ANALYSIS OF THE LEGAL FRAMEWORK RELATED TO BIRTH AND CIVIL REGISTRATION IN THE CONTEXT OF PREVENTION OF STATELESSNESS

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Analysis of the legal framework related to birth and civil registration, in the context of prevention of statelessness, 2018

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AUTHOR

Prof. Borche Davitkovski, PhD.
Full-time professor at the Faculty of Law
"Iustinianus Primus", Ss. Cyril and Methodius University in Skopje

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INTRODUCTION

There is **no official data** in the country regarding the number of stateless persons, nor regarding the exact official number of persons being at risk of statelessness. Several non-governmental organizations have conducted researches which can lead to an orientation number of people being at risk of statelessness; this number is 596, concluding with April 2018. The indicators show that most of them belong to the Roma ethnicity, but also significant is the number of persons belonging to the Albanian ethnicity.

The aim of this Analysis is to provide detailed insight in the problem of statelessness in the country, especially regarding the causes for it, the legal solutions regarding stateless persons incorporated in the national legislative and the gaps in the laws, in order to offer appropriate measures and legal solutions towards decrease and prevention from statelessness in future. In order to conduct the analysis, several laws which are either directly or indirectly connected to the occurrence of statelessness in our country were examined: the Law on Register of Births, Marriages and Deaths, the Law on Foreigners, the Law on Citizenship and the Law on Family.

The legal framework in relation to the legal institute Citizenship, and the manners of acquiring one, which can be considered to be applicable to the term "statelessness" includes:

- The Law on Citizenship from1992, with its amendments from 2004, 2008 and 2011, and
- The Law on foreigners from 1992, with its amendments from 1993 and 2002.

It is necessary to state that these laws do not define what a stateless person is – only through interpretation of the term "foreigner" it can be presupposed that this term also involves the stateless persons. The Law on Citizenship, despite not defining the term "stateless person", contains a number of protective and facilitative provisions for the persons being at risk of statelessness as per the international acts and conventions which have been signed and ratified by our country.

Ground reasons for having stateless persons in the country, are:

- The redefining of Yugoslavia as a federation and the gained independence of our country in 1991, while in the country were living, and still are living, persons which have registered their permanent habitat, but did not fulfill (or did not acquire the requested documentation in order to fulfill) the remaining criteria for acquiring citizenship. These people failed to register themselves into citizenship due to lack of appropriate documentation, and today, they sadly still are recognized as stateless.
- The second reason for the occurrence of stateless persons in the country, is that they are not registered in the Register of births and personal names (Registry books). This especially includes children born in the households, as well as children whose parents do not possess valid personal documents (Birth Certificate, Marriage Certificate as well as Identity card).

An additional negative circumstance which contributes towards the said situation, besides the legal framework, **is the incorporated practice in the implementation of the laws.** Therefore, if the mother has left the child, or has died after birth, there is no manner or possibility for the child to be registered in the Register of births. In other words, the citizenship of the persons, as prescribed by the existing laws, is closely connected to the civil-law identity, since a person without a Birth Certificate is not eligible for a citizenship. These persons mostly belong to socially vulnerable groups, and for them, the requirement for conducting and delivering DNA analysis as a proof for consanguinity with the child which needs to be registered in the Register of Births, which in some cases is deemed as necessary, is an exceptionally aggravating circumstance.

The most basic conclusion would be that not possessing a Birth Certificate leads to a status of a stateless person.

Our legislation does not provide any specific procedure for determining the status of a stateless person, although the country has ratified the 1954 UN Convention Relating to the Status of Stateless Persons, which regulates this issue. On the other hand, the 1961 UN Convention on the Reduction of Statelessness has not yet been ratified by our country, which additionally contributes towards the existence of this problem. Still, the national legislation contains provisions towards protection and facilitation in enjoyment of rights for the persons being at risk of statelessness:

- Eased naturalization;
- Issuance of a travel document and
- Possibility for acquiring the citizenship for a child declared as a foundling.

EXAMPLES OF PROBLEMS WHICH ARISE DURING THE PROCEDURE OF DETERMINING THE CITIZEN STATUS OF THE CITIZENS

1. The mother of a non-registered child is not registered in the Register of Births as well.

In case of a child whose mother is a person which is also not registered in the Register of Births, neither the birth nor the personal name of the child will be inscribed until the mother receives her own Birth Certificate and identity card (the Law on Records of Births, Deaths and Marriages shall prescribe a separate administrative procedure in which the Ministry of Interior and the Ministry of Justice shall determine the identity of the persons without identity).

2. The mother of a non-registered child does not have any identity document (identity card, temporary residence permit for a foreigner)

If the mother of a non-registered child does not possess a valid identity card or is a foreigner, does not possess a temporary residence permit, she cannot initiate a procedure for additional registration of her child; the father, on the other hand, even when possessing his own identity card, cannot file the request for additional registration without the mother.

This problem is specifically high in cases where the mother is homeless, and there is no address which she can give as her residence in order to receive identity card; if the mother is a minor, since as per law she is not entitled yet to an identity card or if she lives in an unlawful construction (which especially is a case with these persons, being at social risk and living in improvised homes).

There was a suggestion that these persons, either homeless or living in improvised households, were able to register residence and to receive identity card at the address of the Centre for Social Work in their municipality, but this was left as a suggestion, since the law regulating these issues needs to be amended so that such solution can be applicable (Law on determining permanent or temporary residence).

3. The mother is deceased or has abandoned her child and is unavailable

In these cases, the father of the child was unable to register neither the birth nor the personal name of the child without the presence of the mother. If the child was born at home, and DNA analysis is required to confirm the blood relative status, the registrars insist that the DNA analysis is performed with a brother or a sister of the non-registered child, which have already been registered and possess personal documents, instead of comparing it to the father's DNA.

What would be a good solution (in practice) is that these children are registered in the Registry of Births by appointing temporary custodian by the Centre for Social Work, with a mandate to conduct the procedure for registration, but in order for such procedure to be conducted, the applicable law needs to be amended.

4. A person who has already came of age, is not registered in the Register of Births

These cases are the hardest to be solved, since it is insisted that the parents of the person personally initiate the procedure (especially the mother), while in practice, we face non-registered people who are older and whose parents are deceased, who do not have any brothers or sisters alive or living in the country in order to conduct the DNA analysis with them. The Law on Records of Births, Deaths and Marriages does not offer any solution for such cases; moreover, these cases are not anticipated with any legal provision.

(Due to this, in practice such cases are not being solved at all, and it is suggested that they fall under the mandate of the Courts, where they can be treated in an extra contentious procedural law procedure through determining the time and place of birth of the persons, or, as in accordance with the suggestions given in the Report on determining a separate administrative procedure).

1. The mother was married to a person which is not a biological father of the child, at the moment of birth of the child

In a rather great number of cases, the mother has left her husband, but the marriage hasn't been dissolved with a valid verdict. In such case, since Article 50 of the Law on Family states that the registered husband of the mother shall be considered as a father of the child born during the marriage, or within 300 days after the termination of the marriage, the Registration Office either won't even register the child, or it will insist to inscribe the husband of the mother as a father of the child, even though he is not it's biological father. The biological father of the child does not give content for a third party to be inscribed as a father of its child, due to which, these children remain non-registered.

(There is a need that this solution, as given in the Law on Family, be amended).

The given cases show the seriousness and actuality of the existing (non-legally regulated) standing. So therefore, as suggested, the Law on Records of Births, Deaths and Marriages shall contain a separate administrative procedure for determination of the identity of the persons without identity on one hand, and on the other hand, the laws which regulate the status of the persons without identity, citizenship, permanent residence and without determined family status, shall contain provisions on grounds of which the authorized bodies could ascertain facts and circumstances through which they can determine and prove the civil status of the persons which, due to whichever reason, cannot receive or prove their civil status.

GENERAL DIRECTIONS FOR FURTHER ACTING

1. The signing and accession to the 1961 UN Convention on the Reduction of Statelessness is of great significance.
2. Law on Records of Births, Deaths and Marriages needs to be amended.
3. A census needs to be conducted on all persons being at risk of statelessness.
4. A separate procedure shall be introduced to determine the status of statelessness.
5. Preparation of materials, video presentations, consultations, trainings for raising the awareness between the people facing risk of statelessness.

CLOSING NOTICES AND SPECIFIC RECOMMENDATIONS FOR LEGAL SOLUTIONS

Apart from the previously stated categories of person composing the number of stateless persons or persons being at risk of statelessness in the country, we need to also address a separate problem – the one with the **persons without civil identity or civil status.** These are people who **do not have any document** which could serve as a confirmation of their citizenship but also of their identity, their existence. Therefore, they are unable to enjoy the rights reserved for the status – civilian of one country in the essential areas of the public life – health, education, social protection, elections, etc. As per some statements of the representatives of the non-governmental organizations, there are around four thousand persons in the country with this problem.

The new draft- Law on foreigners from April 2018, which is now in the phase of second reading before the Assembly of the country, already tries to ameliorate the condition of the persons without citizenship of our country, when it comes to acquiring either temporary or permanent residence in the country, and further, citizenship. In Article 2 par.1 it. 1of the Glossary, it is stated that "a foreigner is a person who is not a citizen of the country and a stateless person, i.e., a person which no country, as per its own laws, considers as its own citizen". At the same time, Article 120 regulates the temporary residence on humanitarian grounds, and prescribes that: "Temporary residence on humanitarian grounds shall be granted as an exception, to a foreigner who does not fulfill the criteria for granting temporary residence as prescribed with this law, in the following cases: (3) to stateless persons." Also, Article 132 regulates the specific criteria for approving permanent residence, as an attempt to solve the status of the persons under item 1. So, Article 132 par.1 states that "persons which, as per this Law are considered as foreigners in Republic of Macedonia, and which, until September the 8th 1991 were citizens of the Socialist Federal Republic of Yugoslavia and had legal residence on the territory of the Federal State of Macedonia, and continued to reside in the Republic of Macedonia after September the 8th 1991, shall acquire, both them and their children aged five and up, a right to permanent residence in the Republic of Macedonia, if they file a request for receiving permit for permanent residence within three years after this Law enters into force". Further, "in specific cases (beneficiaries of social care, minors, persons that are non-registered in the Register of births), the person filing the request from par.1 of this Law, the procedure for approving permanent residence shall be accompanied by an opinion from an authorized institution that the person or members of the family have been enjoying specific rights given by an authorized body in the country". These persons shall "file evidence that they are not citizens of any other country, for which it can be reasonably assumed that is his country of origin or country of origin of his parents." At the end of Article 130 the criteria for approving permanent residence to a foreigner are given, and it is insisted upon uninterrupted residence in the country of five years, stable and regular means of subsistence, provided housing, health insurance and, surprisingly, that "they do not represent a threat to the public order, public health, national security or the international relations of our country" and that they can use the Macedonian language.

All of these suggested law solutions shall be criticized for leaving a great deal of disposal to the authorized bodies (initially the Ministry of Interior – MOI), equal to the one for acquiring citizenship with naturalization, where the MOI shall decide at its own disposal upon the request for acquiring citizenship.

The problem with the persons without civil identity, whose number in the country is still the greatest between the stateless, **remains open (unsolved by law), and actually unsolvable without a legal ground.** As per the national legislation, a person can acquire civil status through:

1. Inscription of a personal name (name and surname)
2. Inscription in the registries of birth, marriage and death
3. Determining the personal identification number (thirteen digits)
4. Determining the place of residence and place of stay
5. Determining the citizenship (blood connection, being born on a territory and place of stay and, upon international agreement – with naturalization)
6. Identity card (evidence for personal identity, citizenship, place of residence, and has to be possessed by any person aged 18 or older)
7. Travel documents which can serve for identification, citizenship and place of stay abroad.

All the above mentioned leads to the conclusion that the civil status shall be decided by two ministries:

1. The Ministry of interior (hereinafter referred to as: MOI)
2. The Office for management of the registers of births, marriages and deaths, as a part of the Ministry of Justice.

Although there is no legally determined mandate of the Ministry of Labor and Social Policy (hereinafter referred to as: MLSP), while acting to solve the status of the stateless persons, as from 2012 and the signing of the Zagreb Declaration on Access to Civil Documentation and Registration, this ministry is actively included in the campaign for solving the problem of these persons, as well. The MLSP has been obliged by the Government to coordinate the Action on registration in the Register of Births, which started right after the signing of the Zagreb Declaration; in order to conduct the action easier, it formed a body – working group, composed of representatives of the MLSP, Ministry of Interior, the Ministry of Justice – Office for management of the registers of births, marriages and deaths, the Ministry of Foreign Affairs, representatives of the missions of the UNHCR and the OSCE, as well as representatives of the NGOs working on this affair. Although this group in the period from its initiation until today has reached many recommendations and measures aiming to solve the problems with the civil documentation and registration in the Register of Births, up until today, none of these measures and recommendation has been applied in practice, nor has it solved the problem. As from April 2018, the Government published a public announcement, inviting all the non-registered persons born on the territory of the country, to file a request for additional registration before their local offices for management of registrtion of births as per the place of their birth within six months from the publication of the public call, during which period, the MLSP should attempt to identify and to determine the exact number of the non-registered persons in the Register of births in the country, as well as to find systematic and legal solution which could solve their status. One of the solutions which could be offered by the MLSP is determining the identity of these people in court in at its own disposal at its own disposal extra-contentious process. The desire and attempt of the MLSP to be of help while untying the bitter hitch, in which many of our citizens are forced to live (which, as per Law, are not civilians of our country) deserve salutation, but bearing in mind the legal system in the country, which defines the mandate and authorization of each and every body of the state administration – especially the provisions from the Law on organization and work of the state bodies (hereinafter referred to as: LOWSB), the MLSP can, and should, provide these people with the rights from the social area, which belong to most of them.

The determination of their identity, on grounds of which they shall acquire civil status, falls under other state bodies. This finding leads us to the question – who is/are the state body (bodies) authorized for determining the civil identity required for the persons to acquire civil status and to receive citizenship on grounds of that? One possibility is the Court – the civil court which should determine the civil status in an extra-contentious process, as previously mentioned. This solution could have some negative consequences, such as:

- long duration of the procedure;
- high costs which inevitably arise due to the long duration of the judicial procedure, while the requestors are usually living on social aid and will be dissimulated to even initiate a procedure, and
- the court acts (decisions reached in an extra-contentious procedure) may not be consistently executed by the bodies in the state administration (Ministry of Interior and the Office for management of the registers of births, marriages and deaths, as is the case with the administrative judiciary.

Another option is that **the administrative bodies** decide upon the civil status and identity for the stateless persons, e.g. the administrative bodies authorized to keep specific registers – the Ministry of Interior and the Office for management of the registers of births, marriages and deaths. It is understood that the ground act for reaching these decisions would be the Law on General Administrative Procedure, but it is necessary that the material laws introduce **novelties** in the shape of provisions regulating a separate administrative procedure for determining the civil identity of a person. These provisions should be inscribed in the Law on Records of Births, Deaths and Marriages, which should include separate part for determining the civil identity/status. In comparison to the court procedure, this would be a **much faster and much more efficient** procedure, which would consequently be **cheaper** for the parties. The only bodies of the state administration that we found to be authorized to keep such procedures – the MOI and the Office for management of the registers of births, marriages and deaths, should be obliged to act together, i.e. to issue a **collective decision** so that to avoid any possible conflict of authorizations. To achieve this, the previously mentioned amendments to teh Law on Records of Births, Deaths and Marriages shall include a provision that refers to the Article 92 from the Law on General Administrative Procedure (Official Gazette 124/15), which regulates the issue on reaching such collective administrative acts with prior consent, confirmation, approval or opinion of another public body, and in this specific case, such body would be the MOI. This way, MOI would have to be included in the procedure for determining the identity through conducting previous activities, noted in the Decision that would later be reached by the Direction on the Records of Births, Deaths and Marriages, and this way, the two authorized bodies would be able to carry out the reached Decision fast and easy, through the legal provisions and activities arising from them in the procedure for determining the civil status of the persons (personal identification number, records on births, marriages and deaths, citizenship, temporary residence, personal name), and, on ground of that, to decide upon the Identity card, travel documents, etc.

All the above mentioned shows that in order to solve the problem of the stateless persons in the country, in most cases it is necessary to determine their civil identity first, so that they can acquire capacity of subjects of law which will entitle them to enjoy the rights arising from their status of a civil, primarily the right to citizenship, which shall further result in enjoyment of all of the other rights.

Skopje, June 2018