

**Review of the remaining obstacles
in exercise of the right to birth registration,
acquisition of citizenship and permanent residence
registration**



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Contents

Introduction	3
1. REGISTRATION IN THE BIRTH REGISTRY BOOK	3
1.1. Birth registration of every child immediately after birth has not been ensured.....	3
1.2. Problems in the court procedures for determination of date and place of birth.....	4
1.3. Problems in the procedures for determination of personal name	4
1.4. Registration of children born abroad in the birth registry book	5
1.5. Re-registration procedure.....	5
2. ACQUISITION OF CITIZENSHIP	6
3. REGISTRATION OF PERMANENT RESIDENCE AND ISSUANCE OF ID CARD	6
4. OTHER PROBLEMS	7
4.1. Free legal aid	7
4.2. Verification of power of attorney	8
4.3. Obtaining evidence <i>ex officio</i>	8
CONCLUSION	8
Recommendations	8

Introduction

Persons at risk of statelessness in Serbia have been facing great, sometimes insurmountable obstacles in exercising the rights to birth registration and acquisition of citizenship for years.

However, approximately six to seven years ago, significant changes occurred which enabled a great number of these persons to regulate their status issues. This progress was made primarily owing to the adoption of laws which provided for late birth registration and registration of permanent residence for persons who had not been able to access these rights for years. Besides, competent ministries issued instructions to competent bodies referring to adequate implementation of regulations, which contributed to harmonising the practice and removing certain irregularities in the work of these bodies. Furthermore, a series of trainings for officers working in the institutions dealing with procedures for exercise of the rights to birth registration, acquisition of citizenship and registration of permanent residence were organized.

Yet, despite unquestionable and significant progress that was achieved as a result of the above-mentioned measures, there are still obstacles that jeopardize the exercise of status rights, resulting in hindered access to other rights the exercise of which is conditioned on possession of personal documents.

The most important problem is undoubtedly the fact that the regulations still prevent birth registration immediately after birth of children whose mothers do not possess personal documents, resulting in new cases of legally invisible persons. There are also other problems which may significantly hinder access to rights, even though, unlike the previously mentioned problem, they do not present a systemic obstacle. These are mainly caused by irregularities in the work of competent bodies.

In previous years, Praxis published reports¹ in which the obstacles hindering the exercise of rights to birth registration, acquisition of citizenship and permanent residence registration were analysed in detail, and where we presented examples of irregularities in the work of competent bodies. Since most problems described in these reports reoccurred in 2018, this report will only provide a short overview of the remaining obstacles and the manner in which these could be overcome, while the reports from previous years provide a more profound insight into the problems.

1. REGISTRATION IN THE BIRTH REGISTRY BOOK

1.1. Birth registration of every child immediately after birth has not been ensured

The systemic obstacle jeopardizing the exercise of the right to timely birth registration has not been removed this year either. The provisions of two bylaws that prevent birth registration immediately after birth of children whose mothers do not possess personal documents are still in force. For this reason, Serbia is still facing a situation in which newborn children are not registered in the birth registry book immediately after birth and are, hence, deprived of or have hindered access to numerous rights, including the rights to health care and social protection.

¹ Reports are available at: <https://www.praxis.org.rs/index.php/sr/reports-documents/praxis-reports>.

1.2. Problems in the court procedures for determination of date and place of birth

Non-contentious court procedure for determination of date and place of birth was introduced into the Serbian legal system in 2012 and is intended for persons who cannot prove the date and place of their birth through an administrative procedure. Thanks to this procedure, a significant number of persons managed to register in the birth registry book, but certain problems in conducting these procedures have been recurring for years.

- Long-lasting procedures. Even though the Law on Non-Contentious Procedure prescribes that the first hearing must be held within 30 days and that the procedure must be completed within 90 days from submitting the motion, most courts exceed these deadlines, sometimes significantly.
- Charging court fees. Year after year, some courts continue to request the applicants to pay the court fees, even though the Law has exempted them from paying any costs of the procedure, and regardless of the fact that we have drawn attention of these courts to this many times. In 2018, some Praxis' beneficiaries have even been faced with enforcement procedure for forcibly charging court fees initiated against them.
- Conducting a separate procedure for each family member. Most courts refuse to conduct procedures in which the date and place birth of more family members would be determined (e.g. for mother and her child or for brothers and sisters). Such practice makes it more difficult to present evidence, increases the costs and length of procedures, and sometimes even results in different decisions brought in the procedures in which the facts and legal grounds are the same.
- Evidentiary hearing. Even though the Law only prescribes that, in the evidentiary hearing, two adult witnesses should be heard, the courts sometimes insisted on hearing the members of immediate family (even though it was impossible or difficult), while, in other cases, they proceeded in a completely opposite manner and would not accept the mother as a witness. In some cases, the courts requested that the parties enclose written evidence which they did not possess, including those pieces of evidence for which it is prescribed that the court should obtain them *ex officio*.
- Procedures for persons (who were) registered in birth registry books in Kosovo. Some courts refused motions submitted by persons who had been registered in the registry books which became unavailable after the 1999 Kosovo conflict or the persons who are registered in registry books in Kosovo (but not in the registry books administered by the bodies of the Republic of Serbia), even though these persons did not have a possibility to register in the birth registry in any other way.
- Mistakes in issued decisions. The courts often fail to include all necessary data in the decisions or they enter wrong data, so it is necessary to request correction of the decisions, which additional extends the length of the procedures.
- Delayed delivery of decisions. In many cases, it takes courts unreasonably long time to deliver a final decision to the registry office for registering birth. It is not rare that several months pass until courts deliver decisions to registrars, while there were also cases when it took more than a year for delivery of a decision.

1.3. Problems in the procedures for determination of personal name

These procedures are initiated for children who were born in hospital, but whose parents had not determined their personal name within 30 days from birth. In almost all cases, child's name had not been determined because the mother did not possess personal documents.

- Impossibility of conducting the procedure when mother does not possess documents. Despite the fact that it is prescribed that everyone shall have the right to personal name, immediately after birth, and the fact that the competent ministry issued an instruction to the social welfare centres (SWC) that the procedure for determination of personal name must be

conducted even in situations when the mother does not possess personal documents, some social welfare centres refused to conduct procedures in such cases.

- Non/proceeding of registry offices. Not implementing decisions of SWCs – Some registry offices refuse to implement final decisions of social welfare centres on determination of personal name in cases when the mother does not possess documents. *Incorrect entry of data about the mother* – In case when a woman gives birth but does not possess personal documents at the time, her data are registered in the birth registry book only on the basis of a verbal statement, which often results in the incorrect entry of data. In such situations, registry offices sometimes refused to conduct the procedure for correction of data about the mother, and for entry of the personal name of the child, and the mother was referred to conduct a court procedure for challenging maternity.

1.4. Registration of children born abroad in the birth registry book

In these procedures, most problems are not related to incorrect proceeding of competent bodies, but to difficulties in obtaining necessary evidence.

- Obtaining documents from abroad. When returning to Serbia, a great number of parents do not bring child's birth certificate (issued on international form), which is almost always needed for registering the child in the Serbian birth registry books. In such situations, it is possible to obtain documents from abroad via the Ministry of Foreign Affairs (MFA), but it often lasts very long and represents high cost for many.

- Correction and amendments of data abroad. It frequently happens that women, when giving birth abroad, do not show their passport to competent bodies there. For this reason, data entered in the registry books are often incorrect or the registration is incomplete, so it is necessary to conduct procedures for correction or amendments of data abroad. These procedures may also be initiated via the MFA, but they last very long and are very expensive, since it is necessary to pay the fees for many pieces of evidence.

- Translation of documents. Registry offices frequently request the parties to provide the translation of the birth certificate issued on international form, translated by a court interpreter, which is another significant cost for beneficiaries.

- Mothers without personal documents. As in other above-mentioned procedures, registry offices occasionally refuse to register birth if the mothers do not possess documents.

- Recognition of paternity. In some cases, the registrars conditioned birth registration of the child with parents giving a statement on recognition of paternity and consent with recognition of paternity, despite the fact that the birth certificate on international form from abroad already contained data on both parents.

1.5. Re-registration procedure

Even though 20 years have passed since the registry books for some municipalities in Kosovo became unavailable to the authorities of the Republic of Serbia, the State has not fulfilled its obligation and has not completely reconstructed unavailable registry books. Therefore, the citizens for whom re-registration procedure has not been conducted so far must initiate and conduct this procedure on their own. The greatest problem in these procedures is the fact that the State bodies only accept birth and citizenship certificates issued before 1999 as evidence that they were once registered, or potentially the data from the records of the Ministry of Interior. Since the majority of those who have not been able to re-register in the registry books so far do not possess these pieces of evidence, the only solution for them to exercise the right to birth registration/citizenship is through the procedures for determination of date and place of birth and/or determination of citizenship.

2. ACQUISITION OF CITIZENSHIP

All afore-mentioned problems that refer to registration in the birth registry book at the same time represent an obstacle to acquisition of citizenship, since without birth registration it is not possible to exercise the right to citizenship. Besides, most frequent direct problems that occurred in relation to the exercise of the right to citizenship are as follows:

- Lengthy procedures before the Ministry of Interior (Mol). The deadlines for issuance of decisions in the procedures for determination of citizenship and naturalization are always exceeded, often multiple times. Thus, the procedures for determination of citizenship last for three to four months at best, while the naturalization procedures are almost never completed in less than a year.

- Acquisition of citizenship by birth on the territory of the Republic of Serbia. In cases of children who were born in Serbia and whose parents are stateless, or are unknown or of unknown citizenship or they cannot pass their citizenship to their children, these children should automatically acquire Serbian citizenship on the basis of birth on the territory of Serbia, and the registrars should enter the citizenship in the birth registry book. However, the registrars do not act in this manner and do not check whether the conditions for acquiring citizenship by birth have been met, which poses a risk for the children not having their citizenship recognized. Besides, practice of the Mol shows that the possibility of acquiring citizenship by birth on the territory of Serbia only refers to children under 18, which is contrary to the 1961 Convention on the Reduction of Statelessness.

- Acquisition of citizenship by descent. In the situations when the child is registered in the birth registry and the mother does not possess documents (e.g. after the completed procedure for determination of date and place of birth), so the child cannot acquire citizenship on the basis of mother's citizenship (because she does not have it), the child cannot acquire citizenship on the basis of father's citizenship either, since the mother who does not possess ID card cannot give her consent to the recognition of paternity. In such cases, social welfare centres should appoint a guardian who would give consent on behalf of the mother, but in practice this almost never happens.

- Entry of data on citizenship after the procedure for determination of date and place of birth. When entering the data from the decision on determination of date and place of birth in the birth registry, some registry offices fail to enter the data on citizenship, even though the legal conditions for acquisition of citizenship have been met.

3. REGISTRATION OF PERMANENT RESIDENCE AND ISSUANCE OF ID CARD

- Avoiding jurisdiction. In a great number of police station, the parties, who wish to register permanent residence and obtain ID card for the first time, are being referred to submit the request and register permanent residence in the police station in their place of birth, even though these persons have not been living in their place of birth for years or decades, and do not have any intention to return there, and regardless of the fact that they do not have real estate in these places at the address of which they could register permanent residence. The parties who do not have citizen's unique personal number and those whose data cannot be found in the police records have also been referred to the police stations in their place of birth to request determination of the citizen's unique personal number and entry of the data in the system, instead of it being done *ex officio*.

- Registering permanent residence at the address of a spouse and parents. The Law on Permanent and Temporary Residence of Citizens prescribes that the persons who do not have legal basis of housing may register permanent residence at the address of their habitual residence, at the address of their spouse, parents or social welfare centre. Even though the registration of permanent residence at the address of a spouse or parents would be the most appropriate, as a rule, the competent bodies do not take this option into consideration.

- Registration of residence at the address of a social welfare centre. A great number of citizens who have been living for years without personal documents and in the facilities built without a building permit, which are not legalized, have managed to obtain ID card owing to the possibility of registering permanent residence at the address of a social welfare centre. However, in practice, *persons who already have permanent residence registered are denied this option*, even though they have not been living in their place of permanent residence for years or decades and have lost connection with that place (this primarily refers to internally displaced persons from Kosovo). Even though some progress was noticed in the past year in relation to this problem, and some police stations started to enable registration of permanent residence to these persons, the negative practice has recently reoccurred and the registration of permanent residence for these persons is again impossible.

In the procedure for registration of permanent residence, police station sends a form for registration of permanent residence to the social welfare centre, which is due to verify it, that is, to give its consent to registration of permanent residence. In spite of this, in some municipalities, *social welfare centres stopped giving consent to registration of permanent residence* at their address. For this reason, requests for registration of permanent residence are rejected, and citizens remain without permanent residence registered.

Irregularities have also been observed in a number of police stations in which officers *refused to receive the request and referred the parties to first address the social welfare centre*.

- Rejection of requests. In cases when police stations reject the requests for registration of permanent residence, the decisions are usually typical and do not contain a valid explanation. They usually state that the reason for rejection is the fact that the intention of the applicant to live at the address at which he/she wishes to register permanent residence has not been established, without explaining how and on what grounds such lack of intention has been established.

- Parents' consent. In cases when parents do not have permanent residence registered at the same address, and some of them does not possess documents or cannot participate in the procedure for some other reason and give consent to the registration of permanent residence, it will not be possible to register permanent residence for the child. Social welfare centres do not appoint a guardian who would give consent to the registration of permanent residence on behalf of parents in these procedures either.

- Fees. Persons who have difficulties in exercising the rights to birth registration and acquisition of citizenship and whose access to personal documents is hindered most often belong to the poorest category of citizens who do not have enough funds to pay the fees for issuance of ID card or registration of permanent residence.

4. OTHER PROBLEMS

4.1. Free legal aid

Given the lack of a law that would regulate the provision of free legal assistance, persons at risk of statelessness in Serbia have for years been relying almost exclusively on the assistance provided by a small number of non-governmental organizations, while the existing free legal aid services and social welfare centres provided assistance in a negligible number of cases. Even though the Law on Free Legal Aid was adopted at the end of 2018, and its implementation should start in October 2019, the question remains whether this Law will establish a functional and efficient free legal aid system, especially since many provisions of the Law are insufficiently clear and precise, and sometimes contradictory to the rationale for the Law that was later issued. Among other things, the possibility that non-governmental organizations provide free legal aid was called into question. Taking into consideration the complicated procedure for approving free legal aid, and expected problems related to funding of free legal aid, it is justifiable to have doubts about whether the persons at risk of

statelessness will be able to obtain adequate legal aid once the implementation of the Law begins.

4.2. Verification of power of attorney

A significant number of public notaries requested that the parties who do not possess personal documents and whose identity should be established by two witnesses when verifying power of attorney pay enormous amounts for verifying signature on the power of attorney. These amounts were often several times higher than those prescribed by public notary tariff.

4.3. Obtaining evidence *ex officio*

Even though two and a half years have passed since the beginning of implementation of the provisions of the Law on General Administrative Procedure which stipulate that the competent bodies should obtain evidence *ex officio*, there has still not been a significant improvement in this issue. A significant number of state bodies still request the parties to obtain evidence on the facts for which there are official records.

CONCLUSION

Even though many described problems do not occur before all bodies and in all individual procedures, and often occur in a small number of cases, the fact that there are so many different problems, as well as gravity of those problems, suggest that the exercise of the rights to birth registration, acquisition of citizenship and registration of residence is far from satisfactory, especially bearing in mind that there is still a systemic problem which prevents birth registration of every child immediately after birth and which, at the same time, causes new cases of legally invisible persons.

Therefore, it is necessary that competent bodies undertake necessary measures to remove the described gaps in the legal system and shortcomings in the practice of competent bodies. For that reason, this report offers the following:

Recommendations

- *Amend the bylaws that prevent birth registration of children whose parents do not possess a birth certificate or ID card, and, thus, ensure birth registration of every child immediately after birth, in accordance with international obligations;*
- *In non-contentious procedures for determination of date and place of birth, enhance effectiveness and efficiency of procedures, primarily by respecting deadlines and rules on presentation of evidence, content of the decisions and exemption from paying fees; enable equal protection of rights and ensure equal proceeding of courts in the situations in which facts and legal grounds are the same;*
- *Ensure that the procedure for determination of personal name is conducted in all cases when the personal name has not been determined, including the situations when the mother does not possess documents;*
- *Registry offices must neither condition implementation of final decisions of social welfare centres on determination of personal name by the parties presenting any pieces of evidence, nor avoid jurisdiction for correction of data incorrectly entered in the birth registry book;*

- *Registration of the fact of birth of children born abroad must not be conditioned by enclosing unnecessary pieces of evidence and burdened by repetitive establishment of facts;*
- *Lost or unavailable registry books must be reconstructed ex officio, and, in case of procedures initiated by the parties themselves, use of evidence should not be limited;*
- *Ensure that the decisions in the procedures for acquisition of citizenship are issued within the stipulated deadlines;*
- *Ensure that the provisions of the Law on Citizenship, which regulate acquisition of citizenship by birth on the territory of Serbia, are applied as prescribed, and that the citizenship may be acquired automatically and without having to conduct an additional procedure, in order to prevent occurrence of new cases of statelessness among children;*
- *Age limit for acquisition of citizenship by birth should be extended and harmonised with the 1961 Convention;*
- *Social welfare centres should appoint a guardian in cases when a child is deprived of acquisition of citizenship by descent because the mother cannot give her consent to recognition of paternity, as well as in cases when it is not possible to secure consent of one parent to the registration of permanent residence;*
- *In the procedures for registration of permanent residence and issuance of ID card, it is necessary to ensure lawful acting of police stations, including observance of regulations on jurisdiction and the obligation of obtaining evidence ex officio; it is also necessary to ensure lawful acting of social welfare centres, especially in cases of unlawful denial of consent for registration of permanent residence;*
- *Enable registration of permanent residence at the address of a social welfare centre to persons who have permanent residence registered in places in which they have not been living for years and with which they have lost all connections, and who do not have legal basis of housing in the place they live and in which they have the intention to reside permanently;*
- *Enable registration of permanent residence at the address of parents or a spouse in situations when conditions for it have been met.*
- *Exempt socially vulnerable citizens from the obligation of paying fees for registration of permanent residence and issuance of ID card.*