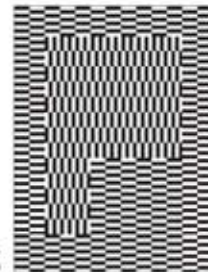


DESIGN BY BRANIMIR ĆKONJOVIĆ



ABOUT PRAXIS

Praxis is a domestic non-governmental organization which aims to protect, improve and promote human rights of refugees, internally displaced persons, returnees upon readmission agreements from Western Europe and members of minorities (Roma, Ashkali and Egyptian). It was established in June 2004, as a continuation of the Norwegian Refugee Council's (NRC) Civil Rights Project, which NRC conducted in Serbia from 1997.

Praxis has continued to protect the rights of target groups through legal remedies, by promoting values of civil society and raising public awareness about the problems they face. While working on individual cases, Praxis also advocates for removal of administrative and systemic obstacles which impede the target groups to enjoy their human rights.

LEGALLY INVISIBLE PERSONS **IN SERBIA**



September 2009

European Union

Royal
Norwegian
Ministry
of Foreign Affairs



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As in the previous publication *Legally Invisible Persons in Seven Stories*, published in October 2008¹, we would like to point once again to actual cases from practice which clearly indicate the need for adoption of a separate law that would regulate the procedure of recognition of persons before the law with the aim to overcome the present legally unbearable situation. By presenting their cases and real life stories, as well as by making efforts towards recognition of every person before the law, we aim to give the "legally invisible" persons the voice they do not have and motivate the authorities to act in full compliance with their powers and obligations.

Once again, we would like to remind that the "legally invisible" persons do not have the possibility to live their lives like other citizens. Those are persons who are not recognized as legal subjects, who cannot

conclude marriage; they are outside the system of education, health care and social welfare. They are not welcome, not wanted and consider themselves socially excluded – without the possibility to influence such state. They are the most marginalized and the most vulnerable group, exposed to various forms of discrimination in all areas of social and cultural life.

After a year and a half of constant lobbying and advocating by the international community and non-governmental sector for finding a systemic solution to overcoming the problems of "legally invisible" persons, the state has not shown tolerance and will to change its policy and practice in the treatment of the "legally invisible".

FIELD EXPERIENCE

Praxis has identified more than a thousand of „legally invisible“ persons in over 20 municipalities in Serbia², the majority of them being children who are particularly exposed to risk of being abused, exploited and victims of trafficking. If we were to convert the statistical data to the level of the whole country, the estimate would show that there are dozens of thousands of children and adults who are exposed to human rights violations, and, from the standpoint of human rights, we could say that we are facing massive violations of human rights.

Taking into consideration frequent migrations of the Roma population, their hard living conditions and their traditional way of life – children are often born at home, at the same time, the parents do not register child's birth before the competent body, and the greatest problem occurs when the

"legally invisible" parents try to subsequently register their child's birth, since they first have to prove their identity, which is impossible because they do not have evidence. It often happens that the Roma women give birth in hospitals using someone else's health booklet in order to avoid paying costs of hospital treatment due to their financial hardship. In some cases, children's grandparents are registered as their parents, because the parents themselves do not have personal documents. In addition, during medical treatment they use someone else's health booklets, and in case the "temporary" user passes away, it is quite difficult to prove that the person whose health booklet had been used is "legally alive".

¹ See Praxis publication at the web address: www.praxis.org.rs

² Kragujevac, Kraljevo, Vranje, Lebane, Vladicin Han, Krusevac, Prokuplje, Novi Sad, Zrenjanin, Pozarevac, Obrenovac, Subotica, Smederevo, Zvezdara, Novi Beograd, Stara Pazova, Kursumlija, Bujanovac, Aleksinac, Novi Pazar, etc.

The lack of personal documents of parents has been recognized as the greatest problem in the registration of newborn children, which results in delaying children's registration and, thus, the problem is sometimes passed on through the generations. In most cases, the parents are not well informed about their legal obligation to register child's birth and about the subsequent registration procedure, while the high level of illiteracy, language barriers, fear and distrust of the state institutions makes their position even more difficult.

On the other hand, even those who process requests – municipal administrative bodies and social welfare centres – are often not well acquainted with the subsequent registration procedure. Many a time, they are forced to ask for expert opinion from the competent ministries, which, unfortunately, do not give clear directives on how one should proceed in an actual case, nor are their

opinions applicable in practice.

Praxis experience in the field unambiguously suggests that the current system of subsequent registration of the fact of birth of "legally invisible" persons of Roma nationality is not efficient and suitable, as well as that it is inappropriate with regards to their specific needs.



FAILED ATTEMPT

An attempt of the Ministry of Human and Minority Rights, made upon the initiative of UNHCR, OSCE Mission to Serbia, the Centre for Advanced Legal Studies and Praxis, to introduce into the Assembly the *Draft Law on the Procedure for Recognition of Persons before the Law*³ for adoption - failed, since certain ministries expressed negative opinion regarding regulation of the procedure for recognition of a person before the law through a separate law. Besides, the authorities did not make a slightest effort to make any changes in order to overcome administrative and bureaucratic obstacles relating to the protection of the right to be recognized as person

before the law. Despite huge efforts of the civil sector and the international community, the state demonstrated a total absence of cooperation and attention for solving this problem.

³ The Draft Law is an insignificantly changed version of the *Model Law on the Procedure for Recognition of Persons before the Law* – in accordance with the comments of representatives of municipal administrative bodies, social welfare centres and non-governmental sector who participated at the roundtables organized in Nis, Belgrade and Novi Sad at which the Model Law was formally presented.

⁴ The Government of the Republic of Serbia adopted the Strategy at the session held on 9th April 2009 (published in the *Official Gazette of the Republic of Serbia, No. 27/09*)

⁵ The text of the Action Plan is available at the web address of the Ministry of Human and Minority Rights of RS: www.humanrights.gov.yu/dokumenti/ap_zs_sprovodjenje_strategije_11jul09.pdf

⁶ Action Plan for Personal documents forms an integral part of the Action Plan for Implementation of the Strategy for Improvement of the Position of the Roma. Praxis actively participated in the Working Group of the Ministry of Human and Minority Rights which worked on preparing the Action Plan for Personal Documents in the period from 2005 until its adoption. Furthermore, Praxis gave its contribution to drafting the Strategy for Improvement of the Position of the Roma in the part referring to personal documents.

ADOPTION OF THE STRATEGY – A SMALL PROGRESS

The only progress is represented by the adoption of the Strategy for Improvement of the Position of the Roma⁴, aimed at removing the disadvantageous social circumstances in which the majority of the members of Roma national minority live. Shortly after the adoption of the Strategy, the Government brought a Conclusion adopting the Action Plan for Implementation of the Strategy for Improvement of the Position of the Roma in the Republic of Serbia⁵, which refers to the period from 2009-2011.

The Action Plan for Personal Documents⁶ states the following as main goals: registration of the fact of birth of persons who are not registered in birth registry book and registration of citizenship; provision of registration of permanent or temporary residence for persons who do not have legal basis of residence, and informing the Roma about the procedure for issuance of personal documents. That

action plan is closely connected to action plans in the field of health, education, employment, social protection, housing – because the problem of lack of personal documents has been recognized as a main obstacle in accessing rights in all the above-mentioned fields.

As a condition for adoption of the AP for Personal Documents, some ministries insisted on rephrasing one of the measures – the adoption of the *Model Law on the Procedure for Recognition of Persons before the Law*⁷ – into adoption of amendments to other laws which would facilitate the subsequent registration of fact of birth in birth registry book. The ministries, thus, clearly expressed their opinion against adoption of a separate law which would regulate the procedure of recognition of persons before the law and taking over of the responsibility by putting the solving of problems of “legally invisible” persons on the agenda.

⁷ All the members of the Working Group agreed with the proposed measure – representatives of the Ministry of Interior, Ministry for Public Administration and Local Self-Government, Ministry of Work and Social Policy, Ministry of Human and Minority Rights, Praxis, Centre for Minority Rights, etc – afterwards the Action Plan for Personal Documents was sent to the relevant ministries for opinion. Certain ministries have expressed negative opinion about the proposed measure.

WHY IS IT NECESSARY TO ADOPT A SEPARATE LAW?

The time will show whether the amendments to other laws, as specified in the Strategy, will enable recognition of “legally invisible” persons before the law. In the meantime, the “legally invisible” persons whose birth was not registered within the legally prescribed deadline depend on professional legal assistance in proving that they have been born in this country and that they are its citizens. The laws that are currently in effect in this field are not harmonized, not precise and they leave space for different interpretations and different practice of the competent bodies. We shall mention some of the laws and by-laws which are in effect: Law on Registry Books, Family Law, Law on Contentious Procedure, Law on Non-Contentious Procedure, Law on General Administrative Procedure, Law on Administrative Disputes, Law on Citizenship, Law on Permanent and Temporary Residence of Citizens, Law on Citizens’ Unique Personal Number, Law

on Personal Identity Card, Instruction on Administration and Forms of Registry Books, Rules of Procedure on registration of the fact of citizenship in birth registry book, forms of keeping records on decisions on acquisition and cessation of citizenship and forms of citizenship certificates, and many others.

In addition, the adopted new Law on Registry Books⁸, just like the previous one, does not regulate the procedure of subsequent registration of the fact of birth, but only prescribes in the Article 25 that, in case the data on birth are registered after 30 days from the birth itself, the registrar can register it in the registry book only on the grounds of a decision of the competent body. However, the subsequent registration procedure itself is not regulated, i.e. the procedure in which the competent body should bring

the decision, and neither are defined evidence needed for initiating the procedure, deadlines, legal capacity, etc. Due to this legal gap, the administrative body competent to bring the decision acts differently and it happens that it is practically impossible to perform the subsequent registration. Namely, the competent body should apply the Law on General Administrative Procedure, but it applies provisions of this Law differently, totally erratically, which leads to legal uncertainty in the procedure for exercising this important right. The body competent for bringing the decision requests different evidence from case to case, does not evaluate evidence in the same manner, the procedure is uncertain, which in practice creates legal chaos.

⁸ The Law was adopted on 18th March 2009, and will apply as of 27th December 2009.

The contentious procedure is not prescribed, nor should it be conducted when it comes to subsequent registration of the fact of birth, and we believe that such referrals by the competent bodies result from the fact that the subsequent registration procedure is not regulated. Whether someone wants to determine maternity or paternity should be a matter of choice and, after registration in birth registry book, one could raise this issue as well, if he/she desires. One's existence itself, one's legal subjectivity, does not depend on who one's parents are, because the right to be recognized as person before the law is a basic human right independently of that fact.

Non-existence of provisions regulating the subsequent registration procedure practically leads to various illegal procedures – the body competent to bring the decision on subsequent registration

refers parties to determine maternity and paternity; in contentious procedure the court acts upon the suit of a person who does not have procedural capacity; the decision determining maternity and paternity contains data about the fact of birth which were not requested in the lawsuit nor can they be part of the decision; the children are forced to sue their parents, then legal successors of parents and, finally, the Republic of Serbia⁹ – even though they do not want to do it. Even if one person receives the decision determining maternity and paternity, which happens since in some cases the courts tolerate the fact that these persons do not have procedural capacity, it is obvious that such decision itself does not solve the problem either. Namely, that decision is about family relations, while the administrative body should register the fact of birth.

⁹ Prescribed by the Article 255 of the Family Law of the Republic of Serbia.

Therefore, the administrative body mainly estimates this court decision as a piece of evidence, and brings decisions either accepting to register the fact of birth on the grounds of this or other pieces of evidence, or rejects the court decision, which has happened sometimes. Thus, even the court decision does not always solve the problem of registration of the fact of birth, and the procedure is long and expensive, since it often happens, usually upon a court order, that the DNA analysis is requested, which amounts to approximately 500 EUR and represents unbearable cost for many.

To make the absurd even greater, the Law¹⁰ regulates the procedure of determining death of a person for whose fact of death there are no evidence prescribed by the law, which is not the case when it comes to the procedure of determining birth of a person for whose fact of birth there are no evidence prescribed by the law.

¹⁰ Law on Non-Contentious Procedure of the Republic of Serbia.

¹¹ International Covenant on Civil and Political Rights, Universal Declaration of Human Rights, Convention on the Rights of the Child, and other international documents.

It all points to the conclusion that it is necessary to regulate the procedure of subsequent registration in birth registry book through a separate law, and then harmonize relevant laws in that field, in order to avoid long and expensive procedures which often have uncertain outcome. Thus, it would not be necessary to engage a whole team of lawyers and attorneys to represent the interests of "legally invisible" persons, as the present situation requires.

***The
state must take
over the responsibility
and protect the right to legal
person guaranteed by the
Constitution of the Republic of
Serbia, and recognize every
person before the law, prescribed
by numerous international
documents¹¹ that Serbia
ratified.***

WITHOUT PARENTS, WITHOUT IDENTITY

Sevdija was born in 1980 in Pristina, Kosovo, in a common-law marriage. Her birth was not registered before the competent administrative body.

Since 1999, she has been living in an illegal Roma settlement in Novi Beograd, holding the status of internally displaced person. Her parents have passed away in displacement.

In April 2008, Sevdija submitted a request for subsequent registration in birth registry book to the administrative body of the City of Nis (competent for administering dislocated registry books from Kosovo of the Municipality of Pristina). She enclosed as evidence her IDP card, statement of the midwife, statements of witnesses of childbirth, copy of her mother's ID card, verified copies of her mother's birth, death and citizenship certificates, copy of her father's ID card and death certificate, as well as copies of birth and citizenship certificates of one brother and one sister.

When she received a notice from the administrative body requiring additional documentation in May 2008, she addressed Praxis lawyers for assistance. Namely, the administrative body requested that Sevdija deliver record on determining personal name made by the competent social welfare centre.

The request for determining personal name was immediately submitted to the Social Welfare Centre Novi Beograd. In July 2008, the Centre informed Sevdija that they were not able to conduct the procedure, since Sevdije "neither possessed documentation on the grounds of which it would be possible to establish identity, nor any evidence of birth".

In the meantime, the procedure of subsequent registration before the administrative body continued, since the request referred to the Social Welfare Centre was submitted as additional documentation to the request. Only in October 2008 did

the City Administration of Nis bring a decision rejecting the request for subsequent registration. Explanation of the decision lies in the fact that the parents had passed away and that, thus, there is no possibility to recognize maternity and paternity, as well as in the fact that the parents did not recognize Sevdija as their child during their lifetime.

The complaint lodged against that negative decision to the Ministry for Public Administration and Local Self - Government was accepted and the case remitted to the first instance body for reconsideration. In reasoning of the decision, the Ministry indirectly suggested to the first instance body to stop the proceedings, which it did in March 2009, ordering Sevdija to initiate the procedure of determining maternity and paternity before court. According to the administrative body, the issue of determining parent-child relationship is prejudicial question-outcome of the procedure of subsequent

registration of Sevdija's birth in birth registry book depends on the decision upon this question.

As soon as April 2009, with the assistance of Praxis lawyers, Sevdija filed a lawsuit for determining maternity and paternity before the Fourth Municipal Court in Belgrade. Since Sevdija's parents are not alive, in accordance with the provisions of the Family Law, the defendants were Sevdija's brothers and sisters. Since two of them live abroad, at an unknown address, it was also suggested to appoint a temporary legal representative.

Only seven days after the lawsuit was filed, the court brought a decision ordering the plaintiff to deliver "documents on the grounds of which the personal name of the plaintiff could be ascertained and the plaintiff identified". It is stated in the explanation of the decision that "the prejudicial question for court to be able to act in this case is the question of

registration of personal name in birth registry book and issuance of personal documents..." A reply was sent to the court in a form of a submission by the plaintiff, emphasising that Sevdija had addressed the court precisely because she was a "legally invisible" person, and that, by not acting upon this case, the court directly violated the Constitutional right to be recognized as person before law and other guaranteed rights. Afterwards, the court brought a decision rejecting the suit, stating that it was disorderly since the plaintiff did not have personal name, and that further proceeding in this case would not be possible until the plaintiff was registered in birth registry book and provided documents on the grounds of which it would be possible to identify her.

A complaint was lodged against the court decision for significant violations of the provisions of contentious procedure, wrong application of substantive law and

wrongly and incompletely established factual state of affairs.

A year and five months after the request for subsequent registration was submitted for the first time and after addressing various authorities, even with professional help of Praxis – Sevdija still cannot even predict the outcome of the procedure. None of the bodies Sevdija addressed showed any understanding for specific situation she is in, but her request was almost always interpreted as groundless, requiring determination of some "prejudicial question", without evaluating evidence she enclosed.

It is obvious that patience, persistence, professional legal assistance and good will of those who bring the decisions, which were all missing in the previous period, are key factors on Sevdija's path to proving her existence.



NO WAY OUT

Suzana was born in 2006 in the Clinical Hospital Centre "Zvezdara", in a common-law marriage. Her parents Cana and Goran have neither registered her fact of birth to the competent body, nor the facts of birth of three older children. The only evidence on children's birth that they possess are papers on the newborn. The family lives in a garbage depot in Belgrade, in extremely poor socio-economic conditions. Due to a malignant disease of an eye, Suzana has received the first cycle of chemotherapy in the Institute of Oncology and Radiology of Serbia. She is underfed, does not speak and is blind.

Taking into consideration overall health condition of the child and the family's living conditions, in March 2008 the Institute asked the Social Welfare Centre in Grocka to emergently take protection measures, primarily for the child and the mother since the child was still breast-feeding, and then of other members of

the family as well.

In June 2008, the Social Welfare Centre in Grocka addressed Praxis with a request for registration in birth registry book of Suzana, her mother, her sisters Marija and Marina and brother Petar. The Centre enclosed in the request the papers on the newborn for all four children and parents' statements. The Centre also stated that Cana, the mother, did not know the date of her birth, nor had any evidence about it, as well as that the father Goran possessed personal documents. The Centre stated that Suzana was accommodated in the Centre for protection of the infants, children and youth in Zvecanska Street, and that the other three children were staying with Goran's uncle in Aleksinac. At the end of its request the Centre stated: "Taking into consideration that we have been acquainted through the media with the action for registration in birth registry books of persons of Roma nationality, which is being implemented

by Praxis under the patronage of UNHCR, we are kindly asking you to initiate the procedure for the above-mentioned family and register them in birth registry books so that they could obtain birth certificates as evidence of their legal identity, which is a precondition for obtaining other important documents and accessing a range of other rights. Please inform us in writing about the developments and outcome of the procedures."

In relation to the above-mentioned, Praxis held a meeting with the lawyer of the Centre and Suzana's parents, in order to discuss future actions and find the best solution. Precondition for subsequent registration of children in birth registry book is completion of the subsequent registration procedure of mother Cana. Cana's father Vojislav possesses personal documents, while her late mother Dobrila is registered in birth registry book, but not in citizenship

registry book. Cana's sister possesses birth certificate.

In August 2008, Praxis submitted requests for issuance of registry book excerpts for Cana's sister and parents. In the meantime, the lawyer of the Social Welfare Centre delivered to Praxis Cana's and her father's statements in which it was stated that Cana had been born at home on the territory of the Municipality of Zvezdara, as well as statements of two witnesses of Cana's birth.

In January 2009, Praxis' authorized lawyer submitted a request for subsequent registration in birth registry book for Cana to the Zvezdara City Municipality, enclosing available evidence and asking the body to bring a decision urgently due to a serious illness of Cana's child.

Due to not bringing a decision within the legally prescribed deadline, a complaint was lodged to the Ministry for Public

Administration and Local Self-Government. The Ministry forwarded the complaint to the Belgrade City Administration, who informed Praxis at the end of July about the reasons for Zvezdara City Municipality not bringing the decision. Namely, acting upon the request, Zvezdara City Administration established that additional facts and statements were needed and, therefore, they addressed the Social Welfare Centre in Grocka, the Ministry of Interior of the Republic of Serbia, and municipal administration bodies in Savski Venac, Aleksinac and Pancevo, for verification of the enclosed evidence. At the same time, they called Cana's father Vojislav to give a statement before this body about circumstances of Cana's birth, but he did not respond to that call. Zvezdara City Municipality emphasised that the decision had not been brought within the deadline for justifiable reasons, taking into consideration that all facts in the procedure must be thoroughly and

accurately established, and not taking into account for once Cana's family situation.

In July 2009, Vojislav gave a contradictory statement before the competent body: "Cana was not born in Belgrade, 29 Smederevski put Street, Municipality of Zvezdara, but in a village somewhere in Serbia, since the family were bear tamers and constantly on the road." On the grounds of that statement, and in accordance with the legal regulation prescribing registration of a person in birth registry book of the municipality according to one's place of birth, Zvezdara City Municipality rejected Cana's request for subsequent registration in birth registry book.

After all the above-mentioned, Cana is left with a possibility to sue her father for determination of paternity before court, but it remains uncertain what use of the court decision will be, since such decision determines legal relations and not one's

identity.

Since the efforts so far did not have any effect, the question is what should happen so that Cana and her four children would get the "papers" with their name and last name on it?!

After a year and three months, Cana is perhaps at the beginning, the end is not in sight, and we are wondering – what about the children, whose concern are they?



WITHOUT IDENTITY-DUE TO INFLUX OF PERSONS OF ROMA NATIONALITY

Sanije is 19 years old. She was born at home in Novi Sad, Serbia, where she lives today with her parents and brothers in an illegal Roma settlement. Her parents did not register her birth before the competent administrative body.

At the beginning of October 2008, during the visit of Praxis' legal mobile team to the settlement in which Sanije lives, she addressed Praxis for assistance. A request for subsequent registration in birth registry book was submitted to the administrative body in Novi Sad the following month. The documents enclosed in the request included: a copy of Sanije's mother's birth certificate, copies of Sanije's father's birth and citizenship certificates, copies of parents' ID cards, statements of witnesses of birth and a copy of the decision on the change of data in the electoral roll for mother.

In January 2009, the administrative body in Novi Sad brought a conclusion reject-

ing the request as groundless and explaining it by the fact that Sanije's parents had permanent residence in Titov Veles, Macedonia, at the time of Sanije's birth. Verified statements of witnesses that were enclosed in the request, as well as other evidence were not taken into consideration. The administrative body did not even obtain evidence that the Sanije was born on the territory of Macedonia, but it based its decision on a sheer assumption.

Are children always and exclusively born in parents' place of permanent residence?

At the end of January 2009, a complaint against the above-mentioned conclusion was lodged to the Ministry of Public Administration and Local Self - Government, which revoked the conclusion at the end of April 2009 and remitted the case to the administrative body for reconsideration.

However, only a few days after the Ministry remitted the case, the administrative body in Novi Sad rejected Sanije's request, this time by a conclusion in which the body declared itself incompetent. Explaining its decision, the administrative body went even further to state that the current situation in Novi Sad and the greater influx of persons of Roma nationality, as well as the fear that hasty decision in this case would result in a large number of such requests, were reasons for rejecting the request. The administrative body also emphasised that they have initiated a procedure in Macedonia through the Ministry of Foreign Affairs (MFA) of the Republic of Serbia to investigate whether Sanije had been registered in birth registry books in the place of her parents' permanent residence at the time of her birth. The administrative body did not wait to see the results of the investigation of the MFA and brought the above-mentioned conclusion.

"Justifiable doubt" as to the child's place of birth and "the current situation" in Novi Sad were sufficient for the administrative body to reject Sanije's request for subsequent registration in birth registry book again in the repeated procedure.

At the beginning of June 2009, Sanije managed to obtain the certificate confirming that she had not been registered in birth registry books in Macedonia according to her parents' place of permanent residence, which she delivered to the Ministry for Public Administration and Local Self-Government as additional documentation to the lodged complaint.

At the beginning of August 2009, the Ministry brought a decision revoking the conclusion of the administrative body in Novi Sad and remitted the case for reconsideration. Explanation of this decision of the Ministry is almost identical to the previous one, only additionally

containing an instruction to take into consideration the certificate which confirms that Sanije had not been registered in birth registry books in Macedonia.

The Ministry for Public Administration and Local Self-Government did not solve the issue in this case either, despite obvious unreadiness of the first instance body to act upon the request.

It remains uncertain what will have the decisive role in Sanije's attempt to exercise her Constitutional right to be recognized before the law – the evidence and application of laws, or the doubts, fear and discriminatory attitude of the administrative body in Novi Sad.



WHICH WAY TO A SOLUTION?

Leontina was born in 2008 in the Institute for Gynaecology and Obstetrics of the Clinical Centre of Serbia in Belgrade. Her parents live in a common-law marriage, from which they have two more children, both older than Leontina. However, unlike her brother and sister, Leontina was not registered in birth registry book upon birth.

In August 2008, Leontina's father Leonard addressed Praxis for assistance in obtaining a health booklet, since the girl could not receive BCG vaccine. Leonard tried to subsequently register Leontina's birth on several occasions, but the administrative body in Savski Venac refused to register the girl, since her mother Valentina did not possess any evidence of her identity apart from the IDP card. It did not represent a problem for Leontina's older brother and sister, who were registered in birth registry books of the Municipality Savski Venac on the grounds of mother's IDP card and father's ID card immediately

upon birth (in 2004 and 2006).

Valentina, their mother, was not registered in birth registry book in the Registry Office Bihac, Bosnia and Herzegovina, where she was born, and does not possess any evidence to initiate the procedure of subsequent registration. Aggravating circumstance is reflected in the fact that Valentina is not able to travel to Bosnia and address the competent body or to initiate the procedure through a proxy. Leonard, the father, possesses all documents.

Having collected the necessary evidence, at the end of August 2008, the request for subsequent registration of the fact of birth for Leontina was submitted to the administrative body in Savski Venac. The following documents were enclosed in the request: verified copy of the paper on the newborn, verified copy of the hospital discharge papers, a copy of father's ID card and a copy of mother's IDP card. It

has been suggested in the request to have a hearing with Leonard and Valentina and, if necessary, to present other evidence.

At the end of September 2008, the administrative body delivered a notice stating, among other things, that the request for subsequent registration had already been accepted, since Leontina's fact of birth had been registered in birth registry book, and that the future request should refer to determination of personal name of the child and recognition of paternity. The notice also stated that the competent body had attempted to obtain mother's birth certificate *ex officio*, but that they had received a reply from Bihac that Valentina was not registered in birth registry books.

Since the administrative body in Savski Venac did not bring a decision within the legally prescribed deadline, at the end of September 2008, a complaint was

lodged to the Ministry for Public Administration and Local Self-Government. In the meantime, the administrative body in Savski Venac brought a decision rejecting Leontina's request for subsequent registration as groundless. Everything that was stated in the previous notice was repeated in the explanation of the decision. It was also stated that the person who considered himself as father of the child had been verbally informed various times that, after the mother delivered her birth certificate, the case would be referred to the competent social welfare centre for deposition as to the paternity of the child and determination of personal name.

In November 2008, a complaint against that decision was lodged to the Secretariat for Administration of the City of Belgrade, requesting them to remit the case for further consideration. However, in December 2008, the Secretariat for Administration brought a conclusion

rejecting the complaint, reasoning that it was lodged by an unauthorised person. From the standpoint of this body, Leonard is not authorised to take any actions in the procedure on Leontina's behalf.

At the end of December 2008, a lawsuit was filed against the conclusion of the Secretariat for Administration before the District Court in Belgrade. It was emphasised in the lawsuit that, in this particular case, it was evident who the party in the administrative procedure of subsequent registration was, and who the legal representative of Leontina was – as the father.

Not until May 2009 did the District Court in Belgrade bring a verdict accepting the lawsuit and revoking the conclusion of the Secretariat for Administration of the City of Belgrade. Thus, the case was remitted to the administrative body in Savski Venac for further consideration.

In the meantime, the procedure for

determination of the fact of birth of Leontina's mother Valentina has been initiated before the Fifth Municipal Court in Belgrade, following previous consultations of Praxis' lawyers with the judge, with the aim of finding a way out of the current situation.

Despite all actions taken, it remains uncertain when Valentina and Leontina will finally be recognized before the law.

PASSING THE BUCK

Arsim is 25 years old. He was born at home in a place called Magura near Lipljan, Kosovo. His parents, who lived in a common-law marriage, did not register his birth before the competent body. Arsim's parents, his older brother Nedz-medin and sister Djevrije all possess personal documents.

Since 1999, when the family were displaced from Kosovo, Arsim has been living in a Roma settlement "Stari aerodrom" in Kraljevo. His mother passed away in 2000 in Kraljevo, and his father moved to Krusevac shortly after, where he lives today.

The only document Arsim had was the IDP card, which he lost in the meantime. The Commissariat for Refugees refused to issue a copy of the IDP card because Arsim was not able to submit birth certificate as evidence, since there are no records of his birth.

When Arsim addressed Praxis' lawyers for assistance, he possessed the certificate issued by the Commissariat for Refugees stating that he had been registered as internally displaced person (IDP). In order to initiate the procedure of subsequent registration in the birth registry book, the lawyers first collected evidence needed for initiating the procedure (mother's and father's birth and citizenship certificates, mother's death certificate, copies of father's ID card and IDP card, brother's and sister's birth certificates, statements on Arsim's identity given before court by Arsim himself, his father and sister, and a certificate that Arsim had been registered as IDP). It took two months to collect evidence, and afterwards the request for subsequent registration was submitted to the administrative body in Nis (competent for administering dislocated registry books from Kosovo of the Municipality of Lipljan) in March 2009, with the available evidence enclosed.

In May 2009, without previous notice requesting additional documentation, the administrative body brought a conclusion adjourning the subsequent registration procedure for the purpose of solving the prejudicial question relating to determination of maternity. The administrative body absolutely disregarded the statements given in the request for subsequent registration and the enclosed evidence, primarily mother's death certificate.

A complaint was lodged to the Ministry for Public Administration and Local Self-Government against the conclusion, since the administrative body did not take into consideration enclosed evidence, nor did it thoroughly establish all facts and circumstances significant to bringing legal and just decision. Besides, the administrative body referred the party to solve the prejudicial question¹² - determination of maternity.

¹² The administrative issue can be solved only by previously solving the prejudicial question.

Deciding upon the complaint, the Ministry revoked the conclusion of the administrative body and remitted the matter for reconsideration, pointing to irregularities in bringing the decision and applying the regulations. The Ministry pointed to the administrative body its obligation to include in the decision establishing the factual state of affairs and giving legal evaluation of the facts all the necessary elements on the grounds of which its authenticity can be established and its factual basis and legality examined.

Dragging out the procedure of subsequent registration of Arsim's fact of birth prevents him to recognize paternity of his children, delays his possibility of finding employment, using health care services and accessing other rights.

MOTHER'S DEATH OPENS THE DOOR TO COURT

Spresa is 32 years old. She was born at home in Kosovska Mitrovica, Kosovo. Spresa's parents, who lived in a common-law marriage, did not register her birth before the competent body. Soon after Spresa's birth, her mother moved to Germany where she got married.

Since 1999, when she was displaced from Kosovo, Spresa has been living with her family in one of the illegal settlements on the territory of Belgrade. She has five children, two of whom are not registered in birth registry books, while three children were registered in birth registry book in the municipalities of Savski Venac and Novi Beograd on the grounds of mother's IDP cards and father's ID card. Since her common-law husband is ill, Spresa supports her family by collecting and selling secondary materials.

She addressed Praxis for assistance at the beginning of June 2008. The procedure

started by submitting a request for issuance of documents, i.e. certificate confirming that she was not registered in birth and citizenship registry books. In October 2008, the Registry Office Kraljevo (competent for administering dislocated registry books from Kosovo of the Municipality of Kosovska Mitrovica) delivered the certificate stating that Spresa had not been registered in registry books.

Afterwards, Praxis started collecting evidence needed for conducting the procedure of subsequent registration of Spresa in birth registry books. The procedure was initiated in December 2008 before the administrative body in Kraljevo. The following documents were enclosed in Spresa's request: certificate stating that Spresa had not been registered in registry books; original birth certificate, original citizenship certificate and passport of her father; original birth certificate of her mother; copies of birth

and citizenship certificates of her sister; copies of birth certificates of her three registered children; verified statements and copies of ID cards of two witnesses of childbirth, as well as a copy of certificate issued by the Municipality of New Belgrade stating that the requests for subsequent registration of Spresa's two children had been submitted. It was also stated in the request that Spresa's mother had refused to give a statement, as well as that she lived in Germany.

In February 2009, the competent administrative body sent a letter emphasising that it was stated in the request that Spresa's mother had left the country, but that they had performed a check in the Police Station Kosovska Mitrovica (dislocated to Kraljevo, Serbia) and established that her mother had permanent residence in Kosovska Mitrovica and that it was necessary to establish contact with her and obtain a statement on Spresa's birth. Therefore, they completely ignored

everything that had been stated in the request for subsequent registration.

At the beginning of March 2009, a letter was sent to the administrative body in which the factual state of affairs was presented once more. Besides, a message from Spresa's mother, in which she informed us that she was seriously ill and in hospital in Germany receiving treatment, was forwarded to the administrative body by fax.

During April 2009, through her cousins, Spresa found out that her mother had passed away and, upon Praxis plea, Spresa's mother's husband sent to us a copy of certificate on deregistration of permanent residence which contained the date and place of death. Afterwards, with Praxis assistance, Spresa sent a request for obtaining death certificate issued on an international form to the competent body in Germany, which was obtained in only ten days.

Since the administrative body did not bring a decision upon the request for subsequent registration within the legally prescribed deadline, in May 2009 a complaint was lodged against "silence of administration" to the Ministry for Public Administration and Local Self-Government.

If the procedure of subsequent registration in birth registry books is not completed before the administrative body, following her mother's death, Spresa has an alternative option to sue her own sister for determination of maternity in accordance with the provisions of the Family Law.

Until final resolution of her status, Spresa is left with hope that, in case of need, she might come across some kind people, like the doctors in the hospital Narodni front in Belgrade, where she was admitted in June 2009 on the grounds of a certificate issued by Praxis stating that the procedure of Spresa's subsequent registration in birth registry book before the competent body was in process.



UNDERSTANDING AS A CHANCE FOR NORMAL LIFE

Bajramsa was born in 1982 in Obilic, Kosovo, in a common-law marriage, in her father's family house. Her parents did not register Bajramsa's birth before the competent body. Shortly after her birth, her parents parted and Bajramsa stayed with her grandmother Radmila (father's mother) and grandmother's common-law husband.

Bajramsa's father passed away, but she has no knowledge of his date of death, nor does she possess his death certificate. Her mother Mirveta got married in 1987 in Obilic and she lives with her husband in Germany today.

Until 1999, Bajramsa lived with her grandmother and grandmother's common-law husband. She attended primary school in Obilic, even though she was not registered in birth registry books. She had been enrolled in school under the last name of her grandmother's common-law husband, with whom

Bajramsa is not related by blood, and after displacement from Kosovo to Serbia she was issued an IDP card under that last name.

Bajramsa addressed Praxis for assistance in September 2008, during a visit to a settlement in Obrenovac in which Bajramsa lives with her family. At that moment, Bajramsa already had five children.

The eldest daughter Lidija was born in 1996 in Urosevac, Kosovo. She was registered in birth registry book under her father's last name, and with respect to data about mother, Bajramsa's name and place of birth were registered accurately, while the data referring to mother's last name and date of birth were incorrect. The data about mother were taken from Bajramsa's school report book.

Bajramsa gave birth to her son Igor in 1999 in Belgrade, and he was registered

in birth registry book in the Municipality of Zvezdara, also under his father's last name. Bajramsa was registered as the mother, and the data were taken from her IDP card.

Bajramsa was not able to register her other three children in birth registry book, since she did not possess valid documents, and the competent administrative bodies would not take into account the IDP card as proof of one's identity any more.

In September 2009, Praxis started collecting evidence needed for conducting the procedure of subsequent registration in birth registry book of Bajramsa.

The greatest problem in submitting the request was determination of last name. Namely, according to the provisions of the Family Law, the parents can give the child the last name only of one or both parents, but, in the only document

Bajramsa possessed (IDP card) the registered last name was that of a person with whom Bajramsa is not related by blood (her grandmother's common-law husband).

The request for subsequent registration was submitted in November 2008 to the administrative body in Nis (competent for administering dislocated registry books from Kosovo of the Municipality of Obilic). The last name was determined according to the last name of Bajramsa's mother at time of Bajramsa's birth, and the date from the IDP card was stated as the date of birth. The following evidence were enclosed in the request: a copy of Bajramsa's IDP card; copies of certificates on not being registered in birth registry book according to the last name of grandmother's common-law husband and according to the last name of Bajramsa's father; verified statement of Bajramsa; verified statement of her mother; copies of her mother's birth

certificate, citizenship certificate, ID card and passport; a copy of father's birth certificate; a copy of grandmother's common-law husband's death certificate; a copy of birth certificate of Bajramsa's son Igor; copies of birth and citizenship certificates of Bajramsa's daughter Lidija; verified statements of witnesses of Bajramsa's birth and copies of their ID cards.

In March 2009, the competent administrative body in Nis brought a decision allowing subsequent registration of Bajramsa in birth registry book.

What is specific about this case, and what can be interpreted as good practice of the administrative body, is the fact that the correct data were accepted and registered in birth registry book on the grounds of statements of witnesses and the person who submitted the request. Acting in this manner, not requesting additional personal statements, the City

administration body showed understanding for a specific situation, hard living conditions, traditional way of life and cultural differences due to which it happened that a person had been living without evidence on birth and citizenship for 25 years.

Finally, upon receiving birth and citizenship certificates, Bajramsa immediately obtained ID card. She registered all her children in birth registry book, and she plans to get married and enrol in evening school soon. Having registered in birth registry book, she made the first step, which opened up the possibility to provide more decent living conditions for herself and her family.



THE CASES FROM PREVIOUS PUBLICATION "LEGALLY INVISIBLE PERSONS IN SEVEN STORIES"
PUBLISHED IN OCTOBER 2008

TO LIVE AND DIE AS A LEGALLY INVISIBLE PERSON

At the end of November 2008, and only after the intervention of the Ministry for Kosovo and Metohija, did Praxis manage to schedule a hearing upon a motion for determination of death with a judge of the Municipal Court Pristina (dislocated from Kosovo to Nis) for January 2009.

Praxis informed Senad's father, the proponent in the procedure, about the date of the scheduled hearing. However, on that occasion Senad informed Praxis that he had travelled to Nis on his own in October (135 km away from Kosovo Polje) and had given depositions with the witnesses stated in the motion before the judge who was replacing the judge appointed in the procedure due to absence, as well as that he did not have the possibility to travel to the scheduled hearing due to financial hardship.

Having in mind the given circumstances, at the end of December 2008, Praxis informed the Court that the proponent

would not be able to come to the hearing and requested the Court to bring a decision on the grounds of the already given depositions.

Afterwards, Praxis attempted to establish contact with the judge on several occasions without success, and in April 2009 sent an urgency letter to the court to act upon the motion.

It has been two years and four months since the submission of the motion for determination of death to the court, but we are still waiting for the court decision, in other words, we are still at the beginning.

WHEN LIFE DEPENDS ON A PIECE OF PAPER

Acting upon a complaint, in mid-November 2008, the Ministry for Public Administration and Local Self-Government revoked the decision of the administrative body in Jagodina and remitted the case for reconsideration.

In mid-January 2009, the administrative body in Jagodina brought a decision allowing the registration of the fact of birth and, at the same time, ordered the registrar to perform registration of the fact of citizenship in birth registry book. After that, a request for issuance of birth and citizenship certificates was submitted to the administrative body.

A year and eight months after addressing the administrative body for the first time, at the age of 31, Afrim finally had a proof of his identity in his hands.



NO EVIDENCE, THEREFORE, NO EXISTENCE

Searching for any formal records about this family, in September 2008, Praxis obtained information from the Commissariat for Refugees of the Republic of Serbia that these persons were in the Commissariat's records, registered under the last name of their mother, not father, and with different dates of birth. Using these data, in December 2008, requests for issuance of documents were submitted to the administrative body in Kraljevo. In January 2009, the administrative body confirmed that Djeljana, Nadjija and Alija were not registered in birth registry books under those dates either.

After their first appearance in Praxis office, we maintained the contact with Djeljana, Nadjija and Alija through a person who first brought them to Praxis' office. In February 2009, that person informed Praxis that the only cousins Djeljana, Nadjija and Alija had were living somewhere in Belgium, and the he

presumed that they had moved to Belgium by crossing the border illegally, since he lost any track of them in Subotica.

It remains uncertain when we shall have the next opportunity to meet Djeljana, Nadjija and Alija...

TO BE BORN WHEN THE FORCES MARCH IN

Shortly after issuing the birth certificate, the administrative body in Krusevac issued a citizenship certificate to Predrag.

Having collected all necessary documents, Predrag's parents addressed the Humanitarian Organization Divac for the programme of granting and purchase of rural households. In mid-December 2008, the family left the collective centre in Kladovo and moved into the rural household in Sopot.



GIVING BIRTH UNDER SOMEONE ELSE'S NAME

The preparatory phase of collecting evidence for the purpose of submitting a request for subsequent registration in birth registry book for Bukurije lasted for a long time, primarily due to bad relationship between Bukurije and her parents, who did not deliver verified statements about her birth until March 2009. In the meantime, Praxis obtained her parents' birth and citizenship certificates, and the procedure before the administrative body in Kragujevac was initiated at the end of March 2009.

At the end of April 2009, the administrative body delivered summons referred to Bukurije's father to appear before this body in mid-May 2009. However, Bukurije informed us that her father, who lived in Montenegro, would not respond to the request of the administrative body. The administrative body was informed about it, and requested to bring a decision on the grounds of available evidence. Until final resolution of Bukurije's case, two

children remain registered in birth registry books on the grounds of the data of women from whom Bukurije "borrowed" health booklet after childbirth, while the third child remains unregistered.

