

## EUDO CITIZENSHIP OBSERVATORY

### *NATURALISATION PROCEDURES FOR IMMIGRANTS SERBIA*

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# Naturalisation Procedures for Immigrants

## Serbia

### Milena Tripković

This report draws together information relevant to the process of ordinary naturalization (i.e. residence-based acquisition of citizenship) in Serbia. The report provides details on the rules and procedures that were in force at the end of 2011 (and which continue to be in force in 2012), and focuses on five central issues: promotion, documentation, discretion, bureaucracy, and review. Since the procedure for acquisition of Serbian citizenship is centralized and carried out by the national rather than regional or local administration, the report will present a full summary of relevant procedures.

#### 1. Promotion

In terms of the activities undertaken by the Serbian Government to promote this specific method of acquisition of Serbian citizenship, it must be noted that no such campaigns were run or funded in the relevant period (10 years).<sup>1</sup> Two facts may help explain why this is the case. On the one hand, this channel of acquisition of Serbian citizenship was not as sought after as some other methods that were intended for people with specific links to Serbia (Serbian origin, ethnic affiliation, refugees from former Yugoslav republics and so on). Since other modes were used more frequently and since Serbia needed to resolve situations pertaining to such persons, the process of ordinary naturalization was not given much attention. On the other hand, the process itself (as will be explained shortly) is not very demanding for the applicant and the list of conditions that the applicant needs to satisfy is rather short. Therefore, the government did not have too much reason to promote this mode of acquisition simply because it is very lenient and there is hardly anything else that the government could have done to promote it.

Accordingly, there are no specific services intended to help the applicants or inform them about regulations and procedures. However, information on the conditions for acquisition of Serbian citizenship are widely available, both in physical and online form. The applicant can find the information either in a police station (police stations are branches of the Serbian Ministry of Interior) or consult a website of the Serbian Ministry of Interior (information is only available in Serbian).<sup>2</sup> Additionally, since the application can be submitted in diplomatic and consular missions of Serbia abroad, the information is also provided by Serbian embassies and consulates. As far as the process of submitting the application form is concerned, this can be done either (1) at a police station or (2) in the diplomatic/consular mission of Serbia abroad. The application form cannot be downloaded from the website or submitted electronically, but can only be obtained and submitted at one of the two mentioned places.

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<sup>1</sup> Various sources were consulted to establish whether such campaigns were present in this period, including governmental and non-governmental organizations, written and electronic media. No mention of any campaign to promote ordinary naturalization was found.

<sup>2</sup> [www.mup.gov.rs](http://www.mup.gov.rs)

Since neither the knowledge of language nor passing the citizenship/integration tests are the conditions for obtaining Serbian citizenship, there are no resources or services provided for this purpose. When submitting the application, a fee must be paid but there is no fee for the issuing of nationality title. The application fee is the only cost that is incurred during the application process. Currently, this fee is RSD 15,280 (around €130). In comparison, application for the national ID card costs RSD 913 (around €8), while the passport application is RSD 2000 (around €18) so the citizenship application costs are considerably higher. There are no grounds for exemption from the application fee. Furthermore, there are no citizenship ceremonies attached to acquisition of Serbian citizenship.

## 2. Documentation

The documents to be submitted are clearly stated in the relevant legislation - Law on Citizenship of the Republic of Serbia.<sup>3</sup> The documents need to be submitted only once, upon submission of the application. The following must be submitted:

- **filled in application form**
- **birth certificate** (from applicant's country of origin/third country)
- **certificate of other citizenship** (from applicant's country of origin/third country)
- **marriage certificate (if any)**
- **photocopy of a document containing a photo** (passport/ID)
- **signed statement that the applicant considers Serbia as his/her state** (from Serbia)<sup>4</sup>
- **proof of paid administrative tax**
- **certified copy of permanent residence permit in Serbia** (from Serbia)
- **certified copy of Serbian ID for foreigners** (from Serbia)
- **certificate/guarantee of a foreign authority that the applicant has been released from foreign citizenship/will be released once he/she acquires citizenship of Serbia** (from applicant's country of origin)

As can be seen, many documents need to be submitted, both of Serbian and foreign origin. The only two documents which serve to prove identity are a birth certificate and a photocopy of a document containing a photo (passport/ID). Although the first document will typically come from the applicant's country of origin, the second one may be either a foreign or a domestic document (e.g. a foreign passport or a domestic ID card). Therefore, the documents to be submitted in order to prove identity will be both foreign and domestic. The law does not state any exemptions from these requirements - the applicant has to submit all required documents when filing the application. The authority which receives the application has no discretion in deciding whether the documents should be accepted - if the application is complete, the authority has to accept it and if not, the application will be rejected. It is doubtful how much discretion the application receiving authority has - if it is a Serbian document, there is no discretion if the document is valid, and in general, the same goes for foreign documents. Since foreign documents do not need to be certified or translated, it is up to the application receiving authority to establish whether a foreign document being submitted is authentic. There are

<sup>3</sup> The Law was brought in in 2004 and supplemented and amended in 2007 after the dissolution of the State Union of Serbia and Montenegro. The changes made in 2007 are not relevant for the process of ordinary naturalization and concern other modes of acquisition.

<sup>4</sup> The contents of this form are regulated by the Regulation on the Form of the Written Statement that the Republic of Serbia is Considered One's State. This very simple form reads: 'Hereby I (*applicant's name, surname, DOB, etc.*) declare that I consider Serbia as my state'.

no guidelines which could help the application receiving authority to decide whether the documents are authentic, so the decision must be made on a case-by-case basis.

Regarding the residence requirement, the applicant needs to submit two documents: (1) a certified copy of the permanent residence permit in Serbia and (2) a certified copy of Serbian ID for foreigners. It is not necessary to submit older IDs or residence permits since the current document will show how long the applicant has resided in Serbia.

No documents regarding language knowledge, integration assessment, economic resources and criminal record need to be submitted since none of these are conditions for obtaining Serbian citizenship. As far as the document proving renunciation requirement is concerned, the Law requires the applicant to submit a certificate/guarantee of a foreign authority that he/she has been released from foreign citizenship or will be released once he/she acquires the citizenship of Serbia. However, the law allows for an exemption from this requirement on both humanitarian and accessibility grounds. Exemption shall be granted in any of the following cases: (1) if the applicant is a stateless person, (2) if the applicant provides proof that, in accordance with foreign law, he/she will lose foreign citizenship once he/she acquires new citizenship, (3) if the foreign state does not allow renunciation or sets conditions which the applicant cannot fulfill or (4) if renunciation 'is not possible' or cannot be 'reasonably expected'. In all of these cases, the applicant must provide documents or statements that prove his or her claim.

## **2. Discretion**

Since the process of acquisition of Serbian citizenship through this mode is non-automatic and since the Law states that the applicant 'can be admitted into citizenship' (the exact translation of the Serbian term for this mode of acquisition) this is clearly a discretionary process and there is no entitlement to the citizenship title. The Law states that the relevant authority may decline to issue the citizenship title even if all conditions are met in the case that there are 'reasons of interest' for Serbia due to which the application should be rejected. Thus, the authority has full discretion rather than discretion on specific elements or in specific cases. The only case that is explicitly mentioned in the Law is the rejection of application in the case of fraud - however, this case would not fall under the rubric 'discretion' since it would be considered that the applicant does not fulfill the conditions (because he does not possess valid and authentic documents).

Before refusing the application, the authority is not obliged to take consideration of any personal or other circumstances - no such obligation is stated in the Law. After submitting the application, the applicant will typically find out about the decision of the authority once it has been made. The applicant has no right (nor obligation) to appear before the deciding authority and cannot inquire about the progress of his/her application. Applicants are not heard by the deciding authority during the procedure. The residence requirement is satisfied by the possession of permanent residence of at least three years in Serbia which is proven by the residence permit and Serbian ID for foreigners.

Since there are no alternative ways to prove identity and no requirements regarding language knowledge, integration/country knowledge and economic resources, there is no discretion in deciding on these issues. As far as the renunciation requirement is concerned, there is discretion in the cases mentioned above; however, there are no guidelines on how to interpret such circumstances so discretionary powers are substantial.

### 3. Bureaucracy

There is one central authority which acts in the process of citizenship acquisition - the ministry with the authority over internal affairs (in the current government, the relevant body is the Ministry of Interior of the Republic of Serbia). This ministry, via local police stations, collects applications and checks that all documentation is correct. The only exception from this rule is the situation when the application is submitted abroad, since in this case, the application is submitted through the ministry with the authority over external affairs (currently, this is the Ministry of Foreign Affairs of the Republic of Serbia). However, since this ministry, upon collecting the application transfers the documents to Serbia and hands them to the Ministry of Interior, the procedure continues as usual. The Ministry of Interior also makes the final decision on the application. The relevant authority will typically check the documents only once before taking the final decision, since the process is one-step and does not include multiple authorities. An applicant becomes a Serbian citizen on the day when the written decision accepting his/her application is delivered to them.

Since it is the obligation of the applicant to submit all the necessary documents, the deciding authority will not typically require any additional documents before deciding on the application. However, should there be any need to double-check the documents or obtain additional information, the Ministry of Interior can access the relevant data directly, since all the domestic documents that need to be submitted are issued by the Ministry (certified copy of permanent residence permit in Serbia and certified copy of Serbian ID for foreigners). Therefore, the Ministry of Interior has direct access to all the domestically issued documents since it is the Ministry that issues them.

As the main authority for deciding on naturalization is the Ministry of Interior, a civil servant will be the one making a particular decision. The expertise of such a civil servant will most commonly be general (i.e. internal affairs) - yet, the application will be decided by someone who works on citizenship issues on a more permanent basis. The decision is taken at the national level, by a centralized authority while the decisions are also reviewed at the national level. As far as the length of procedure is concerned, there are no strict regulations regarding the maximum length. The Law only states that the procedure is 'urgent'; however this sort of norm is not accompanied by a sanction and therefore does not have much effect. The deciding authority is virtually unconstrained when it comes to the time after which the decision will be made, and the applicant does not possess any means to challenge this.

### 4. Review

If the citizenship application is rejected, the applicant does not have a right of appeal before a higher administrative organ. Still, the applicant enjoys a specific type of legal remedy in the form of judicial protection before the Administrative Court of Serbia. This sort of protection stems from a general rule that all final decisions of administrative organs can be challenged.<sup>5</sup> Therefore, should the citizenship application be rejected, the applicant can start the proceeding before the Administrative Court since the act of rejection presents a final decision of public administration. The Administrative Court is a

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<sup>5</sup> The relevant legislative act which regulates these proceedings is the Law on Administrative Disputes.

national-level judicial body which can decide in the final instance. The decision made by the Administrative Court is legally binding and cannot be challenged before a higher judicial body.

The procedure can focus of both substantive and procedural aspects. For instance, the Court may be asked to establish that the rules of procedure have not been respected as well as to determine that the facts of the case have not been established properly. The Court can reach two types of decision: (1) to reject the appeal and (2) to accept the appeal. In the second case, the decision of the administrative body to reject the citizenship application is annulled and the administrative organ is obliged to make a new decision. The Administrative Court can never award the citizenship title, but can only refer the decision back to the administrative body (the Ministry).

The procedure before the Administrative court must be launched within 30 days from the day when the decision was delivered to the applicant. This time limit is preclusive and thus the applicant cannot file the appeal if the time limit has been surpassed.

Since integration and language tests are not conditions for obtaining Serbian citizenship, there are no rules regarding the possibility to challenge them. The Law does not contain an explicit anti-discrimination norm in naturalization procedure, but general prohibition of discrimination from the Constitution applies to citizenship acquisition procedure and falls within the remit of the Ombudsman's competence. Thus, the applicants are protected from discrimination through the general system of protection.

## **5. Conclusion**

Even though ordinary naturalization as a mode of citizenship acquisition has not been promoted much by the Serbian government, the process of submitting an application is quite transparent and simple. The application can be submitted both in Serbia and abroad. There is a long list of documents that need to accompany the application, which include documents issued by Serbian authorities and those issued in the applicant's country of origin (or a third country). Required documents are clearly enumerated and there is no discretion in deciding whether to accept them.

Although the list of documents that need to be submitted is extensive, the list of conditions that the applicant needs to satisfy is rather short. Apart from the condition that the applicant must have uninterrupted legal residence in Serbia of at least three years, there are no other conditions (knowledge of language or passing integration tests, criminal record, economic resources and so on). Yet, the decision whether to grant the citizenship title is discretionary. The Law contains a vague provision which allows the deciding authority to reject the application even if all conditions are met if there are 'reasons of interest' for Serbia due to which the application should be rejected.

The deciding authority on citizenship acquisition is one and centralized. The same authority (Ministry of Interior) accepts the application, checks that all documents are correct and decides on the application. The process is one-step and the final decision cannot be appealed; instead, a judicial process can be launched.



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## Useful websites (governmental agencies and NGOs)

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2. Ministry of Foreign Affairs (Ministarstvo spoljnih poslova), The list of Serbian Embassies and Consulates abroad, <http://www.mfa.gov.rs/sr/index.php/diplomatsko-konzularna-predstavnistva/diplomatske-misije/misije?lang=cyr> (accessed on December 23, 2012)
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