of Zenica-Doboj Canton (“Official Gazette of Zenica-Doboj Canton”, no. 1/14);
- Law on the Provision of Free Legal Assistance of Sarajevo Canton (“Official Gazette of Sarajevo Canton”, nos. 1/12, 26/14 and 40/17 and 19/23);
- Law on the Provision of Free Legal Aid of Bosnian-Podrinje Canton (“Official Gazette of Bosnian-Podrinje Canton”, no. 02/13);
- Law on the Provision of Free Legal Assistance of the Posavina Canton (“Official Gazette of the Posavina Canton”, no. 06/20);
- Law on the Provision of Free Legal Aid of Tuzla Canton (“Official Gazette of the Tuzla Canton”, number: 17/2023); New law adopted at the Tuzla Canton Assembly session on 30 October 2023, entered into force on 11 November 2023,
- Law on the Provision of Free Legal Aid of Herzegovina-Neretva Canton (“Official Gazette of the Herzegovina-Neretva Canton”, no. 07/2013);
- Law on the County Legal Aid Institute of West Herzegovina Canton (“Official Gazette of the West Herzegovina Canton”, nos. 05/08, 04/09, 20/13 and 10/17)
- Law on the Provision of Free Legal Assistance (“Official Gazette of Canton 10/Herceg-Bosnia County”, no. 09/16) for Canton 10 - Livno.

The Ombudsman institution has received complaints from the “Vaša prava Bosne i Hercegovine” Association, due to the violation of Article 6 of the European Convention for the Protection of Human Rights and Fundamental Freedoms, in relation to the right to free legal assistance for the area of the Central Bosnia⁶⁴ and Herzegovina-Neretva Canton.⁶⁵

In the area of the Central Bosnia and Herzegovina-Neretva Canton, a system of access to free legal assistance for the most vulnerable categories of the population has not been established. In order to overcome this situation and establish an appropriate system of free legal assistance, acting in cases of appeal, the Ombudsmen of Bosnia and Herzegovina issued recommendations to the Government of the Central Bosnia Canton to adopt the Law on Free Legal Aid for the Central Bosnia Canton area⁶⁶ and to the Government of the Herzegovina-Neretva Canton⁶⁷ to complete the process of appointing directors and employ staff in the Institute for the Provision of Free Legal Aid. Until the publication of this Special Report, the recommendations of the Ombudsmen of Bosnia and Herzegovina were not followed.

The Institute for the Provision of Free Legal Aid in the territory of Bosnia and Herzegovina was asked to answer the questions in the questionnaire: whether the Law on the Provision of Free Legal Assistance was applied to the following recognized persons: stateless persons, persons at risk of statelessness and whether in the practice of the Institute there were inquiries by these categories of persons, and whether the Institutes provided free legal assistance to these categories.

64 Ž-SA-05-227/23

65 Ž-SA-05-226/23

66 Subject number: Ž-SA-05-227/23, adopted recommendation number: P-236/23

67 Subject number: Ž-SA-05-226/23, adopted recommendation number: P-237/23

The Laws on Free Legal Assistance at the level of Bosnia and Herzegovina, Republika Srpska, the cantons and the Brčko District of Bosnia and Herzegovina define the categories of persons entitled to free legal assistance. The issue of exercising the right to free legal assistance of stateless persons in the territory of BiH is not defined in the same way. Certain laws define the right to free legal assistance by the clear designation “stateless person”⁶⁸, while in some laws this right is defined “ ***on the basis of special laws and international conventions binding on Bosnia and Herzegovina***”⁶⁹.

The answers of the centres/institutes/offices show that no inquiries/requests for providing free legal assistance to persons without citizenship/stateless persons or persons at risk of statelessness were recorded in the reporting period.

Persons at risk of statelessness are legally invisible and undocumented persons who need legal assistance in order to be registered in the Register of Births and in order to obtain an identification document as a prerequisite for exercising any rights. For greater certainty, they are persons who cannot or have difficulty in proving a link with the State concerned.

Regarding the status of beneficiaries who are not recognized in the system of free legal assistance in BiH, it is important to point out that no law on free legal assistance in BiH from the level of BiH, entities, Brčko District of Bosnia and Herzegovina and cantons in the Federation of Bosnia and Herzegovina, has recognized persons at risk of statelessness as beneficiaries.

Consequently, the Ombudsmen of BiH received from the “Vaša prava Bosne i Hercegovine” Association the “*Initiative for Amendments to the Law on Free Legal Assistance Applied in BiH.*” The case was registered with the Ombudsman institution under the number: Ž-SA-08-159/24, and will be processed further.

68 Law on the Provision of Free Legal Aid of the Sarajevo Canton, Law on the Provision of Free Legal Aid of the Bosnian-Podrinje Canton of Goražde, Law on the Provision of Legal Aid of the Herzeg-Bosnian Canton, Law on the Provision of Free Legal Aid of the Posavina Canton, Law on the Provision of Free Legal Aid of the Zenica-Doboj Canton and Law on the Provision of Free Legal Aid of Bosnia and Herzegovina

69 Law on Exercising the Right to Free Legal Aid in Republika Srpska, Law on Legal Aid Office of Brčko District of Bosnia and Herzegovina, on the Provision of Free Legal Aid of Una-Sana Canton, on the Provision of Legal Aid of Tuzla Canton

VI LAW ON NON-CONTENTIOUS PROCEEDINGS/COURT PRACTICE

Article 6 of the European Convention for the Protection of Human Rights and Fundamental Freedoms, judicial protection, i.e. the right to a fair trial, is guaranteed. Judicial protection is conditioned by the work of judicial authorities, and this work requires certain costs that are partially borne by the State, but also by the parties to the proceedings. Article 6 of the European Convention is of fundamental importance in a democratic society and has a central place in the structure of the Convention according to which its aim and purpose are based on the principle of the rule of law on which such societies are built and founded.

The subject of this Report is the analysis of the application of the Law on Non-Contentious Proceedings of the Federation of Bosnia and Herzegovina and Republika Srpska in practice.

In this regard, a questionnaire was sent to municipal courts in Visoko, Sarajevo, Tuzla, Mostar, Bihać, Živinice, Zavidovići, Travnik, Cazin, Zenica; Basic Courts in Banja Luka, Kozarska Dubica, Novi Grad, Trebinje, Zvornik, Gradiška, Sokolac, Bijeljina, Doboje and Prijedor and the Basic Court of the Brčko District of Bosnia and Herzegovina.

The questionnaire requested the following information: the number of registered cases in non-contentious proceedings related to the proposal for determining continuous permanent/temporary residence; whether the proposals were decided on in accordance with the deadlines provided for by the Law on Non-contentious Proceedings. Furthermore, data were requested on the number of registered cases related to determining the time and place of birth, the amount of funds paid for medical expert opinions, as well as whether these costs were borne by the court and whether there are funds planned for these purposes. Also, if decisions were rendered in these court proceedings, a copy of the decisions was requested to be submitted to the Ombudsman.

All courts to which questionnaires were sent submitted answers to the Institution of Ombudsman/Ombudsmen of Bosnia and Herzegovina. Particularly important is the answer of the Municipal Court in Bihać, which also submitted the observed specifics in the mentioned cases.

After analysing the answer received, it can be concluded that most of the courts from which the information was requested (15), in the stated reporting period, did not record cases/non-contentious proceedings related to:

- a) the proposal for the establishment of permanent/temporary residence⁷⁰.

For a small number of courts (6), cases related to:

- b) the proposal for the establishment of the time and place of birth⁷¹ were not recorded.

However, according to the data of the “Vaša prava Bosne i Hercegovine” Association, the courts in Bijeljina, Kozarska Dubica, Banja Luka, Prijedor and Gradiška, had individual cases where they issued decisions on proposals for establishing continuous permanent residence, where the courts acted on the proposal (Bijeljina and Kozarska Dubica) or declared themselves absolutely not competent.

In the submitted answers, certain courts stated that such proceedings were conducted in small numbers (one, two to three cases)⁷². The exception to the submitted answers is the answer of the Basic Court in Bijeljina, which states that in the stated period it issued a total of eight decisions on the basis of which the date and place of birth of the petitioner (parties) in the proceedings was determined and one decision on determining continuous residence, based on Article 2, para. 1 of the Law on Non-Contentious Proceedings.

Amendments to the Law on Non-contentious Proceedings of the Federation of Bosnia and Herzegovina provide for non-contentious proceedings for the purpose of determining the time and place of birth, which is very important in the case of resolving the personal status of a person whose fact of birth is not entered in the Register of Births.

From the submitted answers of the courts, it can be concluded that the courts mostly issue positive decisions determining the time and place of birth within the legally prescribed deadlines. The problem that arises in the implementation of these procedures is the preparation of medical expert opinions, as well as whether funds are provided for medical expert

70 Replies: Municipal Court in Mostar, Municipal Court in Cazin, Municipal Court in Travnik, Basic Court in Novi Grad, Basic Court in Trebinje, Municipal Court in Zavidovići, Basic Court in Zvornik, Basic Court Sokolac, Municipal Court in Živinice, Municipal Court in Bihać, Municipal Court in Zenica, Basic Court in Dobož, Basic Court of Brčko District, Municipal Court in Tuzla, Municipal Court in Visoko

71 , Basic Court Sokolac, Municipal Court in Živinice, Municipal Court in Zavidovići, Basic Court in Trebinje, Municipal Court in Travnik, Basic Court in Prijedor

72 Basic Court in Kozarska Dubica, Basic Court in Banja Luka, Basic Court of Brčko District of Bosnia and Herzegovina, Basic Court in Zvornik, Municipal Court in Zavidovići, Maglaj Department, Basic Court in Gradiška, Basic Court in Dobož, Municipal Court in Bihać, Municipal Court in Zenica, Basic Court in Prijedor, Municipal Court in Tuzla, Municipal Court in Visoko,

opinions. It follows from the submitted answers that the provisions of Article 73k of the Law on Amendments to the Law on Non-Contentious Proceedings of the Federation of Bosnia and Herzegovina stipulate that the costs of the procedure for determining the time and place of birth of a person shall be borne by the petitioner. Furthermore, the answers of the municipal courts state that there were no costs for medical expert opinions, that there was no need to prepare an expert opinion or that they do not have data on the amount of funds paid for medical expert opinions.

The Ombudsmen of Bosnia and Herzegovina in the Special Report on Court Fees, published in 2016, found that the costs of court proceedings, together with court fees, are often a limiting factor for citizens with minimum incomes in the exercise of the rights guaranteed by Article 6 of the European Convention - the right of access to court.

When it comes to determining the facts of continuous temporary residence, the provisions of Article 1, paragraph 2 of the Law on Non-contentious Proceedings of Republika Srpska stipulate that the provisions of this Law shall also apply in other legal matters within the jurisdiction of the courts for which the law does not explicitly stipulate that they shall be resolved in non-contentious proceedings, and which do not relate to the protection of violated or endangered law, nor may the provisions of the Civil Procedure Code be applied due to the nature of the legal matter or the nature of the parties to the proceedings.

From the submitted answers, different practices are observed with the courts in Republika Srpska in the procedures for establishing continuous temporary residence. Namely, some courts applying the provisions of Article 1, paragraph 2 of the Law on Non-Contentious Proceedings of Republika Srpska, adopt decisions establishing continuous temporary residence.

Other courts consider that they are absolutely not competent and issue decisions rejecting the submitted petitions. From the explanation of the aforementioned decisions, it is stated that the Law on Non-contentious Proceedings of Republika Srpska does not know the determination of continuous temporary residence/stay, nor the adoption of a decision on continuous temporary residence, since the determination of the same is carried out according to the rules of administrative procedure before the competent authorities for issuing identification documents, which is the Ministry of the Interior of Republika Srpska.

In cases of determining continuous temporary residence, the Ministry of the Interior rejects the application stating that it is not substantially competent for the above, but the authorities, in accordance with Article 3 of the Law on Foreigners.

At the meeting held *at the Service for Foreigners' Affairs, the Banja Luka Field Centre*⁷³ specifically discussed persons who have the citizenship of the Republic of Croatia, refugees from the Republic of Croatia who have been living in the Republika Srpska for many years but do not have a regulated temporary residence. The position of the competent service is to enable the granting of temporary residence for humanitarian reasons, which is adopted by

73 On 14 December 2023, a session of the Working Group for the preparation of the Special Report and a representative of the Service for Foreigners' Affairs of Banja Luka was held.

the Council of Ministers of Bosnia and Herzegovina. Persons who do not have any nationality may be granted temporary residence through the conditions to be met by the stateless person, which are defined by law.

The Centre does not conduct any investigation procedure regarding the collection of data proving since when the person has actually been in the territory of Republika Srpska, but this period is counted from the moment of application.

The “Vaša prava Bosne i Hercegovine” Association addressed the Ombudsman stating that several persons⁷⁴, refugees from the Republic of Croatia, who do not have a regulated temporary residence in BiH, nor a valid identity document in the Republic of Croatia, were identified in the field. During the proceedings before the Institution of Ombudsman, several meetings were held, initiated by UNHCR, in which representatives of the competent ministries for this area also participated, where the Association informed the attendees about the procedures taken to resolve the status of these persons.

One of the conclusions of the meeting was to seek an opinion from the Ministry of Justice of Republika Srpska on the application of the provision of Article 2, paragraph 1 of the Law on Non-contentious Proceedings of Republika Srpska.

The Ministry of Justice initially called the basic courts in Republika Srpska to comment on the aforementioned issue of different treatment, since three final court decisions were issued establishing continuous temporary residence in non-contentious court proceedings, while in three cases the court declared itself absolutely not competent. The final opinion of the Ministry of Justice was that due to different case law, the conditions for submitting a petition to the court of first instance to resolve the disputed legal issue in accordance with Article 61a of the Civil Procedure Code of Republika Srpska were met. For one beneficiary, the “Vaša prava Bosne i Hercegovine” Association initiated proceedings for resolving the disputed legal issue through the Basic Court in Gradiška, however, the Basic Court in Gradiška rejected the beneficiary’s petition due to the absolute lack of jurisdiction of the court regarding the petition for establishing continuous temporary residence, failing to submit the petition for resolving the disputed legal issue to the Supreme Court of Republika Srpska. An appeal against the aforementioned decision of the Basic Court in Gradiška was filed with the District Court in Banja Luka.

The “Vaša prava” Association informed the Ombudsman that as of 16 February 2024, a total of 12 beneficiaries - refugees from the Republic of Croatia do not have a valid identification document, nor a regulated temporary residence in RS/BiH. Of the 12 beneficiaries, three beneficiaries do not have the citizenship of the Republic of Croatia.

74 The “Vaša Prava BiH” Association based in Sarajevo, as one of the implemented organizations of UNHCR, is a leading non-governmental and non-profit organization in BiH that provides assistance to beneficiaries on the entire territory of Bosnia and Herzegovina in all matters of civil law and civil liberties. The Association provides free legal assistance and representation of the interests of beneficiaries. The priority categories of persons the Association provides assistance to are: returnees, displaced persons, refugees and recognized refugees, asylum seekers, stateless persons, persons on temporary reception, persons on humanitarian temporary residence, victims of human trafficking, etc. (<https://pravna.helpapp.ba>)

Proceedings were also initiated to resolve the disputed legal issue before the Supreme Court of Republika Srpska.

Out of 12 persons, three persons do not have citizenship of the Republic of Croatia, and an administrative procedure has been initiated for the renewal of registration in the Register of Births and for acquiring citizenship of the Republic of Croatia. It follows from the above that the basic courts in Republika Srpska interpret in a different way the requirements in the procedures for establishing continuous temporary residence in terms of the application of Article 1, paragraph 2 of the Law on Non-Contentious Proceedings of Republika Srpska.

VII COURSE OF ACTION OF THE INSTITUTION OF OMBUDSMAN/ OMBUDSMEN

In order to ensure the monitoring, protection and promotion of civil and political rights in Bosnia and Herzegovina, the Institution of Ombudsman has established an internal structure within which the Department for Monitoring the Exercise of Civil and Political Rights has been established. The legal framework for the work of the Department is the Law on the Human Rights Ombudsman of Bosnia and Herzegovina, the International Covenant on Civil and Political Rights, the European Convention for the Protection of Human Rights and Fundamental Freedoms and other international documents, Conventions with Protocols and the General Framework Agreement for Peace in Bosnia and Herzegovina.

The Department for Monitoring the Exercise of Civil and Political Rights receives complaints and ex officio initiates investigations in cases where it finds violations and problems in the exercise of rights arising from the International Covenant on Civil and Political Rights, and in particular in cases where it finds any form of discrimination based on race, colour, gender, language, political or any other affiliation, national or social origin, property status.

What is an important feature of the procedure before the Ombudsman is that it is simple and free of charge. Thus, any person or legal entity who considers that he or she has a legitimate interest, i.e. that he or she considers that his or her human rights have been violated by the work of the authorities in BiH, may contact the Ombudsman without any restriction. The right to complain to the Ombudsman cannot be limited by any discriminatory factors such as nationality, gender, age, religion, so foreign citizens can also contact the Ombudsman, e.g. if they have experienced inconvenience when travelling through Bosnia and Herzegovina with the work of police authorities of any entity. A complaint lodged with the Ombudsman may not entail any liability on the part of the complainant, whether criminal, misdemeanour, disciplinary or inconvenience or discrimination. A complaint may also be sent by e-mail,

whereby it is sufficient to indicate the name and surname of the complainant, so that it is considered signed. Thus, the complaint should contain the personal data of the complainant (personal data such as nationality are kept only for statistical records), data on authorized representatives, if any, data on the authority to which the complaint relates, a summary description of the facts indicating a violation of rights, data on whether any proceedings have been initiated with another authority, as well as the date of filing the complaint. In order to guarantee privacy, the complaint may require that the identity and circumstances of the case remain confidential. The complaint shall be accompanied by copies of the relevant documents for the Ombudsman's further action. In addition to submitting a complaint to the Ombudsman, the complainant is obliged to use regular legal procedures, which means that the complaint to the Ombudsman does not have a suspensive effect on other procedures, but runs in parallel with other procedures. Also, there is a possibility of merging but also of separating cases, if the circumstances of the case indicate that a more expedient procedure will be conducted in this way.

In the exercise of their mandate, the Ombudsmen of Bosnia and Herzegovina carried out various activities, most often aimed at issuing general and individual recommendations to the authorities in Bosnia and Herzegovina, reporting to international bodies and authorities in Bosnia and Herzegovina, all with the aim of enabling all persons located in the territory of Bosnia and Herzegovina to exercise and protect basic human rights. For the purposes of drawing up this Special Report, the following are complaints that reflect the key problems and actions of the Institution of Ombudsman/Ombudsmen:

- ***Subsequent registration in the Register of Births***

1. BiH Ombudsmen received a complaint⁷⁵ regarding the subsequent registration of minor B.K. in the Register of Births and the Register of Citizens in Bosnia and Herzegovina.

The complainant's parents, K.A. and I.Z., are citizens of BiH who travelled to the Federal Republic of Germany in 2013 where they applied for asylum, on which occasion the competent authorities seized and deposited their identification documents. On 31 May, 2014, K.B. was born and registered in the Register of Births at the place of birth.

Considering that the parents' identification documents were seized, that the parents were not in possession of their passports when the child was registered in the Register of Births, it was recorded in the Register of Births that the identity of the parents was not confirmed. Parents were issued a birth certificate on the form of the Federal Republic of Germany in which there is a note that the identity of the parents has not been confirmed.

The complaint states that the family resided in the FR Germany until March 2017, when, due to the fact that they resided in the territory of FR Germany without a residence permit, they were returned to BiH in the readmission procedure. In order to return to Bosnia and Herzegovina, the minor K.B. was issued a travel document by the competent authority of the Federal Republic of Germany.

75 Subject number: Ž-SA-08-287/23;

After returning to BiH, the mother of the minor K.B., through the “Vaša prava Bosne i Hercegovine” Association, approached the competent registry office in the Federal Republic of Germany with the request to submit to her the birth certificate on an international form, in order to subsequently enter the child in the Register of Births in Bosnia and Herzegovina.

The complainants were informed that the requested birth certificate could not be issued and that it was necessary to confirm the identity of the parents beforehand. The consequence of this is that a minor child, although nine years old, due to the lack of a Bosnian-Herzegovinian birth certificate and citizenship certificate, cannot exercise any of the rights that belong to citizens of Bosnia and Herzegovina, and primarily the right to healthcare services, and the “Vaša prava Bosne i Hercegovine” Association initiated the procedure of subsequent registration of the minor K.B in the Register of Births before the competent registry office on the basis of a document of a foreign authority (a birth certificate issued on a German form that is not apostille certified), but the first instance and second instance authorities took the position that on the basis of such a birth certificate it is not possible to make a subsequent entry in the registry books in the Federation of Bosnia and Herzegovina. An administrative dispute was also initiated against the decisions of the administrative authorities, but the judgment of the Cantonal Court rejected the lawsuit with the instructions that parents have the opportunity to initiate non-contentious proceedings before the competent court to determine the time and place of birth.

In accordance with the Law on Non-contentious Proceedings of the Federation of Bosnia and Herzegovina, the authorized representative initiated proceedings for determining the time and place of birth before the Municipal Court in Sarajevo. One year after the proposal was submitted, a hearing was scheduled, where the court took the position that the procedure of determining the time and place of birth cannot be completed without a medical examination in order to determine the age of the child, although the minor child had a birth certificate, i.e. a public document issued by the competent registry office of the Federal Republic of Germany.

During the proceedings before the Institution of Ombudsman/Ombudsmen, the competent court issued a Decision approving the petitioner’s request. In its statement, the court states that the decision was made within the limits of the request made and that the court took all actions in accordance with the law and within the prescribed deadlines.

2. The Ombudsmen of BiH received a complaint⁷⁶ from the “Vaša prava Bosne i Hercegovine” Association on behalf of G.N., whose parents are citizens of BiH. During the past war, they temporarily resided as refugees in Prizren, where G.N. was born. During 1997, the family returned to BiH, where they still reside today. For years, parents have addressed the competent registry offices with a request for subsequent registration in the birth registry, but each time they were verbally rejected on the grounds that they must obtain a birth certificate of the Republic of Serbia.

The Department of General Administration, Assembly and Joint Affairs of the City of Kruševac, upon request for the submission of the birth certificate, sends a notice that G.N.

76 Subject number: Ž-SA-05-416/19;

is not registered in the registries of the relocated Municipality of Prizren, and that it is necessary to renew the registration. However, G.N. was not able to renew the registration due to the fact that she does not have any document on her birth that was issued before 10 June, 1999.

Namely, G.N. has a birth certificate issued by the Ministry of the Interior of Prizren-Kosovo* and a certificate issued by the interim administration of the UN mission in Kosovo. The fact that BiH has not recognized Kosovo⁷⁷ and does not recognize/accept its documents (birth certificate, although it recognizes/accepts the passport of that country) has the consequence that G.N. is still a stateless person and without identification documents.

In the non-contentious procedure of determining the place and time of birth, the Municipal Court in Sarajevo issued a decision establishing that G.N. was born on 15 April, 1994 in the Republic of Serbia. The beneficiary G.N. received a birth certificate, and the procedure for establishing the fact of citizenship was initiated before the municipality of Novo Sarajevo on 12 January, 2023.

- Long duration of the administrative procedure

3. The Ombudsmen of BiH received a complaint⁷⁸ filed by the “Vaša prava Bosne i Hercegovine” Association on behalf of the minor B.A., due to the long duration of resolving the application for registration of paternity recognition in the Register of Births. The Registry Office Mostar Southwest was designated as the responsible authority. During the proceedings before the Institution of Ombudsmen, the competent Registry Office registered the fact of paternity.

77 *All references to Kosovo, whether to territory, institutions or population, should be understood in full compliance with United Nations Security Council Resolution 1244/1999.

78 Subject number: Ž-SA-01-411/19

VIII CONCLUSION AND RECOMMENDATIONS OF THE BIH OMBUDSMEN

The State has an obligation to protect all people located on its territory regardless of their citizenship status or lack thereof. Stateless persons can thus invoke the protection of the State in whose territory they are located in terms of the protection of human rights guaranteed by international law.

The Constitution of Bosnia and Herzegovina lays the foundation of citizenship of Bosnia and Herzegovina and citizenship of the Entity, while the Law on Citizenship of BiH and the Law on Citizenship of the Federation of BiH and the Law on Citizenship of Republika Srpska determine the conditions for acquiring citizenship of BiH/Federation of BiH/Republika Srpska. According to the Law on Citizenship of BiH, citizenship of BiH is acquired: by origin and birth in the territory of BiH, by adoption, through naturalization and through an international agreement.

The Law ensures that, under no circumstances, citizenship of BiH can be lost if this would render a person without nationality or stateless, unless BiH citizenship was acquired by fraud, through false information or on the basis of a fact that cannot relate to the applicant. BiH citizenship ceases: by renunciation, dismissal, deprivation, international agreement. In this way, laws regulate the avoidance of statelessness.

All citizens of the Entities are at the same time citizens of Bosnia and Herzegovina. The relationship between citizenship of Bosnia and Herzegovina and the Entities is set out in the Constitution of Bosnia and Herzegovina, and elaborated in more detail in the provisions of the Law on Citizenship of BiH (Article 1). The legal relationship between citizenship of Bosnia and Herzegovina and citizenship of an Entity in the case when citizenship of BiH is acquired by origin, birth in the territory of Bosnia and Herzegovina or adoption, according to

the Law itself, a person is considered to already have the citizenship of an Entity (Article 2). Citizenship of Bosnia and Herzegovina and citizenship of the Entities cannot exist independently, but at the same time they form a single and indivisible legal entity (Article 27).

In the event that a person loses the citizenship of an entity, the legal consequence of this fact is that the citizenship of Bosnia and Herzegovina is also lost on this basis if that person does not acquire the citizenship of another entity. When a person loses the citizenship of Bosnia and Herzegovina, the legal consequence of this fact is that that person simultaneously loses the citizenship of the entity that he or she had. Thus, citizenship of Bosnia and Herzegovina and the entity cannot exist independently, but only jointly, and in relation to foreign countries, entity citizenship has no significance.

The Law specifically regulates the acquisition of Entity citizenship of the child, which is in accordance with the Convention on the Rights of the Child.⁷⁹

The competence of the authority to acquire, change or elect entity citizenship is determined by the law of the entity, in the Federation of Bosnia and Herzegovina this competence belongs to the Federal Ministry of Internal Affairs and in the Republika Srpska the Ministry it belongs to the Ministry of Administration and Local Self-Government.

Citizenship of the Federation of Bosnia and Herzegovina is regulated by the Law on Citizenship of the Federation of Bosnia and Herzegovina and the Rulebook on the Procedure of Acquisition and Termination of Citizenship of the Federation of BiH, Change of Entity Citizenship and Subsequent Registration in the Register of Births. Citizenship of Republika Srpska is regulated by the Law on Citizenship of Republika Srpska.

In the application of these regulations, the Law on Citizenship of Bosnia and Herzegovina must be applied at the same time. The application of that Law is based on the fact that the manner of acquisition and termination of citizenship of the entity is largely equivalent to the conditions and manner of acquisition and termination of citizenship of BiH. This is ensured by the fact that the law on citizenship of the entity as a whole is largely harmonized with the Law on Citizenship of Bosnia and Herzegovina.

It follows from the above that legislative reform and increased and coordinated efforts of institutions in Bosnia and Herzegovina have largely solved the problem of statelessness. The Ombudsmen of Bosnia and Herzegovina point out that the harmonized legislation of Bosnia and Herzegovina with international standards represents positive aspects in the work of the institutions of Bosnia and Herzegovina at all levels in resolving issues of citizenship and civil registers, and in this regard, the issue of statelessness. In order to fully ensure that no person

79 A child who acquires BiH citizenship by origin or full adoption acquires entity citizenship of a parent or adoptive parent who holds BiH citizenship. If the parents or adoptive parents have the citizenship of different Entities, the child will: acquire the citizenship of the Entity in which he or she was born, and if he or she was born abroad, the child will acquire: the citizenship of the Entity as agreed between the parents, or if no agreement is reached, the child will acquire: in the case of acquisition by origin, the citizenship of the Entity of the parent who registered the child in the Register of Births at the diplomatic and consular mission of BiH, or in the case of acquisition by full adoption, the citizenship of the Entity in which he or she has a residence in BiH, or if there is no place of residence, the citizenship of the Entity of the parent who submitted the application for the registration of the child.

is at risk of statelessness or being a stateless person, it is necessary to fully harmonize regulations with international standards.

However, research has shown that in practice situations arise in which certain categories of persons, due to the circumstances in which they are, and due to the inability to provide the prescribed evidence, may be at risk of statelessness. Several of the most vulnerable categories have been identified, such as: persons who are not registered in the Register of Births, because the registration in the Register of Births proves the facts that are decisive for acquiring citizenship of BiH and entities by origin or birth, and especially children born abroad whose one parent is a BiH citizen, and who do not have proof of birth prescribed by the laws and regulations on Registers of Births; persons who do not have proof of citizenship of any state, and who have a connection with several states on the basis of origin, birth or temporary residence; citizens of the former SFRY who have been continuously temporarily residing in BiH for a longer period of time, and who are unable to acquire citizenship in accordance with the applicable legislation in BiH (due to the lack of identification documents, unregulated temporary residence, documents from Kosovo*, etc.); In a migratory context, children of foreigners born in BiH whose parents do not have regulated temporary residence status, proof of identity or citizenship of parents. Conditions for registration in the Register of Births in the Federation of BiH in the event that the mother does not have an identification document are difficult and often the registration of children is slow and takes a long time, which means that children in such situations are unable to exercise basic rights, such as medical treatment or social protection. In order to prevent the risk of statelessness, it is necessary to establish a mechanism of cooperation between the competent authorities at the local level that will ensure timely entry in the Register of Births of each child immediately after birth regardless of the status of their parents or the lack of parental identity documents. The mechanism that would ensure the prevention of statelessness and ensure that each person is registered in the Register of Births should include the proactive work of registry offices and social welfare centres in identifying and providing assistance with registration, as well as the engagement of institutes/offices for free legal assistance in order to timely register each person in the Register of Births. Current legal solutions do not provide free legal assistance by the competent authorities to persons who cannot meet the prescribed conditions, i.e. who do not have the required documents/residence, who are unable to register their residence in order to obtain their documents. Due to the aforementioned condition, the right to free legal assistance must be regulated more flexibly, and facilitate proof in the absence thereof, especially since persons at risk of statelessness are legally invisible and are mostly persons with poor financial status who need legal assistance in order to resolve basic status rights and rights guaranteed by international instruments, such as the Convention on the Rights of the Child.

The Law on Free Legal Aid has not been adopted at the level of the Federation of Bosnia and Herzegovina and the Central Bosnia Canton, so the institutional mechanism of the Institute for the Provision of Free Legal Aid has not been established in this regard.

In the area of Herzegovina-Neretva Canton, the procedure of appointing the director of the Institute for the Provision of Free Legal Aid has not been completed, and the latest information indicates that it is unlikely that the appointment procedure will be completed within a reasonable time.

The research of the Institution of Ombudsman/Ombudsmen showed that the bodies responsible (Registry Offices) for handling registry cases point to slowness in the work of the International Legal Aid Department of the Ministry of Justice of Bosnia and Herzegovina, insufficient professional competence of employees in diplomatic and consular missions of the Ministry of Foreign Affairs of Bosnia and Herzegovina in matters related to registry records. In this regard, it was pointed out that the International Legal Assistance Department of the Ministry of Justice of Bosnia and Herzegovina should be more efficient and up-to-date in its work, especially when it comes to personal, status issues that require urgent action.

Establishing continuous residence is one of the prerequisites for acquiring BiH/Entity citizenship. In the territory of Republika Srpska, there are still several persons who do not have a regulated temporary residence in Bosnia and Herzegovina. These are persons who claim to have fled the Republic of Croatia during of the previous war, and that they do not have a valid document of the Republic of Croatia, or documents issued in Bosnia and Herzegovina. The “Vaša prava Bosne i Hercegovine” Association initiated non-contentious proceedings on behalf of the aforementioned persons for the purpose of issuance of a decision on continuous temporary residence. In these specific cases, the practice of the basic courts in Republika Srpska was different in the way that decisions were issued determining continuous temporary residence or declaring themselves absolutely not competent to act in this legal matter. In this way, persons in the same legal status are put in an unequal position by the unequal practice of the basic courts in Republika Srpska.

The Ombudsmen of Bosnia and Herzegovina appreciate the importance of highlighting the positive practices that have emerged during the research process of the Institution of Ombudsmen. In their presentation, the competent authorities (registry offices, social welfare centres) particularly emphasized the good cooperation with the Ministry of Civil Affairs of Bosnia and Herzegovina and the “Vaša prava Bosne i Hercegovine” Association. In addition to the above, all registry offices as well as social welfare centres emphasized the willingness to cooperate and good mutual cooperation in solving individual cases.

The practice of courts in non-contentious proceedings to determine the place and time of birth in the Federation of Bosnia and Herzegovina shows that the costs of medical expert opinion (expert opinion on age) amount to approximately BAM 350, which is borne by the petitioner. Further, conducting court proceedings requires the payment of fees and other court costs. Bearing in mind the fact that these proceedings are initiated and conducted in most cases by persons of poor financial status without any documents, the Ombudsmen of Bosnia and Herzegovina point out that this is an excessive burden for this category of persons, and in this connection the essential right of access to the court, guaranteed by Article 6 of the European Convention on Human Rights, is called into question.

Namely, non-contentious proceedings in cases of determining the time and place of birth are initiated and carried out in most cases for “legally invisible persons” without any documents, employment and income, i.e. persons of poor financial status. Such an excessive burden in the form of payment of the costs of the procedure, which is placed on the persons who initiate these procedures, which are often caused by objective circumstances that these

persons had no influence on, essentially calls into question the very right of access to the court guaranteed by Article 6. European Convention on Human Rights. .

It is certainly worth pointing out the good practice of non-contentious departments of individual courts in dealing with cases of determining the time and place of birth of persons, in which they did not order expert opinions on the age of persons whose time and place of birth is determined, but issued court decisions on the basis of all other available relevant evidence.

All non-contentious departments of courts in procedures for determining the time and place of birth are obliged to issue decisions within the legal deadline of ninety (90) days, as prescribed by paragraph (1) of Article 73j. of the Law on Amendments to the Law on Non-contentious Proceedings of the Federation of Bosnia and Herzegovina. This is to ultimately enable persons at risk of statelessness, i.e. “legally invisible persons” to acquire citizenship of Bosnia and Herzegovina as soon as possible, i.e. to enable access to basic human rights (right to education, healthcare and welfare, etc.). In practice, this deadline is often not adhered to and non-contentious proceedings take a long time.

State and entity institutions have an obligation to take care of stateless persons and are assisted by organizations such as UNHCR, and the “Vaša prava Bosne i Hercegovine” Association. Bosnia and Herzegovina, as a signatory to the 1961 UN Convention on the Reduction of the Number of Stateless Persons and the 1954 Convention on the Status of Stateless Persons, has a direct obligation to constantly make efforts to prevent the occurrence of statelessness. The competent institutions of Bosnia and Herzegovina should intensify efforts to ensure the implementation of the recommendations in line with the goals of the UNHCR 2014-2024 Global Action Plan to End Statelessness.

Bearing in mind the above factual situation, relevant domestic legislation, international standards for the protection of human rights and fundamental freedoms, and in order to end and prevent the risk of statelessness in Bosnia and Herzegovina, the Ombudsmen of Bosnia and Herzegovina, in accordance with the provisions of Article 32 of the Law on the Human Rights Ombudsman of Bosnia and Herzegovina make the following:

RECOMMENDATIONS

To the Institutions of BiH

1. To the Council of Ministers of BiH to undertake the necessary coordination activities in order to bind the system of registers, the fact of birth and citizenship registration throughout the territory of BiH in order to facilitate the procedure of registration of all persons in registers regardless of their residence;
2. To the Council of Ministers of Bosnia and Herzegovina, to undertake activities in order to adopt a decision granting temporary residence on humanitarian grounds under facilitated conditions for citizens of the Republic of Croatia who do not possess an identification document and a travel document of the Republic of Croatia, and who have been staying in the territory of Bosnia and Herzegovina for many years, in

order to facilitate they obtain a passport of the Republic of Croatia and resolve status issues.

3. To the Ministry of Civil Affairs of BiH, in coordination with the Ministry of Foreign Affairs of BiH, ministries of justice and entity competent authorities, to ensure: continuous education of civil servants, including employed civil servants working in diplomatic and consular missions of Bosnia and Herzegovina in matters of civil registration and civil status;
4. To the Ministry of Civil Affairs of BiH, in cooperation with the competent authorities, to undertake activities to raise awareness of the importance of registration in Registers of Births and to establish a sustainable mechanism of identification and records of persons who are not registered in Registers of Births for the purpose of their timely registration in Registers of Births, as well as to establish mandatory cooperation between registry offices, social welfare centres and institutes/offices for free legal assistance in order to register each and every person in Registers of Birth and Citizens;
5. To the Ministry of Justice of BiH to ensure efficiency in the work of the International Legal Assistance Department;
6. To notify the Ombudsmen of the outcome of the Recommendations within 60 (sixty) days at the latest.

To the Government of the Federation of BiH

- (1)** In accordance with Article 6 of the European Convention for the Protection of Human Rights and Fundamental Freedoms, to take the necessary actions in order to adopt the Law on Free Legal Aid and the institutional establishment and harmonization of the system (institute, office) in providing free legal assistance to persons in exercising their rights;
- (2)** Undertake activities to regulate the payment of fees and expert opinion fees in extrajudicial proceedings for categories of persons who are stateless persons or persons at risk of statelessness in accordance with Article 6 of the European Convention for the Protection of Human Rights and Fundamental Freedoms, taking into account the facts presented in this Special Report;
- (3)** The Federal Ministry of the Interior to amend the Law on Registers of Births of the Federation of BiH in order to facilitate the entry in the registers of births for persons born abroad whose at least one parent is a citizen of Bosnia and Herzegovina, and to provide a mechanism for the registration of each child immediately after birth in the Registers of Births, regardless of the status of their parents or lack of personal documents; to amend the Instructions on the Manner of Keeping Registers of Births and to prescribe that foreigners who express their intention to apply for asylum prove their temporary residence with a certificate of the stated intention to submit an application for asylum issued by the Service for Foreigners' Affairs, to prescribe a facilitated entry in the registers of births of newborn children of foreigners who do not have a valid document in order for each child to be registered immediately after birth;
- (4)** All cantons should take measures to amend the Law on Free Legal Aid in such a way that the right to free legal assistance is provided to stateless persons, persons in the process of determining statelessness, persons at risk of statelessness: persons who

are not registered in the Register of Births, persons who do not possess proof of citizenship, persons who do not possess identification documents because they are unable to register their residence and do not have the means to obtain an identification document (ID card) and foreigners who have expressed their intention to apply for asylum; and to enable persons at risk of statelessness to prove their status by a statement or certificate issued by the Social Welfare Centre.

- (5) Notify the Ombudsmen of the outcome of the Recommendations within 60 (sixty) days at the latest.

To the Government of Republika Srpska

1. To undertake activities to regulate the payment of fees and expert fees in extrajudicial proceedings for categories of persons who are stateless persons or persons at risk of statelessness in accordance with Article 6 of the European Convention for the Protection of Human Rights and Fundamental Freedoms, taking into account the facts presented in this Special Report;
2. The Ministry of Justice, in cooperation with the Offices for the provision of free legal assistance, to take measures with the aim of amending the Law on Free Legal Aid in such a way that the right to free legal assistance is enabled for stateless persons, persons who are in the process of determining statelessness, persons at risk of statelessness: persons who are not registered in the Register of Births, persons who do not have proof of citizenship, persons who do not have identification documents because they are unable to register their place of residence and do not have the means to obtain an identification document (identity card) and foreigners who have expressed their intention to apply for asylum; and that persons at risk of statelessness prove their status with a statement or certificate issued by the Social Welfare Centre.
3. The Supreme Court of Republika Srpska to take a final position on whether the basic courts can act on the petition of a person for establishing continuous temporary residence/permanent residence in accordance with Article 2 of the Law on Extrajudicial Proceedings of Republika Srpska in the event that, in accordance with the applicable regulations, such persons cannot prove continuous temporary residence before an administrative authority.
4. Notify the Ombudsmen of the outcome of the Recommendations within 60 (sixty) days at the latest.

To the Government of Brčko District of BiH

1. To undertake activities to regulate the payment of fees and expert fees in extrajudicial proceedings for categories of persons who are stateless persons or persons at risk of statelessness in accordance with Article 6 of the European Convention for the Protection of Human Rights and Fundamental Freedoms, taking into account the facts presented in this Special Report;
2. To undertake measures to amend the Law on Free Legal Aid in such a way that the right to free legal assistance is provided to stateless persons, persons in the process of determining statelessness, persons at risk of statelessness: persons who are not registered in the Register of Births, persons who do not possess proof of citizenship,

persons who do not possess identification documents because they are unable to register their residence and do not have the means to obtain an identification document (ID card) and foreigners who have expressed their intention to apply for asylum; and to enable persons at risk of statelessness to prove their status by a statement or certificate issued by the Social Welfare Centre.

3. Notify the Ombudsmen of the outcome of the Recommendations within 60 (sixty) days at the latest.

Ombudsmen of Bosnia and Herzegovina

Dr Jasminka Džumhur

Nives Jukić

Dr Nevenko Vranješ

ANNEX

The Ministry of Human Rights and Refugees of Bosnia and Herzegovina - questions:

1. Are the regulations in the field of civil registers and citizenship harmonized with international documents for the protection of human rights in the field of statelessness? (Universal Declaration of Human Rights, International Covenant on Civil and Political Rights, Convention on the Rights of the Child, 1961 Convention on the Reduction of Statelessness),
2. In what capacity are the Recommendations of the UN body being implemented?
3. Your position on applicable international legal acts for the protection of human rights in the field of statelessness?
4. Do you have data on the number of persons residing in Bosnia and Herzegovina who are at risk of statelessness?
5. Does your Ministry have created programmes and policies that deal with the problem of people affected by statelessness?
6. Do you have information on whether Bosnia and Herzegovina has established a system for collecting reliable data, according to gender and age, on stateless persons and persons at risk of statelessness, which was one of the obstacles from the document Roadmap to Stop the Risk of Roma Statelessness in Bosnia and Herzegovina.

Federal Ministry of the Interior - questions:

1. In what way (ex officio or in some other legally prescribed manner) do you collect information on the number of persons whose request for entry in the Register of Births /Register of Citizenship was rejected, or dismissed, and information on the number of persons located in the territory of the Federation of BiH who are not registered in the Register of Births (on the basis of readmission or some other basis)?
2. How are persons in a state of social need and national minorities ex officio provided with professional legal assistance and counselling in the event of rejection or

dismissal of a request for subsequent registration in the Register of Births/Register of Citizens?

3. How is the application of the provision of Article 42 of the Law on Civil Registers of the Federation of BiH without delay ensured in accordance with KPD (in administrative proceedings) in the case of: persons born outside a healthcare institution, persons born abroad who acquire BiH citizenship by origin, children born in BiH whose parents are foreigners without documents?
4. How does the Rulebook on the Procedure, Evidence and Manner of Registration of Citizenship of the Federation of Bosnia and Herzegovina in the Register of Births/Register of Citizens enable the application of the Law on Citizenship of BiH and the Law on Citizenship of FBiH (Article 38 Acquisition of citizenship of FBiH by residence for citizens of the former SFRY, pursuant to the Administrative Procedure Act of FBiH.

Ministry of Civil Affairs of Bosnia and Herzegovina - questions:

1. Do you have data on the number of persons residing in Bosnia and Herzegovina who are stateless or at risk of statelessness?
2. Does the Ministry of Civil Affairs of Bosnia and Herzegovina have data on the number of persons whose request for subsequent entry of the fact of birth and the fact of citizenship in the Registers of Births submitted in accordance with the Instructions on Subsequent entry of the Fact of Birth and the Fact of Citizenship in the registers, persons who acquired citizenship of Bosnia and Herzegovina under the regulations of the Republic of Bosnia and Herzegovina was rejected or dismissed?
3. In your opinion, are the regulations of the Federation of Bosnia and Herzegovina, Republika Srpska and the Brčko District of Bosnia and Herzegovina in the field of civil registers and citizenship mutually harmonized and aligned with international regulations in this area;
4. Do you think that prescribing the procedure for determining residence would contribute to reducing the number of people at risk of statelessness?
5. In your opinion, which authority should conduct the process of determining residence?
6. Do citizens on the basis of the applicable Law on Permanent and Temporary Residence of Citizens of Bosnia and Herzegovina have difficulties in the process of registering their residence?
7. Does your Ministry have statistics on the number of rejected/dismissed ID card applications due to non-compliance with residence registration requirements?
8. In your opinion, do the competent social welfare authorities provide assistance in obtaining the evidence necessary to register residence for socially disadvantaged persons?

Social Welfare Centre - questions:

1. How many persons without documents approached your Social Welfare Centre for assistance in the process of registration in the Registers of Births;
2. Has your Centre ex officio initiated non-contentious or administrative proceedings regarding the determination of the place and time of birth or subsequent registration

in the Register of Births. Regarding the above, please provide us with information on the number of initiated administrative and court proceedings;

3. Does your Centre ex officio initiate procedures to supplement citizenship data when it becomes known that the fact of citizenship of the child has not been established;
4. Does your Centre use the services of the Institute for the Provision of Free Legal Aid;
5. Number of cases in which administrative proceedings and non-contentious proceedings have been initiated based on the knowledge of your Centre;
6. We kindly ask you to provide information regarding the planning of the budget for the purposes of court proceedings (fees, expert opinions);

Ministry of Administration and Local Self-Government of Republika Srpska
- questions:

1. If a person applies for citizenship of Republika Srpska pursuant to Article 38 or 39 of the Law on Citizenship of Republika Srpska, what is valid evidence regarding the applicant's continuous permanent or temporary residence?
2. How do you proceed in the case when the applicant is a foreign national who is unable to obtain a certificate of continuous temporary residence/stay, because in accordance with the applicable legislation, he or she cannot establish continuous temporary residence before the Ministry of the Interior of Republika Srpska or the Ministry of Security of Bosnia and Herzegovina - the Service for Foreigners' Affairs? In such cases, does the Ministry of Administration and Local Self-Government of Republika Srpska, in accordance with the provisions of the General Administrative Procedure Act, conduct the evidentiary procedure regarding the applicant's continuous temporary residence (e.g. taking witness statements, certificate of education and other evidence regarding temporary residence)?
3. If the applicant for citizenship pursuant to Article 38 or 39 of the Law on Citizenship of Republika Srpska in non-contentious court proceedings proves continuous temporary/permanent residence, will the Ministry of Administration and Local Self-Government of Republika Srpska accept the final and enforceable court decision on the applicant's continuous temporary/permanent residence as valid evidence? This is under the assumption that the applicant cannot prove his or her continuous temporary residence with the administrative authority in accordance with the applicable legislation.
4. What proof of identity must a person who is a citizen of another country and does not have a valid ID document attach when applying for RS/BiH citizenship?
5. If the applicant is a refugee, what proof must he or she submit with regard to the refugee status itself? This is a case of citizenship of Republika Srpska pursuant to Article 16 of the Law on Citizenship of Republika Srpska?

Service for Foreigners' Affairs - question:

1. Can persons who have fled the Republic of Croatia, citizens of the Republic of Croatia who have been temporarily residing in the territory of the Republic of Srpska for more than 27 years, and do not possess a valid identification document determine their continuous temporary/permanent residence before the Service for Foreigners' Affairs?

Affairs in order to apply for citizenship of Republika Srpska in accordance with Article 38 or 39 of the Law on Citizenship of Republika Srpska? Please state which provisions you refer to?

2. What type of temporary residence under the Law on Foreigners could be granted to the persons referred to in question number 1? What documentation, i.e. evidence do they need to enclose?
3. Will the lack of a valid personal document (passport of the Republic of Croatia) for the person referred to in question number 1 be an obstacle in regulating temporary residence before the Service for Foreigners' Affairs?
4. Is the person from question number 1 who is not registered in the Register of Citizens of the Republic of Croatia exposed to the risk of statelessness?

Registry Offices - questions:

1. Does your Registry Office keep written statistical records of persons who address you for registration in the Register of Births and who did not have the necessary documentation at the time of the inquiry, namely: children born in healthcare institutions in BiH, children born outside healthcare institutions in BiH, children born abroad (children of BiH citizens);
2. Does your Registry Office, upon learning that a person or an applicant for registration in the Register of Births does not have the prescribed evidence, submit a written notification to other competent state authorities - the Ministry of the Interior, the Social Welfare Centre, the Institute for the Provision of Free Legal Aid (notification that a particular person does not possess identification documents);
3. How do you provide professional assistance (to ignorant parties) in Register of Births registration procedures, and do you have a person employed to provide professional legal assistance;
4. Do you ex officio obtain evidence for registration in the Register of Births through international legal assistance;
5. Bearing in mind the provisions on the Convention on the Rights of the Child, we kindly ask you to provide the following information: For children born in Bosnia and Herzegovina whose parents are foreigners and who do not have their status in Bosnia and Herzegovina resolved in any way, neither do they have personal documents from the country of origin, nor from authorities of Bosnia and Herzegovina, how do you register this category of children in the BR. Specify the term in which you are registering and the number of such cases;
6. Does your Registry Office inform the Social Welfare Centre or parents that the fact of citizenship has not been established for the child;
7. How many incomplete cases of registration in the Register of Births do you have;

References:

1. 2014-24 Global Action Plan to End Statelessness, UNHCR, November 2014
2. Handbook on Protection of Stateless Persons, UNHCR, 2014
3. Legal analysis of the legislation of Bosnia and Herzegovina governing the area of registration in the Register of Births, "Vaša prava BiH" Association
4. Analysis of the effects of the Law on Amendments to the Non-contentious Proceedings Act of the Federation of BiH - Determining the time and place of birth of a person, "Vaša prava BiH" Association, January 2022
5. Analysis in the field of registration of permanent residence and temporary residence in BiH, "Vaša prava BiH" Association

Abbreviations:

DCM - Diplomatic-Consular Mission

RoB - Register of Births

MHRR - Ministry of Human Rights and Refugees of Bosnia and Herzegovina

MoCA - Ministry of Civil Affairs of Bosnia and Herzegovina

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