



Weekly Briefing

Serbia social briefing:
Missing Babies Law
IIPE


China-CEE Institute

Kiadó: Kína-KKE Intézet Nonprofit Kft.

Szerkesztésért felelős személy: Chen Xin

Kiadásért felelős személy: Huang Ping

 1052 Budapest Petőfi Sándor utca 11.

 +36 1 5858 690

 office@china-cee.eu

 china-cee.eu

Missing Babies Law

Abstract: After 5th October 2000, Serbia has chosen to follow the European path and to join the “family of the European nations”. That meant long and multi-track process which also included adjustment of legal system in order to achieve compliance with international law standards. One of international organizations that were entitled to follow its fulfillment was the Council of Europe and its judicial organ – the European Court of Human Rights. Among the cases that were brought to this Court one revealed disturbing subject of babies that were proclaimed dead after the birth, but, in fact, were taken away.

On February 29th, 2020 Serbian Parliament passed a long awaited “Missing Babies Law” that aims to shed light on the fate of hundreds of children whose parents fear might have been stolen from birth clinics throughout country. The bill passed on a 136-0 vote in the 250-member assembly. Two members of Parliament abstained. The high number of absent deputies was unrelated to the bill, but an ongoing boycott of parliament sessions by opposition parties.

The purpose of this law is to establish a fact from which the truth about the status of these children can be determined, based on the evidence reported and data collected in the judicial service of state and other bodies, parents and other persons.

The procedure is initiated by the petitioner submitting to the court a proposal for establishing the facts about the status of the newborn child suspected to have disappeared from the maternity ward in Serbia. The proposal may be submitted by the parent of the newborn child. If no parents are alive the proceedings can be initiated by the brother, sister, grandfather or grandmother of the missing newborn infant, regardless of whether they have addressed the state authorities or the maternity ward regarding the status of the newborn infant.

A proposal to ascertain the facts of a newborn child's status may also be submitted by a person who doubts his or her origin, regardless of whether he or she has addressed the state authorities regarding his or her family status.

The Protector of Citizens may file a motion to ascertain the facts of the status of the newborn child suspected to have disappeared from the maternity ward in Serbia, on behalf of the authorized proponent. It is also given the opportunity to reopen the case in case new facts and evidence are found.

The law stipulates that the Government set up a Commission to collect facts on the status of newborns suspected to have disappeared from maternity wards in Serbia. The Commission will have 15 members, six of whom are appointed by the Government from the representatives of the ministries responsible for justice, home affairs, health, family care, the state administration, as well as the Security and Information Agency, and nine members from the representatives of registered parents' associations. The Commission submits an annual report on its work to the Government and the competent committee of the Serbian Parliament.

The new law envisions court proceedings to determine what happened to the children or offers compensation of up to 10,000 euros (\$11,000) if the facts cannot be established.

This law was initiated by two reasons. First, the chilling scandal erupted years ago. Group of parents then went public with suspicions their babies hadn't been stillborn or died at birth as they were told but had been kidnapped as part of an organized criminal scheme. Second, the judgment of 2013 the European Court of Human Rights (ECHR) in the case of *Zorica Jovanović v. Serbia* obliged Serbia to adopt such act.

On 26 March 2013, the ECHR delivered the decision in the case of *Jovanović v. Serbia* in which it found the violations of the applicant's right to private and family life (Article 8 of the European Convention on Human Rights). In this case, the Court also held that the State must, within one year from the date on which the judgment became final (9 September 2014) take all appropriate measures to secure the establishment of a mechanism aimed at providing individual redress to all parents in a situation such as, or sufficiently similar to, the applicant's. In other words, ECHR obliged Serbia to create a mechanism for providing answers to parents seeking information about their children. The court determines the amount of fair financial compensation for non-pecuniary damage by a free evaluation, appreciating all the circumstances of the case, and above all the intensity of the mental pain and fear suffered and other criteria determined by the law governing obligations.

In 2013 Belgrade Group of Parents, with the assistance of legal experts proposed the adoption of the Model Law for the Investigation of Cases of Missing Babies from Hospitals in the Republic of Serbia. None of the relevant authorities has ever officially replied to this document. Instead, the State decided to set up a new working group with the sole purpose of preparing Draft Law for the implementation of the abovementioned judgment. This working group had a number of meetings and roundtables and consisted of the representatives of relevant ministries (Ministry of Interior, Ministry of Health and the Ministry of Justice), representatives from the judiciary and the representatives of the associations of parents' of missing babies.

However, there has been a lack of consultations with the parents and the Government decided to prepare the draft law to secure the establishment of a mechanism aimed at providing individual redress to all parents in a situation such as, or sufficiently similar to, the applicant's which entered parliamentary procedure in October 2016.

It is worth noting that concerns raised by the parents' remained unsolved in the proposed legislation. The Draft Law was not adequate and as such insufficient for providing redress in each individual case concerning babies missing from Serbian maternity wards. First of all, it prescribed that the establishment of the facts in these cases should be carried out through the existing Court, non-contentious procedure, without strong investigative powers that could finally provide parents with the information about the destiny of their children and identify perpetrators of these gross violations of human rights. The absence of special investigatory powers which this no litigation Court lacks didn't create the conditions needed to determine the truth about each and every case of missing babies in Serbia. Furthermore, if adopted, this Draft Law would preclude the number of possible applications submitted from parents whose newborn babies were missing from other medical institutions than maternity wards (such as Institute of Neonatology, Mother and Child Health Care Institute of Serbia, etc.). Additionally, in the proposed piece of legislation the Government excluded parents that have not been contacting public authorities until 9 September 2013 (the date when the Judgment in the Case of *Jovanovic v Serbia* became final). Also, proposed legislation provided only the parents with the opportunity to submit their claims to the Courts, while children that believe they are 'missing babies' are not being eligible to petition the Court.

Finally, and most importantly, the Draft Law that has been proposed didn't provide the parents with the redress for the human rights violations they have been experiencing. Rather than that, the Government, in the proposed Law prescribed that 'If the facts which explain what happened to the missing child cannot be determined, the court will [...] ascertain that it cannot determine the status of the missing new-born child' and provide the parents with the compensation for the non-pecuniary damage which will not exceed 10000 €.

Furthermore, Serbian judicial system could not provide the parents with the effective legal remedy in cases related to the destiny of babies missing from Serbian maternity wards. Even the Constitutional Court have not found a single violation of parents' human rights and struck all the applications as inadmissible. Due to that, there have been a number of new, pending cases before the European Court of Human Rights.

Knowing all that, February adopted Law represents a moving forward.

Independent experts initially criticized the proposed bill, saying it served as a way to give parents payouts rather than to establish the truth. Officials have warned that establishing facts could be hard as most cases date back to the era of the former Yugoslav federation, which dissolved in a series of wars in the 1990s and became seven new nations. They say the parents' suspicions likely resulted from a combination of possible criminal action and state negligence.

The government made last-minute additions that included forming a special commission with the parents' representatives and a guarantee that cases could be reopened if new evidence surfaces.

Conclusion

“Missing Babies Law”, i.e. la on determination of facts on the status of children suspected of missing at maternity wards in Serbia. Although the expectations of this law are not exaggerated, it is still the first step to do something to mitigate the effects of infant theft. Namely, one of the biggest embarrassments of all the ruling political groups in the former Yugoslavia and Serbia is the decades-long theft of newborns at maternity wards by declaring them dead shortly after birth and then literally being sold. Such dishonorable jobs undoubtedly involved doctors and nurses in maternity wards, the birth and death registry offices, probably also persons issuing travel documents abroad. Unlike earlier legal solutions that addressed this issue, the new Law provides basis or an investigation, which was considered important and positive.