

(Coat of Arms)

Republic of Serbia

CONSTITUTIONAL COURT

No. IUz-51/2016

12 September 2016

Belgrade

The Small Council of the Constitutional Court consisting of Judge Predrag Četković - Council Chairman, and Judges Bratislav Djokić and Milan Marković, PhD – Council Members, pursuant to Article 167 paragraph 1 point 1 of the Constitution of the Republic of Serbia, at the session held on 6 September 2016, adopted the following:

CONCLUSION

The initiative for instigating a procedure for assessing the constitutionality of the provisions of Article 23 paragraphs 2 and 3 of the Law on Civil Registry Books (*Official Gazette of RS*, nos. 20/09 and 145/14) and their compliance with the ratified international treaty is hereby rejected.

R a t i o n a l e

A joint initiative for instigating a procedure for assessing the constitutionality of the provisions of Article 23 paragraphs 2 and 3 of the Law referred to in the enacting clause and their compliance with the ratified international treaty has been submitted to the Constitutional Court by two initiators.

The initiators state that none of the provisions of the disputed Law require the registration into birth registry books to be complete, which means that registration can still be performed even if some information is missing (for example, citizenship or identity of the father), and Article 26 of the Law provides for the possibility of subsequent registration of data if the circumstances do not allow their registration at the time of application for registration of the fact of birth, while Article 31 of the Law determines the procedure for the correction of data established to be incorrect. Hence, according to the initiators, the disputed provisions of the Law, according to which the registration in birth registry books can exceptionally be postponed for the purpose of checking or determining the missing data, which are to be entered in birth registry books, and also the provisions according to which the separate records of postponed registration cases are

to be kept, give the registrar an "unconstitutionally and unnecessarily," wide discretion, inter alia, to postpone the registration of the fact of birth of a child, although the registrar has the available legal options specified in Articles 26 and 31 of the Law.

Given that the disputed provisions of the Law allow the registrars to postpone the exercise of the right to registration into birth registry books, and consequently the formal recognition of personal name as an essential element of one's identity, while the „special records“ on postponed registration cases and the information contained in such records do not meet the standard of registration into birth registry books immediately after birth, and given that neither the Law nor any by-laws regulate the legal nature of „special records“, i.e. that these are not the records of personal status of citizens, and taking into consideration that the Law does not specify any particular reason for which the registrar can postpone the registration of the fact of birth of a child, the initiators believe that the disputed provisions of the Law are not in accordance with the provisions of Articles 21, 37, 38 and 64 of the Constitution or the provisions of Article 7 paragraph 1 of the Convention on the Rights of the Child; Article 24 paragraph 2 of the International Covenant on Civil and Political Rights; and Articles 8 and 14 of the European Convention for the Protection of Human Rights and Fundamental Freedoms and Article 1 of Protocol No. 12, and the case-law of the European Court of Human Rights. This is because the said Conventions require immediate registration of a child, i.e. „immediately after birth“, while the disputed provisions of the Law allow arbitrary postponement of registration into birth registry books, and also because the European Court of Human Rights took the view, in the case *Mennesson v. France*, that the refusal of registration precludes children from establishing the legal relationship between them and their parents, which is an essential element of their identity and private life, and established a violation of the right to respect for private life under Article 8 of the Convention. The initiators particularly point out that the disputed provisions of the Law infringe the prohibition of discrimination referred to in Article 21 of the Constitution "by making a distinction on the basis of birth - the status of the parents (e.g. a parent does not have personal documents) and the circumstances under which the child was born" between the children who are immediately registered into birth registry books and the children whose registration is postponed.

Examining the assumptions for acting upon the submitted initiative, the Constitutional Court has ascertained that the content of the disputed provisions of Article 26 of the Law on Civil Registry Books (*Official Gazette of RS*, nos. 20/09 and 145/14), which are placed in the provisions of Articles 6 to 44 of the Law, under Section II - Common Provisions, and which

provide that the registrar shall enter the reported data in civil registry books without delay (paragraph 1), and that exceptionally the registration can be postponed for the purpose of checking or determining the missing data, which are to be entered in birth registry books (disputed paragraph 2), and that special records of postponed registration cases shall be kept (disputed paragraph 3), cannot be brought in direct connection, from the constitutional legal aspect, with the provisions of Articles 21, 37, 38 and 64 of the Constitution of the Republic of Serbia, which relate to the prohibition of discrimination, the right to legal personality, the right to citizenship and the rights of the child, or with the provisions of Article 7 paragraph 1 of the Law on Ratification of the UN Convention on the Rights of the Child (*Official Journal of SFRY*, no. 15/90) and the provisions of Article 24 of the Law on Ratification of the International Covenant on Civil and Political Rights (*Official Journal of SFRY*, no. 7/71), relating to the obligation to register a child immediately after birth and the child's right to have a name immediately after birth, the right to acquire a nationality and, if possible, the right to know and be cared for by his or her parents, which the Member States provide in accordance with their national laws and their obligations under the relevant international instruments in this field, especially in cases where the child would otherwise be stateless. Further, the content of the disputed provisions of the Law can neither be brought in direct connection with the provisions of Articles 8 and 14 of the European Convention for the Protection of Human Rights and Fundamental Freedoms or Article 1 of Protocol No. 12 to the Convention, concerning the right to respect for private and family life or the prohibition of discrimination. This is because the disputed provisions of the Law apply to all entries of data in birth registry books as the basic official records on the personal status of citizens (birth registry books, marriage registry books and death registry books), not only to the entries in birth registry books.

In addition, the reasons for disputing the said provisions of the Law are not directly related to the content of the disputed provisions of Article 23 of the Law, but to the appropriateness of these provisions and the initiators' misinterpretation of both the entirety of the provisions of the Law and the possible consequences of these provisions, according to the initiators, i.e. the "refusal of child's registration." This is because the disputed Law provides that the data entered in civil registry books shall be the data on the facts that have been reported or the data contained in the act issued by a competent authority or institution, and that the facts and data entered in civil registry books shall be determined prior to registration, in accordance with the law governing general administrative procedure, and that if there is a reasonable suspicion to think that the data being entered in the registry are incorrect, the registrar shall check them prior to registration (Article 21), that the civil registry books, excerpts and certificates issued on the

basis of civil registry books are public documents (Article 3 paragraph 1). The aforementioned shows the unfoundedness of the initiators' allegations that "the Law does not require the registration into birth registry books to be complete" and that the registrar, regardless of the fulfillment of the requirements referred to in the provisions of Articles 26 and 31 of the Law (registration due to force majeure or emergency or other similar reasons and/or errors in registration) can perform the registration of data subsequently, especially because the basis for such registrar's action, subsequent registration or correction, is a decision issued by the competent authority referred to in Article 6 paragraphs 2 and 4 of this Law.

Having regard to all the aforesaid and taking into consideration that the disputed provisions of the Law relate to the postponed registration in civil registry books and the existence of special records of these registration cases, while the judgment of the European Court of Human Rights in the case *Mennesson v. France* relates to the refusal to register the birth of a child, and given that in the procedure of the constitutional control of general acts it is not possible to assess the potentially unconstitutional practical implementation of general acts, but the protection of individual rights and freedoms guaranteed by the Constitution can be sought through a constitutional appeal, the Constitutional court has found that the initiative is evidently unfounded.

Hence the Court, pursuant to Article 36 paragraph 1 point 5) of the Law on Constitutional Court (*Official Gazette of RS*, nos. 109/07, 99/11, 18/13 – CC Decision, 40/15 – as amended and 103/15), has rejected the initiative.

In accordance with the aforesaid and on the basis of Article 42c paragraph 1 point 2 and Article 47 paragraph 2 of the Law on Constitutional Court, the Constitutional Court has adopted the Conclusion as in the enacting clause.

COUNCIL CHAIRMAN

JUDGE

Predrag Četković (signed)

(seal reads: Republic of Serbia, Constitutional Court, Belgrade)

The accuracy of the copy verified by:

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