



UNHCR OBSERVATIONS ON THE AMENDMENTS TO THE LAW ON FOREIGNERS OF MONTENEGRO:

“STATELESSNESS DETERMINATION PROCEDURE”

Part 1. Introduction

1. The United Nations High Commissioner for Refugees (UNHCR) Representation in Montenegro is grateful to the Government of Montenegro for the invitation to provide observations on the draft amendments to the Law on Foreigners¹ in Montenegro.
2. UNHCR offers these observations in its capacity as the Agency entrusted by the United Nations General Assembly with a global mandate to provide protection to stateless persons worldwide and to engage in prevention and reduction of statelessness.² The General Assembly has specifically requested UNHCR “to provide technical and advisory services pertaining to the preparation and implementation of nationality legislation to interested States”.³ It has also entrusted UNHCR with the specific role foreseen in Article 11 of the *1961 Convention on the Reduction of Statelessness* (1961 Convention).⁴
3. UNHCR’s Executive Committee has further requested UNHCR to undertake “targeted activities to support the identification, prevention and reduction of statelessness and to further the protection of stateless persons”.⁵ The Executive Committee also requests the Office “to provide technical advice to States Parties on the implementation of the 1954 Convention so as to ensure consistent implementation of its provisions”. UNHCR thus has a direct interest in national legislation that is impacting on the prevention and reduction of statelessness and protection of stateless persons, including implementation of the *1954 Convention relating to the Status of Stateless Persons* (1954 Convention).⁶

¹ Available at: <https://www.refworld.org/cgi-bin/texis/vtx/rwmain?docid=5c2f72804>

² UN General Assembly, Office of the United Nations High Commissioner for Refugees: resolution / adopted by the General Assembly, 9 February 1996, A/RES/50/152, available at: <http://www.unhcr.org/refworld/docid/3b00f31d24.html>. Reiterated in subsequent resolutions, inter alia, UN General Assembly Resolution A/RES/61/137 of 25 January 2007, available at: <https://www.refworld.org/docid/45fa902d2.html>, UN General Assembly Resolution A/RES/62/124 of 24 January 2008, available at: <https://www.refworld.org/docid/47b2fa642.html> and UN General Assembly Resolution A/RES/63/148 of 27 January 2009, available at: <https://www.refworld.org/docid/52fb51bb4.html>

³ UN General Assembly Resolution A/RES/50/152, para. 15.

⁴ UN General Assembly, Convention on the Reduction of Statelessness, 30 August 1961, United Nations, Treaty Series, vol. 989, available at: <http://www.refworld.org/docid/3ae6b39620.html>, p. 175. Article 11 of the 1961 Convention provides for the creation of a “body to which a person claiming the benefit of this Convention may apply for the examination of his claim and for assistance in presenting it to the appropriate authority.”

⁵ UNHCR’s Executive Committee in its Conclusion on Identification, Prevention and Reduction of Statelessness and Protection of Stateless Persons No. 106 (LVII), 6 October 2006, paras. (a), (i) and (j). See, UNHCR, Conclusions on International Protection Adopted by the Executive Committee of the UNHCR Programme 1975 – 2017 (Conclusion No. 1 – 114), October 2017, HCR/IP/3/Eng/REV. 2017, available at: <https://www.refworld.org/docid/5a2ead6b4.html>.

⁶ UN General Assembly, Convention Relating to the Status of Stateless Persons, 28 September 1954, United Nations, Treaty Series, vol. 360, available at: <http://www.refworld.org/docid/3ae6b3840.html>, p. 117.

4. UNHCR's supervisory responsibility is exercised in part by the issuance of interpretative guidelines on the meaning of provisions and terms contained in international instruments concerning statelessness, in particular the 1954 and the 1961 Statelessness Conventions. Such guidelines are included, among others, in the UNHCR Handbook on Protection of Stateless Persons (UNHCR Handbook)⁷, which serves as the basis for these observations.

Part 2. General Observations

5. The objective of these observations is to strengthen the provisions relating to the protection of stateless persons in the 2018 Law on Foreigners in Montenegro whereby identification and determination of status is a key step. The following observations also serve to ensure full compliance with Montenegro's international obligations under the UN Statelessness Conventions,⁸ other international legal instruments Montenegro has acceded to, including the *2006 Convention on the Avoidance of Statelessness in relation to State Succession* and the *1997 European Convention on Nationality*,⁹ and international standards related to the protection of stateless persons. The *2007 Constitution of Montenegro* stipulates that generally accepted rules of international law shall have supremacy over national legislation and shall apply directly, regardless of national legislation that regulates otherwise. The standards set out in the 1954 Convention are therefore directly applicable in Montenegrin law.
6. The *2021-2025 Strategy on Migration and Reintegration of Returnees in Montenegro* foresees strengthening of the statelessness determination procedure (SDP), established in 2018, through amendments to the 2018 Law on Foreigners, with support of the UNHCR. UNHCR welcomes this opportunity and would like to express its gratitude for Montenegro's efforts to address statelessness over the past years. The aim of these amendments is to address the main challenges identified during three years of implementation of the SDP in Montenegro and to strengthen access to rights for applicants of statelessness status during the procedure and upon formal recognition as stateless. If adopted and successfully implemented, these amendments are expected to enable Montenegro to fully incorporate international standards on statelessness in its national legislation and grant stateless persons the rights to which they are entitled in line with the 1954 Convention.
7. UNHCR welcomes the measures taken by the Government of Montenegro to improve its SDP, thus ensuring better protection of stateless persons and persons at risk of statelessness.
8. The following section outlines specific observations in relation to access to the procedures, procedural guarantees, as well as rights and obligations of applicants during and upon recognition of statelessness status.

⁷ UNHCR, Handbook on Protection of Stateless Persons, 30 June 2014, available at: <https://www.refworld.org/docid/53b676aa4.html>.

⁸ Montenegro succeeded to all UN treaties ratified by its predecessor, including the 1954 Convention Relating to the Status of Stateless Persons, in June 2006, and acceded to the 1961 Convention on the Reduction of Statelessness in December 2013.

⁹ Montenegro signed the *2006 Convention on the Avoidance of Statelessness in relation to State Succession* and the *1997 European Convention on Nationality* (with reservation on Article 16) in 2007.

Part 3. Specific Observations

9. After analysing the current SDP in Montenegro, as defined by the 2018 *Law on Foreigners*, UNHCR proposes the following amendments to the Law's Chapter on *Establishing the status and issuing of travel document to a stateless person*, currently consisting of Article 59.

Access to the procedures

10. For procedures to be fair and efficient and in line with UNHCR's guidance contained in the Handbook, everyone in the territory must have access to SDP, regardless of legal status, (irregular) entry and legality and duration of stay in the territory. There is no basis in the 1954 Convention to impose time-limits for application or lawful residence in the country in order to access procedures.¹⁰ Such a requirement is particularly inequitable given that lack of nationality denies many stateless persons the documentation that is necessary to enter or reside in any State lawfully.
11. UNHCR welcomes that unlimited access to the SDP, regardless of legal status, entry and duration of stay, is already guaranteed by the SDP in Montenegro, as foreseen by the 2018 *Law on Foreigners*. It is important that the same principle is maintained in the amended SDP.
12. Given that individuals are sometimes unaware of the existence of SDPs or hesitant to apply for statelessness status, UNHCR recommends the possibility for State authorities to initiate the procedure, as foreseen in **proposed new Article 59, Paragraph 3**, cited below. Furthermore, targeted information campaigns and dissemination of information on eligibility criteria in different languages would help ensure transparency and accessibility of the procedures.¹¹
13. In light of the above, UNHCR proposes reformulating of **Article 59** as follows:

Article 59 – Filing of application

The application for establishing whether the applicant is a stateless person shall be filed to the Ministry of the Interior (hereinafter: the Ministry) verbally or in writing, in person or through a legal representative, in the place of habitual residence of an applicant, on the prescribed form. A certificate will be issued to the applicant confirming that s/he is a stateless applicant and hence has the right to lawful stay in Montenegro, until the final decision in the procedure has been made.

Initiation of the statelessness determination procedure is free of charge.

The statelessness determination procedure referred to in paragraph 1 of this Article may be initiated *ex officio* when the Ministry has knowledge of facts, data or information that may indicate possible statelessness.

Upon submission of an application, the Ministry shall inform the individual of their rights and duties as an applicant for recognition of statelessness status.

The application form and the certificate referred to in paragraph 1 of this Article, shall be prescribed by the Ministry.

¹⁰ See *Handbook on Protection of Stateless Persons*, op. cit., pp.69-70.

¹¹ *Ibid.* p.68.

14. Further to the above-mentioned amendments to Article 59 of the *Law on Foreigners*, UNHCR proposes adding additional articles to the *Law on Foreigners* in order to further strengthen the SDP and to ensure that due process guarantees are integrated into national law.

Procedural guarantees

15. UNHCR reiterates the importance of applying the national *Law on General Administrative Procedure*, in order to ensure that a lack of knowledge of Montenegrin language or illiteracy of a party and other participants in the procedure is not to the prejudice of rights they are statutorily entitled to. UNHCR notes that the Ministry provides asylum seekers who do not speak Montenegrin language with free interpretation and translation assistance throughout the asylum procedure and recommends the Ministry to adopt this good practice for applicants of statelessness status in line with paragraphs 71 and 73 of UNHCR Handbook and as **proposed in new Article 59a**.

16. Furthermore, UNHCR considers the individual right to an interview, accompanied by interpretation where needed, as a fundamental procedural safeguard to ensure that applicants have the opportunity to present their cases fully and to provide and clarify information that is material to the claim. This right is stipulated by the national *Law on General Administrative Procedure* and recommended practice in line with paragraphs 71 and 73 of UNHCR Handbook, as foreseen in **proposed new Article 59b**. An interview may not be required where there is already sufficient evidence that an individual is stateless and is not admissible to any other country.

17. The applicant is expected to fully cooperate with the authorities and has a duty to be truthful, provide as full an account of his or her position as possible and submit all information and evidence reasonably available linked to his/her statelessness. This is foreseen in **proposed new Article 59c**.

18. Given the nature of statelessness, applicants for statelessness status are often unable to substantiate the claim with much, if any, documentary evidence.¹² Therefore, recommendation is made to decision-making authorities, in line with UNHCR guidance, to consider all available evidence, oral and written, regarding an individual's claim. A non-exhaustive list of types of evidence that is pertinent to applications for statelessness status can be found in paragraphs 83 to 86 of the UNHCR Handbook.

19. Information provided by foreign authorities is sometimes of central importance to statelessness determination procedures, although it will not be necessary if there is otherwise adequate proof. In this regard, the decision-making authority must be aware of the important distinction between applicants for statelessness status and those who also have an asylum claim (stateless asylum-seekers). Whereas in the case of stateless applicants (who have not submitted a claim for international protection), the decision-making authorities may reach out to authorities of the applicant's country(ies) of origin and/or former habitual residence, contact must not be made with authorities of a State against which the individual alleges a well-founded fear of persecution.¹³

20. Furthermore, UNHCR recommends the burden of proof to be shared between the applicant and the State.¹⁴ This means that both the applicant and the decision-making authority share the responsibility of proving the applicant's statelessness by making efforts to establish whether the applicant is

¹² See *Handbook on Protection of Stateless Persons*, op. cit., pp.87-94.

¹³ See *Handbook on Protection of Stateless Persons*, op. cit., pp.94-99.

¹⁴ See *Handbook on Protection of Stateless Persons*, op. cit., pp.89-90.

considered as a national of any country. This procedural guarantee which is already provided to asylum-seekers in Montenegro should equally be adopted in statelessness determination procedures.

21. The standard of proof necessary to determine statelessness must take into consideration the difficulties inherent in proving statelessness, particularly in light of the consequences of incorrectly rejecting an application. In statelessness determination procedures, UNHCR recommends the same standard of proof as required in refugee status determination, namely, a finding of statelessness would be warranted where it is established to a “reasonable degree” that an individual is not considered as a national by any State under the operation of its law,¹⁵ as foreseen in **proposed new Article 59d**.
22. Children have the right to seek determination of statelessness status regardless of their age or whether they are accompanied, unaccompanied or separated. In order for children to understand the procedures and their options in the decision-making process, child-friendly information should be provided. The best interests of the child’s principle should be applied throughout the SDP, taking into account the child’s views, including decisions such as whether to interview the child, to have a support person present during an interview; to prioritise the processing of the child’s claim; or to share their personal data. Detailed information on child-friendly procedures can be found in UNHCR Guidelines on International Protection relating to child asylum claims.¹⁶ UNHCR notes that the Ministry provides the same level of procedural guarantee to a minor asylum-seeker throughout the asylum procedure and recommends the Ministry to adopt this good practice for the amended SDP as reflected in **proposed new Article 59e**.
23. In light of the above, UNHCR proposes introducing the following **new Articles 59a to 59e**

Article 59a – Language in the procedure

The statelessness determination procedure shall be conducted in Montenegrin language. When an applicant does not understand the Montenegrin language, the Ministry shall provide them with the services of a qualified interpreter, free of charge.

A person seeking determination of statelessness is obliged to submit a certified translation of a document written in a foreign language.

In case a person seeking determination of statelessness status does not dispose of the necessary financial means, the translation of the documents referred to in paragraph 3 of this Article shall be provided by the Ministry, if based on available information, it is determined that the document is relevant for the examination of the application for statelessness status.

Article 59b – Interview

Applicants for determination of statelessness status shall be interviewed prior to the adjudication of their application.

Upon application, the Ministry shall, as soon as feasible, but not later than 30 days, allow the person seeking determination of statelessness to be heard in person regarding all the facts and circumstances relevant to the statelessness determination procedure.

The interview may be omitted if:

¹⁵ See *Handbook on Protection of Stateless Persons*, op. cit., pp.89-93.

¹⁶ UNHCR Guidelines on International Protection No 8 on Child Asylum Claims under Articles 1(A)2 and 1(F) of the 1951 Convention and/or 1967 Protocol (2009).

- 1) the decision to grant statelessness status can be taken based on the evidence submitted by the person seeking determination of statelessness.
- 2) the person seeking determination of statelessness is not capable or able to be interviewed in person.

Article 59c – Duty of cooperation

A person seeking recognition of statelessness status has a duty to cooperate with the Ministry, to present as full an account of his/her position as possible, and to submit all evidence which he/she has at his/her disposal and can be reasonably expected to obtain.

Article 59d – Burden and standard of proof

The applicant and the Ministry will share the burden of proof and collaborate to obtain all relevant evidence.

The Ministry shall consider all relevant evidence, including testimonial evidence provided by the applicant, to establish to a reasonable degree that that the applicant is not considered a national by any State under the operation of its law.

Article 59e – Applications by minors

Minors, irrespective of their age or of them being unaccompanied or separated from their families have the right to submit an application in their own right. An application for statelessness determination may also be lodged by the minor's legal representative or appointed guardian on his/her behalf.

When an application for statelessness status is filed by a minor, the Ministry shall appoint a legal representative.

The Ministry shall give primary consideration to the best interests of the minor and shall ensure their participation and right to be heard in all stages of the procedure and in the decisions concerning them, whilst taking their age and maturity into consideration.

Rights and obligations of the applicant during the procedure

24. Applicants for recognition of statelessness status are entitled to a set of basic rights and carry obligations as stipulated in the 1954 Convention. Per UNHCR's guidance, an individual awaiting a decision is entitled, at a minimum, to all rights based on jurisdiction or presence in the territory as well as "lawfully in" rights as described in the 1954 Convention. Thus, status must guarantee, *inter alia*, the right to legally reside during the procedure, identity papers, the right to self-employment, freedom of movement and protection against removal/expulsion, as foreseen in **proposed Article 59f** detailing rights and duties of the applicant. As the aforementioned Convention rights are formulated almost identically to those in the 1951 Refugee Convention, it is recommended that individuals awaiting a determination of statelessness status receive the same standards of treatment as asylum-seekers whose claims are being considered. The status of those awaiting the determination must also reflect applicable human rights such as protection against arbitrary detention and assistance to meet basic needs. Allowing individuals awaiting the statelessness determination to engage in wage-earning employment, even on a limited basis, may reduce the pressure on State resources and contributes to the dignity and self-sufficiency of the individuals concerned.¹⁷

¹⁷ *Ibid.* pp.145-146.

25. Further to UNHCR's mandate, it is crucial to give an applicant effective access to UNHCR throughout the procedure and vice versa, as suggested in **proposed Article 59g**. This good practice is also foreseen in paragraph 71 of UNHCR Handbook.¹⁸

26. In light of the above, UNHCR proposes introducing the following **new Articles 59f and 59g**:

Article 59f – Rights and obligations of the applicant

During the examination of an application for determination of statelessness, an applicant has a right to:

- 1) legal residence in Montenegro until the final decision has been reached;
- 2) freedom of movement;
- 3) health care;
- 4) primary and secondary education;
- 5) the information necessary for a stay, legal advice on application proceedings and legal aid;
- 6) work;
- 7) identity documents in accordance with this Law;
- 8) family unity;
- 9) access to UNHCR.

During the procedure for determination of statelessness, the applicant must uphold the Constitution of Montenegro, its laws and regulations, as well as any measures adopted for the maintenance of public order.

The applicant has the obligation to respond to the Ministry's invitation for a personal interview and to remain on the territory of Montenegro throughout the procedure, unless allowed by the Ministry on exceptional grounds.

The applicant must notify the Ministry of a change in contact details within three days of the change.

Article 59g – Access to UNHCR

The United Nations High Commissioner for Refugees (UNHCR) shall have effective access to the applicant before, during and after the procedure.

The representative of UNHCR may take part in any stage of statelessness determination procedure upon consent of the applicant. In particular, UNHCR representative:

- 1) may be present at the applicant's interview; and
- 2) may gain access to the documents/files of the procedure and may make copies thereof.

Deciding on the merits of the application

27. UNHCR welcomes that the Ministry applies the benefit of the doubt to asylum-seekers throughout the asylum procedure and recommends that the Ministry applies the same standard to the statelessness determination procedure. The benefit of the doubt standard is particularly important in situations when a person who initiated SDP is unable to substantiate his/her statement with documents due to

¹⁸ See *Handbook on Protection of Stateless Persons*, op. cit., pp.71

the very condition of his/her statelessness and despite genuine efforts to obtain necessary documents. As outlined in relation to proposed new Article 59c above, decision-making authorities should consider all available evidence, oral and written, regarding an individual's claim when deciding on the merits of an application.¹⁹ The decision-making authorities should make a distinction between applicants who show no interest in genuinely cooperating or providing supporting information and those who may be unable to submit much evidence or information because, for example, they do not have the resources or knowledge to obtain information about the laws of a given State. Enquiries with the authorities of countries with whom the applicant has relevant ties, including by birth, filiation, marriage, or former habitual residence, and which disclose the applicant's personal details must be initiated with the written consent of the applicant.

28. When an applicant raises both a refugee and a statelessness claim (stateless asylum-seekers), it is important that authorities must not establish contact with authorities of the country against which the applicant alleges a well-founded fear of persecution, unless it has definitively been concluded that he/she is not a refugee or entitled to subsidiary/temporary protection as a refugee.²⁰ It is nevertheless relevant, that both types of status are recognised. This is because protection under the 1951 Convention generally gives rise to a greater set of rights at the national level than that under the 1954 Convention. In addition, there may be instances where refugee status ceases without the person having acquired a nationality, necessitating then international protection as a stateless person.
29. UNHCR is aware of varied state practices for conducting both refugee status and statelessness determination procedures simultaneously, often depending on the governance structure and context of statelessness in a given country. Where refugee status and statelessness determinations are conducted in separate procedures and a determination of statelessness can be made without contacting the authorities of the country of origin, both procedures may proceed in parallel. However, to maximize efficiency, where findings of fact from one procedure can be used in the other, it may be appropriate to first conduct interviews and to gather and assess country information for the refugee determination procedure. Nonetheless, the applicant must be able to re-activate a suspended statelessness claim, in case (1) the refugee claim fails; (2) refugee status is recognised but subsequently ceases; (3) refugee status is cancelled because the inclusion criteria of Article 1A(2) of the 1951 Convention were not met; or (4) if additional evidence emerges supporting that an individual is stateless.
30. UNHCR understands that the assessment of evidence in statelessness determination procedures may be complex. However, the precarious situation of an applicant requires clear and reasonable deadlines for resolution of the SDP application. Therefore, UNHCR proposes, in line with the standard set out in paragraph 75 of UNHCR Handbook, that decisions be made within six months from the day of lodging the application, unless exceptional circumstances necessitate an extension of up to 12 months for enquiries regarding the individual's nationality status with another country. The Ministry shall inform the applicant about the decision in writing, providing due explanation on the grounds on which the decision was made, and in case of refusal additional information on the possibilities of appeal. This is reflected in **proposed Article 59j**.
31. As per judicial standards, applicants for statelessness status have an effective right to appeal a negative first instance decision by an independent body on both points of fact and law, as set out in **proposed Article 59k**.

¹⁹ See *Handbook on Protection of Stateless Persons*, op. cit., pp.87-94.

²⁰ See *Handbook on Protection of Stateless Persons*, op. cit., pp.96.

32. In light of the above, UNHCR proposes introducing the following **new Articles 59h to 59k**:

Article 59h – Assessment of evidence

The Ministry shall consider all available evidence to establish whether the applicant is a national of any State under the operation of its law. The Ministry shall, if necessary, seek the assistance of foreign authorities of countries with whom the applicant has relevant ties through birth, filiation, marriage, or former habitual residence. The Ministry shall thereby consider how competent authorities construe and apply their nationality law as relevant to the applicant's case.

Notwithstanding Paragraph 1 of this Article, the Ministry shall not establish contact with authorities of a country against which an applicant alleges a well-founded fear of persecution, unless it has definitively been concluded that (s)he is not a refugee or entitled to subsidiary/temporary protection as a refugee.

Article 59i – Coordination with other procedures

If a refugee claim appears to exist during the procedure, the statelessness determination shall be suspended with the consent of the applicant, and the case file shall be transferred to the Ministry's directorate in charge for the refugee status determination procedure, within 3 days.

If the refugee claim is denied with finality, cancelled, or subsequently ceases to exist, the statelessness determination shall recommence automatically.

Article 59j – Decisions

The Ministry shall decide on the application for determination of statelessness within six months from the day of lodging the application.

The deadline referred to in para 1 of this Article may exceptionally be extended for additional six months, if the application for determination of statelessness involves identifying complex factual circumstances or clarifying a complex legal matter under Article 59h of this Law.

Where it is reasonable to expect that a decision cannot be made within the period referred to in paragraph 1 of this Article, the person seeking determination of statelessness shall be notified thereof in writing and, upon his/her request, (s)he shall be informed of the reasons for which it is not possible to take the decision within this timeframe and the deadline within which a decision can be expected.

Article 59k – Right to appeal

Applicants have the right to appeal a decision on granting of statelessness status within 30 days of written notification of the decision.

The lodging of appeals or administrative or judicial reviews shall suspend the execution of any decision concerning expulsion of the applicant.

Rights and obligations of recognized stateless persons

33. With the exception of the more favourable treatment provided by the international treaties on human rights to which Montenegro is a party, by the Constitution or by its national laws, stateless persons

shall enjoy all the rights recognised in the 1954 Convention Relating to the Status of Stateless Persons.

34. UNHCR recommends that an individual granted statelessness status is entitled, at a minimum, to all rights based on jurisdiction or presence in the territory as well as “lawfully in” rights as described in the 1954 Convention. Thus, his or her status should guarantee, *inter alia*, the right to reside in Montenegro, to work independently or as employees, access to healthcare services, education and other social services provided by the State, identity and travel documents, freedom of movement and protection against expulsion and removal, as well as access to facilitated naturalization. As the aforementioned Convention rights are formulated almost identically to those in the 1951 Convention, it is recommended that individuals granted statelessness status receive the same standards of treatment as refugees.
35. Although the 1954 Convention is silent on the granting of residency rights to stateless persons, granting such permission fulfils the object and purpose of the treaty and is reflected in the practice of States with determination procedures. Without a right to remain, the individual is at risk of continuing insecurity and prevented from enjoying the rights guaranteed by the 1954 Convention and international human rights law. UNHCR therefore recommends that States grant persons recognised as stateless a residence permit valid for at least two years, although permits for a longer duration, such as five years, are preferable in the interests of stability. Such permits are to be renewable, providing the possibility of facilitated naturalization as prescribed by Article 32 of the 1954 Convention and reflected in **proposed Articles 59m and 59o**.²¹
36. In light of the above, UNHCR proposes introducing the following **new Articles 59l to 59o**:

Article 59l – Rights and obligations of recognized stateless persons

A stateless person has the right to:

- 1) Residence in Montenegro, in line with Article 59m of this Law
- 2) Work
- 3) Health care
- 4) Education
- 5) Free legal aid
- 6) Social care
- 7) Property
- 8) Identity and travel documents, in line with Article 59 m and 59n of this Law
- 9) Naturalization, in line with Article 59o of this Law

A stateless person shall be entitled to the rights referred to in Paragraph 1 of this article in accordance with the laws regulating the manner of exercising these rights.

A stateless person must:

- 1) observe the Constitution and the laws and regulations of Montenegro;
- 2) report his/her residence address within 15 days from receiving the decision granting international protection as a stateless person.

²¹ See *Handbook on Protection of Stateless Persons*, op. cit., pp.147-148.

Article 59m – Residence permit

If a positive decision is rendered on granting the status of stateless person, the decision should indicate issuance of a ‘residence permit’ to the applicant.

The residence permit referred to in paragraph 1 of this Article is an identity document which proves that the individual has been granted the status of stateless person in Montenegro and is entitled to lawful residence in the country.

The residence permit referred to in paragraph 1 of this Article shall be valid for three years, renewable.

The residence permit referred to in paragraph 1 of this Article shall be prescribed by the Ministry.

Article 59n – Travel documents

A person granted statelessness status shall be issued a travel document for the purpose of travel outside the territory, on his/her request.

The travel document referred to in paragraph 1 of this Article shall be valid three years, renewable.

The travel document referred to in paragraph 1 of this Article shall be prescribed by the Ministry.

Article 59o– Naturalization

The Ministry shall, as far as possible, facilitate the naturalization of recognized stateless persons.

The Ministry shall in particular make every effort to expedite naturalization proceedings and to reduce as far as possible the charges and costs of such proceedings.

Expulsion and termination of status

37. Regarding conditions for expulsion of stateless persons, UNHCR proposes to apply the conditions set out in Article 31 of the 1954 Convention, which are mirrored in proposed new Article 59p. The **proposed new Articles 59q to 59s** on cessation, revocation, and cancellation of statelessness status follow the standards of the 1954 Convention and UNHCR guidance, which are similar to those for terminating refugee status.
38. In light of the above, UNHCR proposes introducing the following **new Articles 59p to 59s**:

Article 59p – Expulsion

The Ministry shall not expel a stateless person lawfully in the territory of Montenegro save on grounds of national security or public order.

The expulsion of such a stateless person shall be only in pursuance of a decision reached in accordance with due process of law. Except where compelling reasons of national security otherwise require, the stateless person shall be allowed to submit evidence to clear

herself/himself, and to appeal to and be represented for the purpose before competent authority or a person or persons specially designated by the competent authority.

The Ministry shall allow such a stateless person a reasonable period within which to seek legal admission into another country.

Article 59q - Cessation

The status of stateless person shall be ceased, if a person:

- 1) Acquires the nationality of Montenegro, or
- 2) Acquires the nationality of another country in accordance with its laws.

Article 59r – Revocation

The Ministry shall revoke the status of statelessness of a person when there are serious reasons to believe that, after its granting:

- a) They have committed a crime against peace, a war crime, or a crime against humanity, as defined in the international instruments drawn up to make provisions in respect of such crimes;
- b) They have been guilty of acts contrary to the purposes and principles of the United Nations.

The Ministry shall issue a written decision in writing notifying the individual in cases referred to in paragraph 1 of this Article. The individual has a right to appeal the decision.

Article 59s – Cancellation

The status of stateless person shall be cancelled if it is determined that a person has been granted this status even though he/she did not meet the criteria at the time of determination, provided the grant of such a status was due to misrepresentation or concealment by the applicant of facts which were essential to the decision-making and would have led to the rejection of said status had they been known about at the time.

The Ministry shall issue a decision in writing notifying the applicant in cases referred to in paragraph 1 of this Article. The individual has a right to appeal the decision.

39. Based on the above proposed amendments, UNHCR recommends that Article 60 of the Law on Foreigners is deleted and invites Montenegro to consider adopting the new Articles suggested herein.

40. UNHCR hopes that the Ministry of the Interior will give due consideration to this set of recommendations. UNHCR is available to provide the necessary technical support and expertise in order to ensure that this important legislative initiative leads to further strengthening the protection of stateless persons in Montenegro, in line with international law standards.

**UNHCR Representation in Montenegro
10 February 2022**