

## **Serbia - Constitutional Court, case no. IUo-190/2018**

An initiative was submitted to the Constitutional Court of Serbia to assess the provisions of two by-laws that prevent registration of children in the birth registry immediately after birth, in cases when the children's parents do not possess personal documents, on the grounds that the by-laws are not in accordance with the provisions of the Serbian Constitution, the Family Law and ratified international conventions which guarantee the right to birth registration and personal name to every child, immediately after birth. The Constitutional Court rejected the initiative, on the grounds that possession of an ID card is legally binding on all citizens of the Republic of Serbia who are over 16 years of age and have permanent residence on the territory of the Republic of Serbia.

**Case name (in original language) :** Inicijativa za pokretanje postupka ocene ustavnosti i zakonitosti propisa koji onemogućuju upis u matičnu knjigu rođenih odmah po rođenju

**Case status:** Decided

**Case number:** IUo-190/2018

**Date of decision:** 23/09/2019

**State:** Serbia

**Court / UN Treaty Body:** Constitutional Court of the Republic of Serbia (Ustavni sud Srbije)

**Language(s) the decision is available in:** English, Serbian

**Applicant's country of birth:** Serbia

**Applicant's country of residence:** Serbia

**Legal instruments:** Convention on the Rights of the Child (CRC)

**Key aspects:** Birth registration, Childhood statelessness

### **Facts**

The provisions of two by-laws - the Rulebook and the Instruction - condition the entering of information about the parents of a child in a birth notification and the

birth registry books, requiring parents to possess ID cards, birth (or marriage) certificates, passports or other identification documents. If the information on parents is not recorded in a birth notification and/or the birth registry books, it will not be possible to determine the child's personal name. Consequently, in cases where parents do not possess personal documents, it will not be possible to register newborn children in birth registry books immediately after birth with all required details, including the personal name and information on the parents. Children will be unable to obtain a birth certificate and a citizenship certificate. In such cases, in order to register a child into the birth registry books, it is necessary to conduct one or more additional procedures. These procedures take a certain amount time, ranging from several months to significantly longer than a year.

### **Legal arguments by the applicant**

The Constitution of the Republic of Serbia, the Law on Family and ratified international conventions guarantee the right of registration into the birth registry books and personal name determination to every child and prescribe that it must be done immediately after birth. Thus, Article 64 paragraph 2 of the Constitution of the Republic of Serbia provides that every child shall have the right to personal name, entry in the registry of births, the right to learn about its ancestry, and the right to preserve its own identity, while Article 13 of the Law on Family provides that every child shall have the right to personal name and that the right to personal name is acquired by birth. Article 7, paragraph 1 of the Convention on the Rights of the Child establishes that the child shall be registered immediately after birth and shall have the right from birth to a name, the right to acquire a nationality and, as far as possible, the right to know his or her parents, while Article 24, paragraph 2 of the International Covenant on Civil and Political Rights provides that every child shall be registered immediately after birth and shall have a name.

### **Legal arguments by the opposing party**

It is only necessary to conduct separate administrative procedures before registration in the birth registry book in certain cases. Conducting one or more procedures may be avoided by obtaining, in a prescribed manner, personal documents of parents.

### **Decision & Reasoning**

Claim of the submitter of the Initiative that registration of data in the birth registry form and birth registry book are conditioned upon possession of ID card of parents is not valid, since the possession of ID card is legally binding on all citizens of the Republic of Serbia who are over 16 years of age and have registered permanent residence on the territory of the Republic of Serbia, and the stated persons are subject to misdemeanour liability if they do not possess ID card. The registration in the manner described by the disputed by-laws is precisely the way to exercise constitutionally guaranteed rights of the child to a personal name, birth registration, the right to know his/her origin and the right to preserve his/her identity.

### **Decision documents**

[Initiative to the Constitutional Court Praxis 27July2018 \(English\)](#)

[Conclusion of the Constitutional Court of Serbia IUo-190-2018 \(Serbian\)](#)

### **Outcome**

The Serbian Constitutional Court rejected the initiative to assess the constitutionality of the provisions.

### **Links to other relevant materials related to the case (blogs, analysis, articles, reports, etc.)**

Praxis submitted an Initiative to Constitutional Court for Assessment of Bylaws that Prevent Registration of Every Child Immediately after Birth, 27 July 2018:

<https://www.praxis.org.rs/index.php/en/praxis-in-action/status-and-soci...>