

Violation of children's rights in the procedure of birth registration

In 2002 a new legislation concerning citizenship and legal status of foreigners came into force in Russian Federation. It has established more strict requirements for obtaining Russian citizenship in comparison to the earlier operating legislation. Due to paper work and bureaucratic procedures many people in Kaliningrad region turned out to be deprived of basic rights – right for lodging, for receiving welfare and pension payments, for free medical care and education, right to vote, and freedom of movement.

A particular social problem is the occurrence of cases when the Civilian Registry Office refuses to give out birth certificates to children whose parents either illegally stay in Russia or do not have valid marriage certificates. In 2002-2003 the ombudsman authority has registered more than 10 complaints of such kind.

Case 1: A Russian citizen M. who lives in Nesterov in Kaliningrad region, has made a complaint that his daughter's birth (16.10.2001) is not registered and he can not get her birth certificate, because her mother does not have a civil passport. Child's mother K. has no citizenship, she came to Kaliningrad from Kyrgyzstan and the only document she has is a birth certificate from Kyrgyzstan. The Kaliningrad Civilian Registry Office claims that it is legally impossible to give a birth certificate to a child in this case. The Kaliningrad Public Prosecutor authority agrees with this decision and states that this person can not prove her citizenship of any country and the legality of her stay in Kaliningrad. Therefore, the authorities are under the force of article 18.9 of the Administrative Code of Russian Federation, which provides sanctions for the authorities in case of violation of law concerning foreigners and people without allegiance. In this case a father of the child had to prove his fatherhood in court and then register the birth of the child.

It is important to mention that although K. has no allegiance, she has a birth certificate. Article 10 point 2 of Federal Law from 25.07.2002 №115/F3 "About legal position of foreigners in Russian Federation" states that the documents proving personal identity of a foreigner in Russian Federation are: 1) a document issued by a foreign country and legitimate in Russian Federation as an identity card for people with no allegiance in accordance with an international agreement; 2) a temporary stay permit; 3) residence permit; 4) other documents recognised by an international agreement as identifying a person with no allegiance. At the same time, "The Convention of simplified procedure of acquisition of nationality for the members of the Commonwealth of Independent States" (concluded in Moscow 19.01.1996) recognises a birth certificate as an identifying document (art. 2 of Convention). Therefore, the refusal to give out a birth certificate in the stated case was illegal.

Case 2. The Kaliningrad Ombudsman office has received a complaint from D., a citizen of Ukraine, who could not register birth of her daughter (18.08.2002). The Kaliningrad Civilian Registry office refused to give out a birth certificate due to the fact that D. has shown her Ukrainian foreign passport with no information of her entry into marriage. Besides, D. has missed the time of extension of her temporary stay in Russia. In case of issue of birth certificate the Civilian Registry office would have violated article 18.9 of the Administrative Code "Official's violation of regulations of stay in Russian Federation for foreigners and people with no allegiance". In this case the ombudsman of Kaliningrad region has undertaken the following steps:

- *the Kaliningrad custody and guardianship committee, the youth wardship commission and the committee of youth rights defence were informed about the case;*

- *together with the custody and guardianship committee the ombudsman has sent the Ukrainian consul general in St.-Petersburg an official petition to give out the information about D.'s marriage status in order to further register a child;*
- *the Kaliningrad Public Prosecutor's inspection was initiated.*

As a result of the undertaken measures the Kaliningrad Civil Registry Office has made a decision to give out a birth certificate. The same result was achieved in two other cases and the birth certificates were given to children of a citizen of Turkmenistan M. and a citizen of Kyrgyzstan B.

It is important to comment on this case that the claim of the Civil Registry office to present a marriage certificate was not lawful. The Federal Law from 15.11.1997 № 143/F3 "About civil status" contains regulations that "...the information about the father of a child is filled in to a birth certificate on the grounds of the marriage certificate". However, the law does not state that the mother's marriage certificate is needed to register a child.

The juridical authorities have taken a humanistic stand in the described case. The other example is the case of Ukrainian citizen F., who could not get a birth certificate for her son (10.12.2002) because she did not have a temporary stay permit in Russia and could not register her marriage with a father of the child, a Russian citizen. The juridical authorities for civil legislation have made a resolution to register a child and insert the data about both parents into a birth certificate.

It is necessary to mention that the passport of a Ukrainian citizen is valid in Russia and is enough to identify a foreigner, and therefore is acceptable for a birth certificate of a foreigner's child.

The Kaliningrad ombudsman has pointed out to the officials of the Civil Registry office and the Public Prosecutor's office that according to article 7, point 1 of the U.N.O Convention of children's rights "a child is to be registered shortly after birth and from the day of birth has a right to have a name and a citizenship, a right to know his/her parents and a right for their care".

Without a birth certificate parents cannot get a family allowance and a free medical care. Children cannot go to the day care institutions or schools, travel and cross the border of Kaliningrad region, even for travelling to Russian Federation. Moreover, the internationally accepted principle of unity of a family and a state's non-interference into private life is violated.

Refusals to register birth of children might force parents to do some immoral conducts. For example, a 17-year old girl from Kazakstan made an abortion and motivated it with the difficulties connected to the illegal status of a child in the society.

It is worth mentioning that such practice leading to a serious violation of human rights results from the collisions in the legislation. There are serious contradictions between some norms of Russian civil legislation and the international legislation. However, an immediate registration of a child is a priority, and from the point of view of human rights it is more important than the requirements of the national legislation to regulate parents' status.

The Kaliningrad Ombudsman initiated a number of publications in the Kaliningrad media concerning the problem of birth registration. This issue was also discussed at the Round Table meeting of ombudsmen from all regions of Russia, which took place in March 2003.

Realising a great social importance of the discussed problem, the Kaliningrad ombudsman initiated deputy hearings in Kaliningrad Duma concerning the issue of birth registration.

Therefore, in order to improve the practice of birth registration in Kaliningrad, we recommend to the Civil Registry office to take into consideration the following conditions:

1. It is important to recognise as parents' identification documents all documents approved as such by international agreements, signed and confirmed by Russian Federation. The national passports and documents of CIS countries are also to be treated as identification documents in accordance with the regulations of "Convention of a simplified procedure for obtaining a citizenship for citizens of CIS countries and former USSR members".
2. It is important to recognise the marriage documents and certificates of the citizens of CIS countries, which they present for the birth registration procedure.

Besides, we consider the importance of the following recommendations:

1. To recommend to the Kaliningrad Civil Registry office to inform their local representatives about the changes in the legislation concerning nationality, citizenship and the legal status of foreigners, about the international requirements concerning the issue of birth registration (including the UNO Convention of children's rights).
2. To advise to the Kaliningrad public authorities to improve the birth monitoring, to organise an all-embracing cooperation between custody, medical and social authorities in order to improve the defence of children's rights.
3. To recommend to the Kaliningrad public authorities to pay a special attention to the issue of improving the functioning of authorities, which are in charge of the human rights implementation; and the system of juvenile justice.

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