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APATRIDIJA U CRNOJ GORI

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APATRIDIJA U CRNOJ GORI
Kroz iskustvo i praksu Pravnog centra

Izdavač

NVO Pravni centar
pravnicentar@t-com.me

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APATRIDIJA U CRNOJ GORI

Kroz iskustvo i praksu Pravnog centra

Uvod

„Svako ima pravo na državljanstvo.“¹

Pripadnost pojedinca određenoj državi izražava se i dokazuje državljanstvom. Državljanstvo je zakonom priznata veza pojedinca sa jednom državom². Način i stepen ostvarivanja brojnih prava kao što su pravo na rad, socijalnu zaštitu, boravak, imovinska i dr.prava, uslovljen je i zavisian od posjedovanja državljanstva. Svaka država svojim sopstvenim pravom određuje ko su njeni državljani.³ Lica koja nemaju državljanstvo i ne mogu dokazati pravnu vezu sa nekom državom uobičajeno se nazivaju apatridima. Termin „lice bez državljanstva“ označava lice koje nijedna država ne smatra svojim državljaninom u skladu sa odredbama svoga zakona.⁴

1 čl.15 Univerzalne deklaracije o ljudskim pravima

2 U čl.1 st.1 Zakona o crnogorskom državljanstvu državljanstvo se definiše“zakonska veza između fizičkog lica i Crne Gore i ne ukazuje na nacionalno i etničko porijeklo”

3 čl. 3. st. 1. Evropske konvencije o državljanstvu (1997)

4 čl. 1. st. 1. Konvencije o statusu lica bez državljanstva(1954)

Kroz dosadašnji rad, Pravni centar se susretao sa osobama koje se suočavaju sa ozbiljnim preprekama u ostvarivanju prava zbog problema koji su vezani za utvrđivanje, odnosno uspostavljanje državljanškog statusa, a sve kao posljedica raspada SFRJ i promjene zakonske regulative u ovoj oblasti. Problem je posebno izražen kod raseljenih lica, među kojima ima osoba u specifičnom „riziku” od apatridije zbog nedostatka dokaza o državljanstvu. Neposjedovanje efektivnog državljanstva, lične dokumentacije, boravišnih dozvola, rađanje djece izvan zdravstvenih ustanova, za značajan broj Roma, kako raseljenih tako i domicilnih, direktan je uzrok nemogućnosti da dokažu državljanstvo.

Instrumenti međunarodnog prava o apatridiji

Isključivo pravo države da uređuje oblast državljanstva svojim unutrašnjim propisima danas je u značajnoj mjeri ograničeno pravilima međunarodnih ugovora i aktivnostima Ujedinjenih nacija i Savjeta Evrope. Obaveza regulisanja i zaštita položaja i prava apatrida proizlazi iz niza značajnih međunarodnih dokumenata. Crna Gora je pristupila ključnim univerzalnim i regionalnim dokumentima koji se odnose na lica bez državljanstva i to:

- Konvenciji Ujedinjenih nacija o statusu lica bez državljanstva iz 1954. godine
- Konvenciji Ujedinjenih nacija o smanjenju broja lica bez državljanstva iz 1961. godine
- Evropskoj konvenciji o državljanstvu iz 1997. godine
- Konvenciji o izbjegavanju apatridije u stanju sukcesije država iz 2006. godine.

Najvažniji međunarodni sporazum koji predstavlja osnov zaštite lica bez državljanstva jeste **Konvencija UN-a o statusu lica bez državljanstva iz 1954. godine**. Regulisanje pravnog statusa i poboljšavanje položaja lica bez državljanstva njeni su osnovni ciljevi i svrha. Odredbama ove konvencije definišu se osnovna načela za postupanje prema apatridima i utvrđuju njihova minimalna prava i obaveze u državama ugovornicama.

Konvencija UN-a o smanjenju broja lica bez državljanstva iz 1961. godine sadrži niz odredbi koje imaju za cilj smanjenje broja lica bez državljanstva, uz obavezivanje država ugovornica da te standarde implementiraju kroz nacionalno zakonodavstvo. Pravo država da izražavaju rezerve u trenutku potpisivanja, ratifikacije ili pristupanja ograničeno je samo u pogledu članova 11,14 ili 15 Konvencije⁵. Konvencija predviđa mogućnost formiranja posebnog organa u okviru Ujedinjenih nacija, kome bi se lice, u slučaju da država ugovornica krši prava zagarantovana Konvencijom, moglo obratiti radi razmatranja njegovog zahtjeva i radi pomoći u podnošenju tog zahtjeva nadležnom organu.⁶

Evropska konvencija o državljanstvu iz 1997. godine je regionalni instrument Savjeta Evrope. Postizanje većeg jedinstva među članicama Savjeta Evrope jedan je od osnovnih ciljeva zbog kojeg je i usvojena Konvencija. Ujednačavanje prava državljanstva, odnosno odredbi o sticanju i gubitku državljanstva među članicama, samo je put za ostvarenje pomenutog cilja. Konvencija donosi niz značajnih novina u načinu regulisanja pitanja višestrukog državljanstva i vojne obaveze u slučaju višestrukog državljanstva, kao i sukcesije država i državljanstva. Samim tim, Konvencija predstavlja sintezu pravnih normi o

5 član 17. Konvencije iz 1961. godine o smanjenju broja lica bez državljanstva

6 član 11. Konvencije iz 1961. godine o smanjenju broja lica bez državljanstva

državljanstvu i unutrašnjeg i međunarodnog prava državljanstva⁷. Crna Gora je 11. maja 2007. primljena u punopravno članstvo Savjeta Evrope, a Konvenciju je ratifikovala 2. marta 2010. godine uz isticanje rezervi na član 16. Konvencije.

Konvencija Savjeta Evrope o izbjegavanju apatridije u vezi sa sukcesijom država iz 2006. godine tretira sukcesiju država kao glavni izvor slučajeva pojave apatridije i reguliše i definiše niz pitanja koje sukcesija proizvodi na pravo državljanstva. Prema Konvenciji, principi nediskriminacije, zabrane proizvoljnog uskraćivanja državljanstva, vladavine prava i da svako ima pravo na državljanstvo osnovni su principi koji se moraju poštovati kako bi se izbjegla apatridija. Dužnost države je da olakša sticanje svog državljanstva licima koja imaju zakoniti i uobičajeni boravak na njenoj teritoriji, a koja zbog državne sukcesije postaju apatridi.

Nacionalni pravni okvir za apatridiju

Zakon o crnogorskom državljanstvu

Način i postupak sticanja, gubitka i ponovnog sticanja crnogorskog državljanstva regulisan je Zakonom o crnogorskom državljanstvu⁸. Crnogorsko državljanstvo stiče se porijeklom, rođenjem na teritoriji

⁷ Državljanstvo u savremenoj Evropi - Vida Čok, str. 36

⁸ Zakon o crnogorskom državljanstvu („Sl. list Crne Gore“, br. 13/08 od 26.02.2008)

Crne Gore, prijemom i po međunarodnim ugovorima i sporazumima.⁹ Detaljniji uslovi sticanja crnogorskog državljanstva po nekim od ovih osnova u najvećoj mjeri odražavaju odredbe člana 6 Evropske konvencije o državljanstvu sa ciljem sprečavanja pojave slučajeva apatridije, posebno kod djece. Članom 14 Zakona o crnogorskom državljanstvu propisan je olakšan (privilegovan) način sticanja crnogorskog državljanstva prijemom za lice bez državljanstva tako što ne mora ispunjavati uslove u pogledu obezbijedenog smještaja, stalnog izvora prihoda i znanja jezika u službenoj upotrebi. Iako Zakon propisuje mogućnost sticanja crnogorskog državljanstva za lice bez državljanstva, ovo pravo lice bez državljanstva teško može da ostvari u praksi. Problem je u dozvoli boravka, odnosno u obavezi lica bez državljanstva da zakonito boravi u Crnoj Gori 10 godina prije podnošenja zahtjeva. Dozvola boravka je, prema tome, neophodan uslov za prijem u crnogorsko državljanstvo. Zakoniti boravak ima samo lice koje na teritoriji Crne Gore ima prebivalište, stalno nastanjenje, priznat status izbjeglice, odnosno priznat status raseljenog lica iz republika bivše SFRJ¹⁰. Zakon ne sadrži pravnu definiciju lica bez državljanstva, ne daje njegovo određenje odnosno značenje, saglasno članu 1 Konvencije o statusu lica bez državljanstva iz 1954 godine.¹¹

9 član 4 Zakona o crnogorskom državljanstvu

10 Odluka o kriterijumima za utvrđivanje uslova za sticanje crnogorskog državljanstva prijemom („Sl.list CG”, br.47/08)

11 Izraz „lice bez državljanstva“ u smislu ove Konvencije označava lice koje nijedna država prema svom zakonodavstvu ne smatra svojim državljaninom.

Zakon o strancima Crne Gore

U decembru 2014. godine Skupština Crne Gore je donijela novi Zakon o strancima,¹² kao prvi zakon koji daje definiciju lica bez državljanstva. Prema članu 2 ovog Zakona: „Lice bez državljanstva je stranac koga nijedna država u skladu sa svojim zakonodavstvom ne smatra svojim državljaninom.” Zakon poznaje i jedan izuzetak koji se odnosi na lica bez državljanstva (član 4 st. 2), prema kome se „na lica bez državljanstva primjenjuju odredbe potvrđenih i objavljenih međunarodnih ugovora i opšteprihvaćenih pravila međunarodnog prava, ako je to za njih povoljnije.” Za lice bez državljanstva zakonom je propisana mogućnost izdavanja putne isprave.¹³ Putnu ispravu izdaje Ministarstvo unutrašnjih poslova, sa rokom važenja do jedne godine. Putna isprava neće se izdati strancu ako: se protiv njega vodi krivični ili prekršajni postupak; je osuđen na kaznu zatvora ili novčanu kaznu, dok kaznu ne izdrži, odnosno ne plati novčanu kaznu; nije izmirio dospjelu imovinsko-pravnu obavezu na osnovu pravosnažne odluke; to zahtijevaju razlozi nacionalne bezbjednosti, javnog poretka ili javnog zdravlja; to nalažu međunarodne obaveze Crne Gore. Zahtjev za izdavanje putne isprave za lice bez državljanstva stranac podnosi lično. Obrazac zahtjeva za izdavanje putne isprave, sadrži: naziv organa kojem se zahtjev podnosi, datum podnošenja i broj zahtjeva i broj zahtjeva u formatu bar kod zapisa, podatke o podnosiocu zahtjeva (jedinstveni matični broj, pol, prezime, ime, rođeno prezime, datum i mjesto rođenja, država rođenja); podatke o ocu i majci podnosioca zahtjeva i boravku u Crnoj Gori, broj telefona i potpis podnosioca

¹² Zakon o strancima („Sl. list Crne Gore“, br. 56/14 od 24.12.2014)

¹³ član 118 Zakona o strancima

zahtjeva¹⁴. Dokazi, odnosno činjenice koje se odnose na lične okolnosti podnosioca zahtjeva, a koje okolnosti su relevantne za utvrđivanje apatridije, navedenim propisima nijesu definisane. Kako nije određeno Zakonom da li se putna isprava može produžiti tj. izdati nova, to ostavlja mogućnosti različitog postupanja u praksi. Do sada su izdate tri putne isprave za lice bez državljanstva, sa rokom važenja od godinu dana, dok je za četiri lica postupak po njihovim zahtjevima u toku. Jednom licu je nakon isteka važenja izdata nova putna isprava.¹⁵ Iako je Ministarstvo propisalo i obrazac zahtjeva za izdavanje i obrazac putne isprave za lice bez državljanstva, područne jedinice MUP-a ne mogu da zaprime zahtjev za izdavanje putne isprave jer njihova elektronska baza tehnički ne omogućava evidentiranje takvog zahtjeva. Osim što još uvijek ne postoji posebnom zakonom utvrđena procedura za utvrđivanje apatridije, ne postoji unutar državnih upravnih struktura ni poseban organ koji se posebno bavi licima bez državljanstva.

Zakon o vanparničnom postupku

Jedan od prepoznatih mogućih uzročnika apatridije jeste i nepostojanje registrovanog upisa činjenice rođenja u matični registar rođenih, prije svega lica rođenih van zdravstvenih ustanova (u kućnim uslovima) kao i onih rođenih u zdravstvenim ustanovama. Problem se pretežno vezuje za romsku

14 Pravilnik o izgledu i sadržaju obrasca posebne identifikacione isprave, obrascu putnog lista za strance, obrascu i bližem načinu izdavanja putne isprave za lice bez državljanstva („Službeni list CG“, br. 22/2015 od 4.5.2015. godine, stupio na snagu 12.5.2015.)

15 Datum objave 12.11.2015 god. Izvor: Ministarstvo unutrašnjih poslova i javne uprave Crne Gore

populaciju. Postupak utvrđivanja vremena i mjesta rođenja za ona lica koja nijesu upisana u matični registar rođenih, a koja vrijeme i mjesto vlastitog rođenja ne mogu da dokažu na način predviđen propisima kojima se uređuje vođenje matičnih registara, regulisan je Zakonom o vanparničnom postupku.¹⁶ Predviđeno je da se pomenuti postupak pokreće predlogom od strane samog lica čije vrijeme i mjesto rođenja treba utvrditi, kao i predlogom svakog onog ko za to ima neposredni pravni interes. U ulozi predlagača se mogu naći i organ starateljstva kao i druga lica koja su inače, po zakonu kojim se uređuje vođenje matičnih registara, ovlašćena da prijave rođenje.¹⁷ Zakon propisuje i šta od podataka sam predlog treba da sadrži.¹⁸ Nakon što zaprimi predlog, sud u roku od 30 dana provjerava da li je to lice upisano u matični registar rođenih slanjem naloga Ministarstvu unutrašnjih poslova da izvrše provjere u evidenciji i dostave pisani odgovor sudu. U dokaznom postupku sud mora da sasluša najmanje dva punoljetna svjedoka. Rješenje kojim je utvrđeno vrijeme i mjesto rođenja, osim podataka o licu, sadrži i podatke o njegovim roditeljima, ako su poznati.¹⁹ Na osnovu pravosnažnog rješenja vanparničnog odjeljenja suda, predlagaču se omogućava upis u registar rođenih. Ukoliko i nakon svih izvedenih dokaza sud ne može da utvrdi sa sigurnošću vrijeme rođenja, smatra se da je to lice rođeno 1. januara u 00:01 čas one godine za koju je vjerovatno utvrđeno da je njegova godina rođenja. Ako, pak, sud ne može da utvrdi mjesto rođenja, onda se uzima ono mjesto koje je vjerovatno mjesto njegovog rođenja a na osnovu svih izvedenih dokaza. U slučaju da se ni tako ne može utvrditi, mjestom rođenja

¹⁶ („Sl. list RCG“, br. 27/06 od 27.04.2006, 20/15 od 24.04.2015)

¹⁷ član 70a st. 2

¹⁸ član 70a st. 3

¹⁹ član 70c

se smatra ono gdje je lice nađeno odnosno gdje je imalo boravak u momentu podnošenja predloga za utvrđivanje vremena i mjesta rođenja.²⁰ Važno je reći i da je predlagač zakonom oslobođen plaćanja taksi, dok troškovi vještačenja padaju na teret suda.²¹ Zakon ne postavlja rokove u okviru kojih je sud dužan da donese rješenje.

Aktivnosti države na sprečavanju i smanjivanju apatridije

Prijemom u Ujedinjene nacije²² Crna Gora je, prema pravilima o sukcesiji u odnosu na međunarodne ugovore, prihvatila obaveze seta konvencija UN-a, koje je do 3. juna 2006. godine zaključila i kojima je pristupila državna zajednica Srbija i Crna Gora²³, uključujući i **Konvenciju o statusu lica bez državljanstva iz 1954 godine**. Instrument potvrđivanja je deponovan 23. oktobra 2006. godine. Dana 5. decembra 2013, deponovanjem pristupnog instrumenta, Crna Gora je postala 58. država ugovornica koja je pristupila i **Konvenciji UN-a o smanjenju broja lica bez državljanstva 1961. godine**. Članstvo u Savjetu Evrope²⁴ doprinijelo je potpisivanju još dva važna regionalna dokumenta o apatridiji i to **Evropske konvencije o državljanstvu iz 1997. godine**²⁵ i **Konvencije o izbjegavanju apatridnosti u vezi sa sukcesijom država iz 2006. godine**.²⁶

20 član 70d

21 član 70f

22 Generalna skupština UN usvojila rezoluciju o prijemu Crne Gore u ovu Organizaciju 28. juna 2006. god.

23 Odluka o proglašenju nezavisnosti Republike Crne Gore („Sl. list RCG“, br 36/06)

24 11. maja 2007. Crna Gora primljena u punopravno članstvo Savjeta Evrope

25 „Službeni list Crne Gore – Međunarodni ugovori“, br. 2/10

26 „Službeni list Crne Gore – Međunarodni ugovori“, br. 2/10

Pristupanjem ovim konvencijama Crna Gora je preuzela važne obaveze koje se odnose na zaštitu i pomoć licima bez državljanstva na planu integracije u crnogorsko društvo. Na potpunu primjenu konvencija obavezuje i Ustav Crne Gore koji u članu 9 propisuje da su: „Potvrđeni i objavljeni međunarodni ugovori i opšteprihvaćena pravila međunarodnog prava sastavni dio unutrašnjeg pravnog poretka, imaju primat nad domaćim zakonodavstvom i neposredno se primjenjuju kada odnose uređuju drukčije od unutrašnjeg zakonodavstva.“

Kako problem apatridije ima i regionalan karakter, to je i na regionalnom planu preduzeto niz značajnih aktivnosti kroz razne inicijative, radne grupe ili zaključivanje bilateralnih sporazuma što je sve u funkciji rješavanja specifičnih problema koje donosi apatridija. U okviru regionalnog procesa „Beogradska inicijativa“, formirana je Regionalna tehnička radna grupa za pojednostavljivanje procedura pribavljanja dokumentacije. Radna grupa je imala značajne rezultate u otklanjanju pojedinih prepreka u pribavljanju dokumenata, upisa i naknadnog upisa u registar rođenih i državljana, utvrđivanju državljanstva raseljenih lica i interno raseljenih lica, kako u državama porijekla ovih lica, tako i u državama prijema.²⁷

Vlade Crne Gore i Kosova su 2011. godine potpisale Sporazum o naknadnom upisu interno raseljenih lica sa Kosova koja borave u Crnoj Gori u registre rođenih i registar državljana Republike Kosovo²⁸ u svrhu uspostavljanja saradnje u rješavanju statusnih pitanja interno raseljenih lica sa Kosova koja borave

27 12.09.2011. god. Zapisnik sa trećeg sastanka Regionalne tehničke radne grupe za pojednostavljenje procedure pribavljanja dokumentacije

28 „Sl. list CG - međunarodni ugovori“, br. 5 od 30. aprila 2013. god

u Crnoj Gori, u dijelu naknadnog upisa u osnovne registre (rođenih, vjenčanih i umrlih) i registar državljana Republike Kosova. Saglasno sporazumu, nadležni organi Kosova, u okviru svojih nadležnosti, obezbijediće neophodne preduslove za naknadni upis u osnovne registre kada lice dokaže raniji upis na osnovu izdatih dokumenata od nadležnih organa ili priloži bilo koji drugi dokument koji dokazuje bilo koji podatak vezan za građansko stanje.²⁹ Od maja 2014. godine do jula 2016. godine organizovano je jedanaest posjeta kosovskog mobilnog tima u skladu sa sporazumom. Tim posjetama obuhvaćeno je 1356 lica raseljenih sa Kosova. Od toga broja, za 234 lica još uvijek ne postoji dogovor o pravnim koracima koje treba preduzeti kako bi se izvršio naknadni upis jer se radi o vrlo komplikovanim slučajevima koji ne mogu pružiti nijednu informaciju o okolnostima i činjenicama u vezi sa njihovim rođenjem (vrijeme i mjesto rođenja, podaci o roditeljima).

I na zakonodavnom planu Crna Gora je na planu prevencije i smanjivanja apatridije preduzela određene aktivnosti. Uvođenjem sudskog postupka za utvrđivanje vremena i mjesta rođenja lica rođenih van zdravstvene ustanove³⁰ stvoreni su preduslovi za naknadni upis u matični registar rođenih lica koja to ranije nisu mogla ostvariti po važećim propisima.

U cilju sprovođenja aktivnosti na identifikaciji i pomoći svim osobama u riziku od apatridije, Ministarstvo unutrašnjih poslova Crne Gore, u saradnji sa UNHCR-om, uputilo je javni poziv licima koja borave u Crnoj Gori, a smatraju da nemaju pristup državljanstvu ni jedne države ili ne mogu da dokažu da ga

²⁹ čl. 2 Sporazuma

³⁰ „Sl. list RCG“, br. 27/06 od 27.04.2006, 20/15 od 24.04.2015

imaju, da se jave najbližoj Područnoj jedinici ili Filijali MUP-a radi davanja podataka. Kampanja je bila u periodu od 22. septembra do 22. novembra 2014. godine. Na javni poziv se odazvalo i upitnike popunilo ukupno 486 lica. Lista lica koja su u ovom problemu, sakupljena tokom Javnog poziva, nije konačna.³¹ Pravni centar je, kroz svoju bazu podataka, evidentirao 780 lica koja su se izjašnjavala kao lica bez državljanstva. Od tog broja, 322 predmeta su uspješno riješena.

Pristup pravima i standardi postupanja prema licima bez državljanstva

Pravo na rad i zapošljavanje

Prema važećem radnom zakonodavstvu, lica bez državljanstva imaju pravo na rad ukoliko imaju zakoniti boravak. Ustav Crne Gore garantuje svakom licu „... pravo na rad, na slobodan izbor zanimanja i zapošljavanja, na pravične i humane uslove rada i na zaštitu za vrijeme nezaposlenosti.“³² Zakon o radu³³ ne definiše posebno značenje lica bez državljanstva, ali se u zakonu jasno ističe da se zakon primjenjuje i na zaposlene strane državljane i lica bez državljanstva koji rade kod poslodavca na teritoriji Crne Gore.³⁴ Saglasno zakonu, lice bez državljanstva može zaključiti ugovor o radu ako ispunjava zakonom

31 Analiza Javnog poziva , MUP, UNHCR, Septembar 2015. god.

32 čl. 62 Ustava Crne Gore („Sl. list Crne Gore“, br. 01/07

33 Zakon o radu („Sl. list Crne Gore“, br. 49/08 od 15.08.2008, 26/09 od 10.04.2009, 88/09 od 31.12.2009, 26/10 od 07.05.2010, 59/11 od 14.12.2011, 66/12 od 31.12.2012, 31/14 od 24.07.2014)

34 čl. 2 st. 3 Zakona o radu

priopisane uslove.³⁵ Posjedovanje radne knjižice i prijava na evidenciju Zavoda za zapošljavanje preduslovi su za zasnivanje radnog odnosa. Lice bez državljanstva sa navršenih 15 godina života, u svrhu zaposlenja, ima pravo na dobijanje radne knjižice. Uz zahtjev za izdavanje radne knjižice neophodno je podnošenje i strane putne isprave ili lične karte za stranca.³⁶ Lica bez državljanstva ne mogu biti evidentirana kod Zavoda za zapošljavanje kao nezaposlena lica i ostvarivati prava po osnovu nezaposlenosti. Nezaposlenim licem se smatra „lice od 15 do 67 godina života koje je crnogorski državljanin i stranac sa odobrenim stalnim boravkom, priznatim statusom izbjeglice ili odobrenom dodatnom zaštitom, koje se nalazi na evidenciji Zavoda za zapošljavanje Crne Gore, sposobno ili djelimično sposobno za rad, koje nije zasnovalo radni odnos i koje aktivno traži zaposlenje.”³⁷

Porodica HH

HH je rođen na Kosovu 1965. godine, gdje je sve do ratnih dešavanja radio i živio sa porodicom. Posjedovao je sva dokumenta i bio upisan u matične knjige rođenih i državljana. Nakon ratnih dešavanja dolazi u Crnu Goru, gdje se zaposlio. Nikada nije imao problem sa dokumentacijom, posjedovao je pasoš i ličnu kartu Srbije, čiji je bio državljanin. Međutim, kada se 2014. godine obratio Ambasadi Srbije u Podgorici sa zahtjevom za izdavanje pasoša, došao je do saznanja da je izbrisan iz knjige državljana Srbije jer je porijeklom Crnogorac. Njegovi roditelji su rođeni u Crnoj Gori i crnogorski su državljani. Tom prilikom

35 čl. 34 Zakona o radu

36 čl. 2 i 3 Pravilnika o radnoj knjižici („Službeni list RCG“, br. 1/83 i 54/2001.)

37 čl. 3 Zakona o zapošljavanju i ostvarivanju prava iz osiguranja od nezaposlenosti („Sl. list Crne Gore“, br. 14/10 od 17.03.2010, 39/11 od 04.08.2011, 40/11 od 08.08.2011, 45/12 od 17.08.2012, 61/13 od 30.12.2013, 20/15 od 24.04.2015)

je dobio rješenje u kom se navodi da je izbrisan iz knjige državljana Srbije i poništena mu je biometrijska lična karta izdata u Srbiji – PU za Peć samo 3 godine ranije! Takođe je navedeno da je do njegovog upisa u knjigu državljana došlo uslijed greške službenika. Upućen je da preda zahtjev za utvrđivanje državljanstva Crne Gore, ali je njegov zahtjev odbijen jer nije podniet u zakonskom roku. Trenutno je u toku postupak pred Upravnim sudom u Srbiji. Budući da sada ne posjeduje nikakav važeći identifikacioni dokument, on ne može izvaditi radnu knjižicu, prijaviti se na Zavod za zapošljavanje i zasnovati radni odnos. Niko od članova njegove porodice nema problem sa dokumentacijom. Supruga je državljanica Crne Gore i po osnovu braka bi mogao prijaviti boravak (spajanje porodice), ali je uslijed nedostatka dokumentacije to nemoguće.

Pravo na socijalnu zaštitu

Lica bez državljanstva nisu obuhvaćena sistemom socijalne i dječje zaštite. Oni apsolutno nemaju mogućnost korišćenja prava na socijalnu i dječju zaštitu iako borave na teritoriji države i ispunjavaju ostale propisane pretpostavke za ostvarenje tog prava. Zbog činjenice da ne posjeduju identifikacioni dokument kojim bi dokazali da imaju regulisan svoj pravni status u Crnoj Gori, onemogućen im je pristup pravima iz socijalne zaštite. Ova činjenica posebno pogađa pripadnike romskog naroda koji su potencijalno najizloženiji apatridiji. Ostvarivanje prava na socijalnu i dječju zaštitu tijesno se povezuje sa posjedovanjem državljanstva pa, samim tim, ima diskriminatorski karakter u odnosu na lica bez državljanstva.³⁸ Saglasno zakonu, prava iz socijalne i dječje zaštite mogu ostvariti samo: crnogorski

³⁸ Zakon o socijalnoj i dječjoj zaštiti („Sl. list Crne Gore“, br. 27/13 od 11.06.2013, 01/15 od 05.01.2015, 47/15 od 18.08.2015)

državljanin sa prebivalištem na teritoriji države i lica koja imaju status stranca sa odobrenim privremenim boravkom ili stalnim nastanjenjem u državi.³⁹ Primjera radi, za ostvarivanje prava na materijalno obezbjeđenje porodice, uz zahtjev je neophodno podnijeti i dokaz o nezaposlenosti koji izdaje Zavod za zapošljavanje. Apatridi ne mogu da se prijave na Zavod za zapošljavanje te stoga ne mogu pribaviti potvrdu da su nezaposleni, što prouzrokuje da ne mogu ostvariti ni socijalnu pomoć. Nemogućnošću da ostvare materijalno obezbjeđenje, automatski su isključeni da ostvare pravo na dječiji dodatak koji bi inače mogli ostvariti ukoliko bi primali materijalno obezbjeđenje porodice. Takođe, i za ostala socijalna davanja (npr. naknade zarade za porodiljsko, odnosno roditeljsko odsustvo ili naknada po osnovu rođenja djeteta) lica moraju biti prijavljena na evidenciju nezaposlenih lica Zavoda za zapošljavanje, ali pošto to ne mogu, onda ne mogu ni ostvariti svoja prava koja bi ih sljedovala da imaju državljanstvo ili da im je priznat status apatrida.

Porodica FF

Porodicu čine dvije sestre i brat. Svi su rođeni u Hamburgu u Njemačkoj. Od dokumenata samo F1 ima kopiju izvoda iz knjige rođenih iz Hamburga, a drugo dvoje djece imaju kopije potvrde o rođenju. U izvodu iz knjige rođenih i potvrdama samo je upisana majka, podaci o ocu nisu upisani jer ih otac nikad nije priznao. Međutim, majka ih je napustila odmah po rođenju posljednjeg djeteta, nemaju nijedan njen dokument, ne znaju čije je državljanstvo imala, navodno boravi u Italiji, ali nisu sa njom u kontaktu. Njihov

³⁹ čl. 5 Zakona o socijalnoj i dječjoj zaštiti

otac je živio sa njima u Njemačkoj sve do 2003. godine, kada ih je na tuđe putne listove preveo preko Njemačke granice i doveo u Crnu Goru, gdje oni od tada žive bez prijavljenog boravka. Otac je bio crnogorski državljanin, imao je crnogorska dokumenta – ličnu kartu i pasoš. Tragično je preminuo 2010. godine u Crnoj Gori. Porodica FF živi u Crnoj Gori od 2003. godine bez regulisanog statusa, bez izvoda iz matične knjige rođenih i uvjerenja o državljanstvu, nemaju pristup zdravstvenoj, ni socijalnoj zaštiti.

Porodica GG

Porodica GG ima četiri člana. Nijedan član porodice nije upisan u knjige državljana. Porodicu čine otac, koji je rođen u Crnoj Gori i ima izvod iz knjige rođenih, majka, koja ima izvod iz knjige rođenih, i dvoje maloljetne djece rođene u Crnoj Gori, od kojih samo jedno ima izvod iz knjige rođenih. Ni otac ni majka nemaju identifikaciona dokumenta. Ne mogu dobiti ličnu kartu, pasoš, vozačku dozvolu, ne mogu sklopiti brak. Majka je oboje djece rodila u bolnici u Crnoj Gori. Starije dijete rođeno 2015. godine upisano je u knjige rođenih, ali bez podataka o ocu jer otac ne posjeduje identifikacioni dokument. Drugo dijete, djevojčica rođena 2016. godine, nije upisana u matične knjige rođenih. Razlog je to što je majka maloljetna, nema identifikacioni dokument, pa je za upis djeteta potrebna saglasnost njenih roditelja, koji se nalaze u inostranstvu. Činjenica da dijete nema izvod iz knjige rođenih dovodi do toga da dijete ne može biti ni zdravstveno osigurano, a roditelji ne mogu ostvariti pravo na naknadu po osnovu rođenja djeteta kod Centra za socijalni rad.

Pravo na zdravstvenu zaštitu

U smislu važećih propisa iz oblasti zdravstvene zaštite,⁴⁰ pod strancem se podrazumijeva strani državljanin i lice bez državljanstva. Pristup i obim prava na zdravstvenu zaštitu određen je stepenom pravne vezanosti stranca za teritoriju države. Zdravstvena ustanova i zdravstveni radnici dužni su da strancu ukažu hitnu medicinsku pomoć, pri čemu stranac snosi troškove pružene hitne medicinske pomoći ili druge vrste zdravstvene zaštite, prema cjenovniku zdravstvene ustanove, ako međunarodnim ugovorom nije drukčije uređeno.⁴¹ Prava iz obaveznog zdravstvenog osiguranja (zdravstvena zaštita, naknada zarade za vrijeme privremene spriječenosti za rad, naknada putnih troškova u vezi korišćenja zdravstvene zaštite⁴²) mogu ostvarivati samo lica kojima je utvrđeno svojstvo osiguranih lica. Utvrđivanje svojstva osiguranog lica i izdavanje zdravstvene knjižice osiguranim licima u nadležnosti je Fonda za zdravstveno osiguranje Crne Gore. Da bi neko lice bilo zdravstveno osigurano, mora postojati osnov za zdravstvenu zaštitu. Osnov za zdravstvenu zaštitu ima lice koje je u radnom odnosu, penzioner, nezaposleno lice koje je prijavljeno na Zavod za zapošljavanje, korisnici prava iz oblasti socijalne i dječije zaštite, poljoprivrednici, preduzetnici i dr.⁴³ Kako se lica bez državljanstva zbog neregulisanog pravnog statusa ne mogu vezati ni za jedan od zakonom poznatih osnova za zdravstvenu zaštitu, ne mogu steći svojstvo

40 Zakon o zdravstvenoj zaštiti („Službeni list Crne Gore“, br. 003/16 od 15.01.2016), Zakon o zdravstvenom osiguranju („Službeni list Crne Gore“, br. 006/16 od 22.01.2016)

41 čl. 12 Zakona o zdravstvenoj zaštiti

42 čl. 13 Zakona o zdravstvenom osiguranju

43 čl. 6 Zakona o zdravstvenom osiguranju

osiguranog lica. Primorani su da plaćaju troškove liječenja svaki put kada im je potrebna ljebarska pomoć. Često je slučaj da odu na zdravstveni pregled kod doktora i da mole doktora ili medicinsku sestru da pregledaju njihovo bolesno dijete, a oni odbiju da ih prime zbog toga što nemaju zdravstvenu knjižicu, a nije im neophodna hitna intervencija. Takođe se dešava da korišćenjem tuđe zdravstvene knjižice obezbjeđuju sebi zdravstveni pregled kod ljekara. Na taj način često prouzrokuju mnoge nevolje i probleme kako sebi tako i drugima, ali to im je jedini način da ostvare zdravstvenu zaštitu jer nemaju novca da plate za nju.

Porodica KK

KK je rođena u Beogradu. Ne zna kada je rođena i nikada nije upisana u matične knjige rođenih jer njena majka, koja je preminula, nije imala nikakav identifikacioni dokument. Majka je dvoje maloljetne djece iz dvije vanbračne zajednice. Prvo dijete iz prve vanbračne zajednice je rodila u bolnici u Crnoj Gori. Tada je posjedovala zdravstveni karton interno raseljenog lica do kojeg je, kako tvrdi, porodica njenog prvog vanbračnog supruga došla na nezakonit način jer u Crnoj Gori nikada nije registrovana kao interno raseljeno lice. Odmah po rođenju prvog djeteta KK napušta vanbračnu zajednicu i dijete i zasniva novu vanbračnu zajednicu. U drugoj vanbračnoj zajednici je rodila drugo dijete 2015. godine. Kako nije imala nijedan dokument, pa ni zdravstvenu zaštitu, prilikom porođaja u bolnici, kako ne bi plaćala troškove porođaja i hospitalizacije, prezentovala je zdravstveni karton svoje rođake. Dijete nije upisano u matične knjige jer majka nema nijedan dokument, a sa druge strane postoji prijava rođenja u MUP-u na ime

njene rođake. Rođaka sada ima problem jer ona i njen suprug ne mogu da imaju djece te planiraju ići na vantjelesnu oplodnju, a u zdravstvenom sistemu je zabilježeno da se porodila u julu 2015. godine!

Pravo na obrazovanje

Pravo na obrazovanje, prema važećim propisima, omogućeno je pod istim uslovima kako crnogorskim državljanima tako i strancima.⁴⁴ Osnovno obrazovanje obavezno je za svu djecu uzrasta od 6 do 15 godina.⁴⁵ Opšte srednje⁴⁶ i visoko obrazovanje⁴⁷ dostupno je pod jednakim uslovima i državljanima i strancima. U navedenim propisima, izraz stranac se koristi u značenju stranca sa stalnim ili privremenim boravkom, sa izuzetkom Zakona o visokom obrazovanju koji pod strancem podrazumijeva i lice bez državljanstva.⁴⁸ Nedefinisani pravni status i nedostatak dokaza o identitetu osnovni su razlozi koji licima bez državljanstva otežavaju ostvarivanje prava na obrazovanje. Jedan broj djece apatrida (uglavnom romske djece) nije uključen u sistem obrazovanja upravo zbog nedostatka dokumentacije. Najugroženija su djeca koja nisu upisana u matične knjige rođenih. Za romsku djecu koja nisu upisana u matičnu knjigu rođenih upis u osnovnu školu vrši se na predlog Ministarstva prosvjete.

44 čl. 9 Opšteg zakon o obrazovanju i vaspitanju („Sl. list Crne Gore“, br. 4/ 2008, 21/09, 45/10, 40/11, 45/11, 36/13, 39/13, 44/13)

45 čl. 4 Zakona o osnovnom obrazovanju i vaspitanju („Sl. list RCG“, br 64/2002, 49/2007, „Sl. list CG“, br. 45/2010, 40/2011 – dr. zakon i 39/2013)

46 čl. 14 Zakona o gimnaziji („Sl. list Crne Gore“, br. 45/ 2010, 39/13)

47 čl.100.Zakona o visokom obrazovanju („Sl. list Crne Gore“, br. 44/ 2014, 52/14)

48 čl.10 st.1 tač.11 Zakona o visokom obrazovanju

Porodica JJ

Porodica JJ je porodica interno raseljenih lica sa Kosova. Broji 12 članova, od čega je desetoro djece. Petoro djece je rođeno na Kosovu, a petoro u Crnoj Gori. Kada je Pravni centar identifikovao ovu porodicu, nijedno dijete nije bilo upisano u matične knjige rođenih iako su roditelji posjedovali identifikaciona dokumenta. Nijedno dijete nije pohađalo školu. Aktivnošću Pravnog centra, djeca rođena u Crnoj Gori upisana su u matične knjige rođenih i dobila su status interno raseljenih lica. Sada troje djece pohađa osnovnu školu. Ostala djeca su, po navodima roditelja, ili „velika“ za odlazak u osnovnu školu ili mlađa od 6 godina.

Zaključak

I pored uloženi napore na planu smanjenja apatridije, Crna Gora se i dalje suočava sa određenim izazovima u implementaciji međunarodnih standarda u ovoj oblasti. Još uvijek ne postoje precizni i jasni mehanizmi za identifikovanje i registraciju lica bez državljanstva. U unutrašnjem zakonodavstvu, izuzev Zakona o strancima, ne postoje jasne odredbe koje daju definiciju i prava lica bez državljanstva. Iako je predviđena mogućnost da lice bez državljanstva bude primljeno u crnogorsko državljanstvo, u praksi još nisu registrovana lica koja su i ostvarila to pravo. I dalje nedostaju posebni mehanizmi da se odredbe potpisanih konvencija zapravo sprovedu u praksi.

Family II is a family of internally displaced persons from Kosovo. It consists of 12 members, 10 of which are children. Five children were born in Kosovo, while five children were born in Montenegro. When Legal Center identified the family, none of the children was registered in the birth registry books although the parents possessed identification documents. None of the children attended school. With Legal Center's activity, the children born in Montenegro have been registered in the registry books and acquired the status of internally displaced persons. Three children are attending school at the moment. According to the parents, other children are either "too big" to go to primary school or younger than six years of age.

Conclusion

Despite the efforts to reduce statelessness, Montenegro still faces certain challenges in the implementation of international standards in this area. There are still no precise and clear mechanisms for identification and registration of stateless persons. In internal legislation, with the exception of the Law on Foreigners, there are no clear provisions which provide a definition and rights of stateless persons. Although the possibility is envisaged for a stateless person to be admitted into Montenegrin nationality, persons who exercised the right have not been registered in practice. There is still the lack of special mechanisms to implement the provisions of signed conventions in practice.

The right to education

The right to education, according to the current regulations, is enabled under the same conditions to both Montenegrin nationals and foreigners.⁴⁴ Primary education is compulsory for all children aged 6 to 15 years.⁴⁵ General secondary⁴⁶ and higher education⁴⁷ is available under equal conditions to both nationals and foreigners. In the current regulations, expression foreigner is used within the meaning of a foreigner with permanent or temporary residence, with the exception of the Law on Higher Education which, under the term foreigner, also implies a stateless person.⁴⁸ Undefined legal status and the lack of identity evidence are basic reasons which make it difficult for stateless persons to exercise the right to education. A number of stateless children (mainly Roma children) are not included in the education system because of the lack of documents. The most vulnerable are children who were not registered in the birth registry book. Enrollment in primary school of Roma children who were not registered in the birth registry book is done by the proposal of the Ministry of Education.

⁴⁴ Art.9 of the General Law on Education and Upbringing ("The Official Gazette of Montenegro", No. 4/ 2008, 21/09, 45/10, 40/11, 45/11, 36/13, 39/13, 44/13)
⁴⁵ Art.4 of the General Law on Education and Upbringing ("The Official Gazette of Montenegro", No. 64/2002, 49/2007, ("The Official Gazette of Montenegro", No. 45/2010, 40/2011 – another law and 39/2013)
⁴⁶ Art. 14 of the Law on High School ("The Official Gazette of Montenegro", No. 45/ 2010, 39/13)
⁴⁷ Art. 100 of the Law on Higher Education ("The Official Gazette of Montenegro", No. 44/ 2014, 52/14)
⁴⁸ Art. 10, para.1, item 11 of the Law on Higher Education

they need medical assistance. It often happens that they go to the doctor for medical examination, they beg a doctor or a nurse to examine their sick child, but they refuse to receive them because they do not have a health card and they are not in need of immediate intervention. It also happens that they manage to provide medical examination at the doctor's using someone else's health cards. Thus, they often cause many troubles and problems, not only for themselves but also for others, but it is their only way to achieve health care because they have no money to pay for it.

Family KK

KK was born in Belgrade. She does not know when she was born and she was never registered in the birth registry book because her mother, who died, did not have any identification documents. She is the mother of two children from two common law marriages. The first child from the first common law marriage was born in hospital in Montenegro. At the time, she possessed a health card of an internally displaced person which, as she claims, was obtained illegally by the family of her first unlawful husband because she has never been registered as an internally displaced person in Montenegro. As soon as the first child was born, KK abandons common law marriage and the child and establishes a new common law marriage. The second child was born in 2015 in second common law marriage. Since she has not had any documents, including health protection, she presented her cousin's health card during childbirth in the hospital, so that she would not pay for the costs of delivery and hospitalization. The child was not registered in the civil registry books because the mother does not possess any documents and, on the other hand, there is a birth registration in the MUI on her cousin's name. The cousin has a problem now because she and her husband cannot have children on their own and are planning to go to in vitro fertilization and it was recorded in the health system that she delivered a child in July 2015!

The right to social protection

In terms of the applicable regulations in the field of health care,⁴⁰ a foreigner means any citizen of another state or a stateless person. Approach and scope of the right to health care is determined by the degree of legal attachment of a foreigner to the territory of the state. Health institution and health workers are obliged to provide urgent medical assistance to a foreigner, whereby a foreigner bears the expenses of urgent medical assistance provided or other types of health care, according to the price list of the health institution unless an international agreement provides otherwise.⁴¹ The rights from compulsory health insurance (health protection, wage compensation during temporary inability to work, reimbursement of travel costs related to the use of health care⁴²) may be exercised only by persons whose status of the insured has been determined. Determining the status of the insured and issuing of a health card to the insured persons is under the jurisdiction of the Health Insurance Fund of Montenegro. In order for a person to have health insurance, there must be a basis for health care. A person who is employed, a retiree, an unemployed person who is registered with the Employment Agency, beneficiaries of the rights from the area of social and child protection, agriculturists, entrepreneurs,⁴³ etc. have the basis for health care. Since stateless persons cannot be linked to any of legally known basis of health care because of their unregulated legal status, they are, consequently, unable to acquire the status of an insured person. They are forced to pay the costs of treatment whenever

40 The Law on Health Care ("The Official Gazette of Montenegro", No. 003/16 from 15.01.2016) , The Law on Health Insurance ("The Official Gazette of Montenegro", No. 006/16 from 22.01.2016)

41 Art.12 of the Law on Health Care

42 Art.13 of the Law on Health Care

43 Art.6 of the Law on Health Care

allegedly resides in Italy. Their father lived in Germany with them until 2003, when he took them across German border, with other persons' documents, and brought them to Montenegro. Since then, they have lived in Montenegro without registered residence. The father was Montenegrin national, he had Montenegrin documents – an identification card and a passport. He tragically died in Montenegro in 2010. Family FF has been living in Montenegro since 2003, without regulated status, without birth and citizenship certificates, they do not have access to health care or social protection.

Family GG

Family GG has four members. None of the family members has been registered in the citizenship registry book. The family consists of the father, who was born in Montenegro and possesses a birth certificate; the mother, who has a birth certificate and two minor children born in Montenegro, one of whom possesses birth certificate. Neither mother nor father possesses identification documents. They are not able to obtain ID card, passport, driving licence, they cannot conclude marriage. Both children were born in hospital in Montenegro. Older child, born in 20015, was registered in the birth registry book, but without information about father because father does not possess any identification document. Another child, a girl born in 2016, was not registered in the birth registry book. The reason lies in the fact that the mother is minor, does not have an identification document, so she will need the consent of her parents, who are abroad, in order to register a child. The fact that a child does not have a birth certificate leads to the fact that a child is not able to achieve health care, and the parents are not able to exercise the right to compensation on the basis of the child's birth with the Center for Social Welfare.

national residing on the territory of the state, and persons who have the status of foreigner with temporary residence or permanent residence in the country.³⁹ For example, in order to exercise the right to family allowance, it is necessary to submit, along with the application, a proof of unemployment issued by the Employment Agency. Stateless persons are not able to register with the Employment Agency and, therefore, they are not able to obtain a certificate that they are unemployed, which causes an inability to achieve social welfare. Inability to achieve material support automatically exclude their possibility to exercise the right to child allowance which they would otherwise achieve if they were beneficiaries of family allowance. Also, for other social benefits (eg. salary compensation for maternity or parental leave, or compensation on the basis of the child's birth) persons must be registered as unemployed persons with the Employment Agency, but since they are not able to do so, then they can not exercise their rights which would belong to them if they had nationality or their status of an apatriide was recognized.

Family FF

The family consists of two sisters and a brother. They were all born in Hamburg, Germany. As for the documents, only F1 has a copy of an extract from the birth registry book from Hamburg, while the other two children have copies of the certificate of birth. In the extract from the birth registry book and certificates only mother was recorded; data about the father were not recorded because he never recognized them. However, their mother abandoned them soon after the last child was born. They do not have any documents belonging to her, they do not know which nationality she possessed, they have no contact with her although they know that she

³⁹ Art. 5 of the Law on Social and Child Protection

are Montenegrin nationals. On that occasion, he received a decision stating that he was erased from the citizenship registry books of Serbia and that his biometric identity card issued in Serbia – Regional Administration for Pec, had been cancelled three years earlier! It was also stated that his registration occurred due to a servant's fault. He was referred to submit a request for determination of Montenegrin nationality but the request was denied because it was not submitted within the legal deadline. The procedure is currently pending before the Administrative Court in Serbia. Since he does not possess any valid identification document now, he is not able to take out a working booklet, register with the Employment Agency, and become employed. No member of his family has any problems with documents. His wife is a Montenegrin national and he could register his residence on the basis of marriage (family reunification), but it is impossible due to the lack of documents.

The right to social protection

Stateless persons are not covered by the social and child protection. They have absolutely no possibility to use the rights to social and child protection although they reside on the territory of Montenegro and meet other prescribed conditions for the exercise of this right. Due to the fact that they do not possess identification documents to prove that they have regulated their legal status in Montenegro, they are prevented from the access to social protection rights. This fact especially affects members of Roma population who are potentially most exposed to statelessness. Exercising the right to social and child protection is closely associated with the possession of nationality and therefore has a discriminatory character in relation to stateless persons.³⁸ In accordance with the law, social and child protection rights can only be achieved by: a Montenegrin

³⁸ The Law on Social and Child Protection ("The Official Gazette of Montenegro", No. 27/13 from 11.06.2013, 01/15 from 05.01.2015, 47/15 from 18.08.2015)

he/she meets the conditions prescribed by the law.³⁵ Possession of a working booklet and registration with the Employment Agency are prerequisites for employment. A stateless person who has attained the age of 15 years, for the purpose of employment, is entitled to obtain a working booklet. With the request for issuance of working booklet, it is also necessary to submit a foreign passport or identity card for foreigners.³⁶ Stateless persons may not be registered with the Employment Agency as unemployed and exercise the rights on the basis of unemployment. An unemployed person is considered “a person between 15 and 67 years of age who is a Montenegrin citizen and a foreigner with permanent residence permit, who holds recognized refugee status or subsidiary protection, who is registered with the Employment Agency of Montenegro, capable or partially capable of work, who has not been employed and who is actively seeking employment.”³⁷

Family HH

HH was born in Kosovo in 1965, where he worked and lived with his family until the war. He possessed all documents and was registered in the birth and citizenship registry books. After the war, he came to Montenegro where he found employment. He never had any problems with documents, he possessed both a passport and an identity card of Serbia, the nationality of which he possessed. However, when he applied to the Embassy of Serbia in Podgorica in 2014 with a request for the issuance of a passport, he found out that he was erased from the citizenship registry book because he is a Montenegrin by origin. His parents were born in Montenegro and

³⁵ Art. 34 of the Labour Law

³⁶ Art. 2 and 3 of the Rules of the Rules of the working booklet (“The Official Gazette of Montenegro”, No. 1/83 and 54/2001)

³⁷ Art. 3 of the Labour Law and exercising the right from unemployment insurance (“The Official Gazette of Montenegro”, No. 14/10 from 17.03.2010, 39/11 from 04.08.2011, 40/11 from 08.08.2011, 45/12 from 17.08.2012, 61/13 from 30.12.2013, 20/15 from 24.04.2015)

able to prove that they have it, to approach the nearest regional unit or Branch Office of the MoI in order to give information. The campaign was active from 22 September until 22 November 2014. A total of 486 persons responded to the public call and filled in questionnaires. A list of persons who have this problem, gathered during the public call, is not final.³¹ Through its database, Legal Center registered 780 persons who declared themselves to be stateless persons. Out of this number, 322 cases were successfully resolved.

Access to rights and standards of treatment of stateless persons

The right to work and employment

According to the current labour legislation, stateless persons have the right to work if they have legal residence. Montenegro's Constitution guarantees to all persons "... the right to work, to free choice of profession and employment, to just and humane conditions of work and to protection during unemployment."³² The Labour Law³³ does not define the special meaning of stateless persons, but the law clearly states that the law applies to employed foreign citizens and stateless persons working with the employer on the territory of Montenegro.³⁴ In accordance with the law, a stateless person may conclude an employment contract if

31 Analysis of Public Call, the MoI, UNHCR, September 2015

32 Art. 62 of the Constitution of Montenegro ("The Official Gazette of Montenegro", No. 01/07)

33 The Labour Law ("The Official Gazette of Montenegro", No. 49/08 from 15.08.2008, 26/09 from 31.12.2009,

26/10 from 07.05.2010, 59/11 from 14.12.2011, 66/12 from 31.12.2012, 31/14 from 24.07.2014)

34 Art. 2 para. 3 of the Labour Law

internally displaced persons from Kosovo residing in Montenegro, in the part of subsequent registration in basic registry books (birth, marriage, and deaths) and the citizenship registry books of the Republic of Kosovo. Pursuant to the Agreement, the competent authorities of Kosovo, within their competences, shall provide necessary conditions for subsequent registration in the basic registry books when a person proves the previous registration on the basis of documents issued by competent authorities, or when a person encloses any other document that proves any information related to the civil status.²⁹ From May 2014 until July 2016, eleven visits were organized by Kosovo mobile team in accordance with the agreement. These visits encompassed 1,356 persons displaced from Kosovo. Out of that number, 234 persons still lack the agreement on legal steps that should be taken to conduct subsequent registration because the issue is about very complicated cases that are not able to provide any information about circumstances and facts concerning their birth (time and place of birth, information about parents).

At the legislative level, Montenegro has also undertaken certain activities in the field of prevention and reduction of statelessness. Introduction of the court procedure for determination of the time and place of birth of persons born outside the health institution³⁰ created preconditions for subsequent registration in birth registry book of persons who previously have not been able to achieve it under the current regulations. In order to implement activities on the identification of and assistance to all persons at risk of statelessness, the Ministry of Interior of Montenegro, in cooperation with the UNHCR, launched a public call for persons residing in Montenegro, who believe that they do not have access to nationality of any country or are not

²⁹ Article 2 of the Agreement

³⁰ "The Official Gazette of Montenegro", No. 27/06 from 27.04.2006, 20/15 from 24.04.2015

By joining these conventions, Montenegro has undertaken important commitments relating to the protection of and assistance to stateless persons in the field of integration into Montenegrin society. The Constitution of Montenegro also obliges to the full implementation of the Convention, providing in Article 9 that: "The ratified and published international treaties and generally accepted rules of international law are an integral part of the internal legal order, shall have primacy over national legislation and are directly applicable when they regulate the relations differently from the internal legislation."

As the problem of statelessness also has a regional character, a number of significant activities have been undertaken at the regional level through various initiatives, working groups or conclusion of bilateral agreements which is all in the function of resolving specific problems brought about by statelessness. Within the regional process "Belgrade Initiative", the Regional Technical Working Group for simplifying procedures for obtaining documents has been formed. The working group has achieved significant results in the elimination of certain barriers in obtaining documents, registration and subsequent registration in the birth and citizenship registry books, determination of nationality of displaced persons and internally displaced persons, in the countries of origin of these persons as well as in the receiving countries.²⁷

In 2011, the governments of Montenegro and Kosovo signed the Agreement on Subsequent Registration of Internally Displaced Persons from Kosovo Residing in Montenegro in the birth and citizenship registry books of the Republic of Kosovo²⁸ for the purpose of establishing cooperation in resolving status issues of

27 12.09.2011. Minutes of the Third Meeting of the Regional Technical Working Group for simplifying procedures for obtaining documents
 28 "The Official Gazette of Montenegro – International Treaties", No. 5 from 30. April 2013

birth cannot be determined even in this manner, it shall be considered that the place of birth is the one where the person was found, or where the person has had residence at the moment of submission of the proposal for determining the time and place of birth.²⁰ It is also important to say that the proposer is legally exempted from paying fees, while expertise costs go at the expense of the court.²¹ The law does not set deadlines within which the court shall be obliged to issue a decision.

Activities of the state to prevent and reduce statelessness

Upon the reception in the United Nations,²² Montenegro has accepted, according to the rules of succession in relation to international agreements, obligations of a set of UN conventions which were concluded by 3 June 2006 and to which the state union of Serbia and Montenegro acceded²³, including the *1954 Convention of the Status of Stateless Persons*. The instrument of ratification was deposited on 23 October, 2006. On 5 December 2013, by depositing the instrument of accession, Montenegro became 58th contracting state which acceded to the *1961 UN Convention on the Reduction of Stateless Persons*. Membership in the Council of Europe²⁴ contributed to the signing of two more important regional documents on statelessness: *the 1997 European on Nationality*²⁵ and the *2006 Convention on the Avoidance of Statelessness in Relation to State Succession*.²⁶

20 Article 70d

21 Article 70f

22 The UN General Assembly adopted a resolution on the admission of Montenegro in the Organization on 28 June 2006
 23 The Decision on the Proclamation of Independence of Montenegro ("The Official Gazette of Montenegro", No. 36/06)
 24 On 11 May 2007, Montenegro admitted to full membership of the Council of Europe
 25 "The Official Gazette of Montenegro – International Treaties", No. 2/10
 26 "The Official Gazette of Montenegro – International Treaties", No. 2/10

of the time and place of birth for those persons who were not registered in the birth registry book, and who are not able to prove the time and place of their own birth in the manner that is provided by regulations governing the management of civil registry books, is regulated by the Law on Non-Contentious Procedure.¹⁶ It is envisaged that the mentioned procedure shall be initiated by the proposal of a person on whose behalf the time and place of birth shall be determined, as well as by the proposal of anyone who has direct legal interest for it. Guardianship authority, as well as other persons who are otherwise authorised to register the birth, may find themselves in the role of a proposer according to the law governing the management of civil registry books.¹⁷ The law also envisages which data shall be contained in the proposal itself.¹⁸ After reception of the proposal, the court shall verify within 30 days whether the person has been registered in the birth registry book by sending an order to the Ministry of Interior to investigate the records and submit a written reply to the court. In evidentiary procedure, the court must hear at least two adult witnesses. Decision determining the time and place of the birth contains, except for information about a person, information about his/her parents as well, if they are known.¹⁹ On the basis of a final decision of non-contentious department of the court, a proposer shall be enabled to register in the birth registry book. If, even after all presented evidence, the court is unable to determine with certainty the time of birth, it shall be considered that the person was born on 1 January at 00:01 in the year for which is probably determined to be his/her year of birth. If, however, the court is unable to determine the place of birth, then the place which is probably the place of his/her birth shall be taken on the basis of all presented evidence. In the event that the place of

16 ("The Official Gazette of Montenegro", No. 27/06 from 27.04.2006, 20/15 from 24.04.2015)

17 Article 70a para. 2
18 Article 70a para. 3
19 Article 70c

and the residence in Montenegro, phone number and signature of the applicant.¹⁴ Evidence, or facts pertaining to personal circumstances of the applicant, which are relevant for determination of statelessness, have not been defined by the mentioned regulations. As it is not determined by the Law whether a travel document could be extended, i.e. whether a new one could be issued, this leaves the possibility of different treatment in practice. So far, three travel documents have been issued to stateless persons, with a validity period of one year, while the procedure is still pending in the case of four persons. One person has been issued a new travel document¹⁵ after the old one expired. Although the Ministry also prescribed application form for issuance and a form of the travel document for a stateless person, the MUI Branch Offices are not able to receive applications for the issuance of travel documents because their database technically prevents recording of such application. Apart from the lack of a specific procedure, established by law, for determination of statelessness, there is also the lack of a specific body within state administrative structures that particularly deals with stateless persons.

The Law on Non-Contentious Procedure

One of the identified potential causes of statelessness is the lack of registered fact of birth registration in the registry of births, primarily of persons born outside health institutions (at home), as well as of those born in health institutions. The problem is mainly linked to Roma population. The procedure of determination

¹⁴ Regulation on the format and content of the form of a special identification document, the form of a travel certificate for foreigners, form and more detailed procedure for issuing travel documents for stateless persons ("The Official Gazette of Montenegro", No. 22/2015 from 04.05.2015, entered into force on 12.05.2015)

¹⁵ Date of publication 12.11.2015. Source: The Ministry of Interior and Public Administration of Montenegro

The Law on Foreigners of Montenegro

In December 2014, the Parliament of Montenegro adopted a new Law on Foreigners,¹² as the first law providing definition of a stateless person. According to article 2 of the Law: "A stateless person is a foreigner who is not considered as a national of any state under the operation of its law." The law also recognizes one exception pertaining to stateless persons (article 4, para 2), according to which "the provisions of ratified and published international treaties and generally recognized regulations of international law are applied to stateless persons, if it seems more favorable for them." The law provides for a possibility of issuance of the travel document for a stateless person.¹³ The travel document is issued by the Ministry of Interior, with a validity period of one year. No travel document shall be issued to a foreign person if: he/she is engaged in a criminal or misdemeanour proceeding; he/she was sentenced to a prison or fine, until such sentence is served or fine settled; he/she failed to satisfy his or her real property or civil obligation following a valid decision issued by the competent court; if so required due to the reasons of national security, public order or public health; if so required by international commitments of Montenegro. An application for the issuance of travel document for a stateless person shall be submitted by a foreigner personally. Application form for the issuance of a travel document contains: the name of the body to which application shall be submitted; the date of the submission and the number of application, as well as the number of application in a form of bar code record, information about the applicant (unique identification number, gender, surname, name, birth surname, date and place of birth, country of birth); information about father and mother of the applicant

¹² The Law on Foreigners ("The Official Gazette of Montenegro", No. 56/14 from 24.12.2014)

¹³ Article 118 of the Law on Foreigners

territory of Montenegro, admittance, and international treaties and agreements.⁹ More detailed conditions for the acquisition of Montenegrin nationality by some of these grounds are largely reflected by the provisions of Article 6 of the European Convention on Nationality with the aim to prevent cases of statelessness, particularly among children. Article 14 of the Law on Montenegrin nationality provides for alleviated (privileged) manner of the acquisition of Montenegrin nationality by admittance for a stateless person, so that conditions regarding provided accommodation, steady source of income and knowledge of a language in official use do not have to be met. Although the law prescribes the possibility of acquiring Montenegrin nationality for a stateless person, the right could be hardly exercised by a stateless person in practice. The problem is residence permit, or obligation of a stateless person to legally reside in Montenegro 10 years before the submission of a request. Residence permit is, therefore, a necessary condition for admission into Montenegrin nationality. Legal residence is only held by a person who has habitual residence, permanent residence, has been recognized as a refugee, or has been granted the status of a displaced person from the republics of former Yugoslavia¹⁰ on the territory of Montenegro. The law does not contain legal definition of a stateless person, does not define it or give meaning of it, in accordance with article 1 of the 1954 Convention of the Status of Stateless Persons.¹¹

⁹ Article 4 of the Law on Montenegrin Nationality

¹⁰ The decision on the criteria for determining conditions for acquiring Montenegrin citizenship by admission ("The Official Gazette of Montenegro", No. 47/08)

¹¹ Expression "stateless person" in terms of this Convention means a person who is not considered as a national by any state under the operation of its law."

and military obligations in cases of multiple nationality, as well as State succession and nationality. Therefore, the Convention represents a synthesis of legal norms on nationality and national and international right to a nationality.⁷ Montenegro was admitted to full membership of the Council of Europe on 11 May 2011, and the Convention was ratified on 2 March 2010, emphasizing reserves to article 16 of the Convention.

The 2006 Convention on the Avoidance of Statelessness in Relation to State Succession treats state succession as a main source of cases of statelessness and regulates and defines a series of issues produced by the succession to the right of a nationality. According to the Convention, principles of non-discrimination, prohibition of arbitrary deprivation of nationality, rule of law and the right of every person to a nationality are basic principles that must be respected in order to avoid statelessness. The states' duty is to facilitate acquisition of its nationality to persons who have lawful and habitual residence on its territory but who, due to state succession, become apatriotes.

National Legal Framework for Statelessness

The Law on Montenegrin Nationality

The Law on Montenegrin Nationality shall regulate the manner of and conditions for acquiring, losing, and re-acquiring Montenegrin nationality.⁸ Montenegrin nationality shall be acquired by origin, birth in the

7 Nationality in Contemporary Europe – Vida Cok, page 36

8 The Law on Montenegrin Nationality ("The Official Gazette of Montenegro", No. 13/08 from 26.02.2008)

The most important international agreement which represents the basis of protection of stateless persons is the **1954 Convention relating to the Status of Stateless Persons**. Regularization of legal status and improvement of the position of stateless persons are its basic aims and objectives. The provisions of the Convention define basic principles for the treatment of stateless persons and determine their minimum rights and obligations in the Contracting States.

The 1961 Convention on the Reduction of Statelessness contains a number of provisions aimed at reducing the number of stateless persons, including the obligation of the Contracting States to implement these standards through national legislation. The right of states to express reservations at the time of signing, ratification or accession is limited only with regard to articles 11, 14 or 15 of the Convention.⁵ The Convention shall provide the establishment of a body within the framework of the United Nations, to which a person, in case that Contracting State violates rights guaranteed by the convention, may apply for the examination of his claim and for assistance in presenting it to the appropriate authority:⁶

The 1997 European Convention on Nationality is a regional instrument of the Council of Europe. Achieving greater unity among the members of the Council of Europe is one of the basic objectives for which the Convention was adopted. Equalization of rights to nationality, that is provisions on the acquisition and loss of nationality among members, is only the way to achieve the mentioned aim. The Convention brings a number of significant innovations in the way of regularization of issues concerning multiple nationality

⁵ Article 17 of the 1961 Convention on the Reduction of Statelessness
⁶ Art. 11 of the 1961 Convention on the Reduction of Statelessness

Instruments of international law related to statelessness

Through its previous work, Legal Center encountered persons who were facing serious barriers in exercising their rights due to problems related to determination, i.e. establishment of citizenship status, all as a result of disintegration of SFRY and changes in legislation in this area. The problem is particularly acute among displaced persons, among whom there are persons at particular "risk" of statelessness due to the lack of evidence of nationality. Non-possession of effective nationality, identification documents, residence permits, giving birth outside health facilities is, for a significant number of Roma (both displaced and domicile), a direct cause of inability to prove their nationality.

The exclusive right of a state to regulate the area of nationality with its internal regulations has been significantly limited by the rules of international agreements and activities of the United Nations and the Council of Europe. Responsibility to regulate and protect the status and rights of stateless persons stems from a series of important international documents. Montenegro has acceded to key universal and regional documents relating to stateless persons, as follows:

- The 1954 Convention relating to the Status of Stateless Persons
- The 1961 Convention on the Reduction of Statelessness
- The 1997 European Convention on Nationality
- The 2006 Convention on the Avoidance of Statelessness in Relation to State Succession.

STATELESSNESS IN MONTENEGRO

Through Legal Center's Experience and Practice

Introduction

"Everyone has the right to a nationality."

Affiliation of an individual to a particular state is expressed and proved by nationality. Nationality is a legally recognized relationship between a person and a state². The manner and degree of exercising numerous rights, such as the right to work, social protection, residence, property, and other rights is conditioned by and dependent on the possession of nationality. Each country, by virtue of its own internal law, shall decide which relationship is appropriate for a person to be considered its national.³ Persons who do not possess nationality and are not able to prove a legal connection with a state are usually called apatrides. The term "stateless person" signifies a person who is not considered a national of any state under the operation of its law.⁴

1 *Art.15* The Universal Declaration of Human Rights

2 In art. 1 para. 1 of the Law on Montenegrin Nationality, nationality is defined as "a legal connection between a natural person and Montenegro and does not indicate a national or ethnic origin"

3 Art. 3 para. 1 of the European Convention on Nationality (1997)

4 Art.1 para. 1 of the Convention relating to the Status of Stateless Persons (1954)

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STATELESSNESS IN MONTENEGRO

Through Legal Center's Experience and Practice

Legal Center is a non-governmental organization founded with the aim of providing free legal aid, counseling, and representation before courts and other administrative bodies to displaced persons from Kosovo and refugees from Bosnia and Herzegovina and Croatia, asylum seekers, persons at risk of statelessness and other marginalized categories in order to ensure their rights in the country of their origin and to provide them with assistance during their integration in Montenegro.

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THROUGH
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STATELESSNESS IN MONTENEGRO



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