



**REPUBLIC OF SERBIA
PROTECTOR OF CITIZENS**

21-6/12
Belgrade



Заштитник грађана
Zaštitnik građana

Ref. No. 1920 Date: 26/01/ 2012

GOVERNMENT OF THE REPUBLIC OF SERBIA

- Prime Minister Mirko Cvetković, PhD-

BELGRADE
11 Nemanjina Street

Dear Mr. Cvetković,

Judging on the basis of procedures initiated upon citizen complaints, the notifications received from the citizens' associations Praxis and the Center for Advanced Legal Studies, the information obtained in collaboration with the UN High Commissioner for Refugees about the need for amending the laws, regulations and general acts relevant to the fulfillment and protection of citizens' rights, in accordance with Article 18, paragraph 2 of the Law on the Protector of Citizens (*Official Gazette of RS*, Nos 79/2005 and 54/2007), I hereby submit the following

INITIATIVE

FOR AMENDING THE LAW ON NON-CONTENTIOUS PROCEDURE

The Law on Non-Contentious Procedure should be amended to allow the citizens, who cannot, for objective reasons, meet the requirements for civil registration stipulated in the provisions of the Law on Registry Books (absence of evidence or impossibility of proving personal data before an administrative body), to prove their status before court in a non-contentious procedure, that is - to enable the court to determine the facts necessary for their civil registration. The reasons are following:

A certain number of people living in the Republic of Serbia have never been registered in birth registry books or the birth registry books with their records have been destroyed or missing, and therefore they do not possess documents or other evidence that could be used for resolving their status. These persons are "legally invisible" and therefore prevented from exercising their civil and other rights. They are usually of Roma ethnicity. According to the report of the United Nations High Commissioner for Refugees, which was published under the title *Persons at Risk of Statelessness in Serbia* in June 2011, 1.5% of Roma, Ashkali and Egyptians have not been registered in birth registry books. Taking into account the estimate, cited by the Government of the Republic of Serbia in the European Commission's Questionnaire, according to which some 450,000 Roma live in Serbia, the research findings indicate that there are around 6,750 "legally invisible" persons in Serbia.

The provisions of the Law on Registry Books and corresponding by-laws stipulate that in order to be registered into birth registry books, the submitter of request has to provide evidence to confirm certain facts regarding his/her birth and identity, such as the facts about the place, day, month and year of birth, information about the parents and the like, which "legally invisible" persons of Roma ethnicity are often unable to provide. The entry of data about the parents is mandatory and it is performed on the basis of relevant documents (birth certificate, citizenship certificate, identity card) and with the obligatory participation of both parents in the process, or at least the mother. However, in reality, there are a large number of Roma families whose members have not possessed documents for generations and who live on the margins of society and in the state of social exclusion, and consequently do not have even the basic data required for registration into civil registry books.

Since the legislation does not regulate effectively the way of registering into birth registry books the adults who do not possess necessary documents and data, whose parents are unknown or unreachable, they are forced to initiate different types of procedures that last for years and have an uncertain outcome. Their requests for subsequent registration are often rejected or the procedures are suspended, and the submitters of request are instructed to initiate a civil procedure to establish maternity and paternity. While participating in civil procedures, these individuals again encounter numerous obstacles - the courts request from the parties to submit evidence for establishing their personal name and identity, which in these cases the parties are unable to provide; the courts decline their subject-matter jurisdiction, and in situations when they do act upon the parties' request, the courts often order the presentation of evidence through a DNA analysis, which is an insurmountable requirement for these persons in terms of expenses. The explanations of passed decisions show that the attitude of courts in this matter is extremely uneven, and that these procedures are not the solution, but only an ineffective attempt to compensate for the shortcomings of the current legislation regarding the subsequent registration in birth registry books.

The "legally invisible" persons who have not succeeded in being registered in birth registry books in an administrative procedure or by filing a claim for establishing maternity and paternity in a civil procedure, tried to fulfill their right to legal personality in a non-contentious procedure, by submitting a petition for establishing the fact of birth. On the other hand, the rules of non-contentious procedure do not contain any specific legal provisions on the basis of which they could resolve their legal status. The explanations of decisions passed by courts in non-contentious cases most often reveal the viewpoint that a subsequent registration may be performed only on the basis of decision issued by an administrative body responsible for administering relevant registry books. Nevertheless, it is important to stress that the non-contentious procedure is suitable by its nature for solving the cases of individuals who are not recognised as persons before the law, taking into consideration the subject matter, rules and nature of this procedure.

For the aforementioned reasons, a great number of people have lived for years without the possibility of being registered in birth registry books, and consequently without the possibility of realising their human and civil rights. The state has a duty to ensure full legal security, effective judicial protection and equal treatment in practice for those persons who are not able to prove their identity, by creating a simpler and more efficient procedure for solving the problem of subsequent registration into birth registry books.

The organisations and experts with experience in this area, primarily Praxis and the Center for Advanced Legal Studies, in cooperation with the Protector of Citizens' Secretariat, have prepared a draft text of amendments to the Law, which I enclose to this Initiative for the purpose of efficiency. I believe that the aim of this Initiative would be reached by accepting this text, after appropriate legal and technical editing in the Government or the competent ministry:

The Law on Non-Contentious Procedure is amended (Official Gazette of SRS, Nos 25/82 and 48/88 and Official Gazette of RS, No. 46/95 – state law and 18/2005 – state law) by adding:

2A DRAWING UP A DOCUMENT ON THE FACT OF BIRTH

Article 174a

A person who is not registered in birth registry books within 3 months of submitting the request for subsequent registration to the administration body responsible for administering registry books shall acquire the right to be registered in birth registry books in accordance with the provisions of this Law.

Article 174b

(1) The procedure shall be instigated ex officio, by a petition of the persons referred to in Article 174a, other person with a direct legal interest, guardianship authority, or body or organisation dealing with the protection of human rights.

(2) Notwithstanding the petition referred to in paragraph 1 of this Article, the body referred to in Article 174a shall submit the initiative for instigating the procedure.

(3) Upon the petition or initiative referred to in paragraphs 1 and 2 of this Article, the court shall act even in cases where the name and surname of the person who is not registered into birth registry books cannot be proved.

Article 174v

(1) The petition referred to in Article 174b shall contain the facts about the date and place of birth, sex, name by which the person is called, as well as other decisive facts known to the petitioner.

(2) The petition referred to in paragraph 1 shall contain also the data about the witnesses that should be heard, and it may contain other evidence known to the petitioner.

(3) The evidence on elapsed period of time referred to in Article 174a shall be submitted along with the petition.

Article 174g

(1) A document that confirms the fact of birth shall be drawn up on the basis of statements given by the persons referred to in Article 174a and the statements of two adult witnesses whose identity has been established on the basis of public documents.

(2) In the procedure referred to in paragraph 1 of this Article, the court may also present other available evidence.

(3) The document may be drawn up also outside of the courthouse under the conditions referred to in Article 166 of this Law.

Article 174d

(1) In cases where it is not possible to establish the date and hour of birth of the person who is not registered in birth registry books, it shall be considered that such person was born at 00.00 hours on 1 January of probable year of his/her birth.

(2) In cases where it is not possible to establish the place of birth of the person referred to in paragraph 1 of this Article, it shall be considered that such person was born at the seat of municipality or town in whose territory he/she was probably born or in whose territory he/she was found.

Article 174đ

(1) *The decision on drawing up a document that confirms the fact of birth shall be issued in the form of ruling, within 30 days of the date of submitting a petition.*

(2) *The document on the fact of birth shall contain the name and surname of the person referred to in Article 174a of this Law, place, date and hour of birth, and if known and established in this procedure, in the way determined in Article 174g of this Law, or otherwise in accordance with law, also the name and surname of the parents and their place and date of birth.*

(3) *The fact of registering data about the parents of the persons referred to in Article 174a of this Law shall not preclude the challenging of their parental status.*

(4) *The appeal against the ruling referred to in paragraph 1 of this Article may be filed within 8 days of the date of delivering a copy of the ruling, and the court shall decide upon appeal within 90 days of being filed.*

Article 174e

(1) *The final ruling referred to in Article 174d shall be delivered within 8 days to the administration body responsible for administering registry books.*

(2) *The competent body referred to in paragraph 1 of this Article shall perform the subsequent registration of the fact of birth into birth registry books within 3 days of receiving the ruling.*

Article 174ž

The procedure for drawing up a document that confirms the fact of birth shall be free of any fees or charges.

Article 174z

The provisions of Article 71, 167-169 and 174 of this Law shall apply on the procedure for drawing up a document that confirms the fact of birth.

Article 174i

The procedure for drawing up a document that confirms the fact of birth shall be exclusively within the competence of courts and shall not be transferred to the competence of notary public.

PROTECTOR OF CITIZENS

Saša Janković

Sent also to:

- Ministry of Justice, Minister Snežana Malović
- Praxis
- Center for Advanced Legal Studies