

Hanoi, 22 December, 2014

REPORT

On the results of workshop “Overall assessment of the Draft Law on Civil Status from the human rights-based perspective” in Do Son district, Hai Phong city

In implementation of the 2014 Work plan within the framework of Project “Strengthening Access to Justice and Protection of Rights in Viet Nam” supported by UNDP (hereinafter referred as the Project), the Bureau of Civil Status, Nationality, Authentication has, in coordination with the Project, held a two-day workshop on “**Overall assessment of the Draft Law on Civil Status from the human rights-based perspective**” in Do Son district, Hai Phong city on 9-10/10/2014. The following results are inputs obtained from the workshop:

1. Organization of the workshop

1.1 Time and venue of the workshop

The workshop was held in the Guest House No. 21, Do Son district, Hai Phong city on 09-10/10/2014.

1.2. Participants

** Central participants:*

- Representative of the Legal Department of the Office of the National Assembly;
- Representatives of the leadership and officials of the Bureau of Civil Status, Nationality, Authentication;
- National experts of the research study on “**Overall assessment of the Draft Law on Civil Status from the human rights-based perspective**”.

** Local participants:*

- Representatives of the leadership of the Departments of Justice, Divisions of Judicial Administration, Divisions of Justice and judicial – civil status officials of some communes, districts and towns of the following provinces, cities: Ha Noi, Hai Phong, Hai Duong, Hoa Binh, Vinh Phuc, Yen Bai, Tuyen Quang.

2. Main contents of the workshop

2.1. The first working session (the morning session on 09/10/2014)

* Mr. Nguyen Quoc Cuong, Deputy Director General of the Bureau of Civil Status, Nationality, Authentication, welcomed the participants and briefed the workshop's agenda.

* Dr. Nguyen Cong Khanh, Director General of the Bureau of Civil Status, Nationality, Authentication, opened the workshop and made a brief introduction of the directions, development process and some main contents of the Draft Law on Civil Status.

* Dr. Tran That, national expert of the research study to present shortcomings, weaknesses and difficulties within the current legal system related to civil status and other relevant aspects that affect the exercise of the rights of individuals and citizens.

According to Dr. Tran That, these shortcomings and weaknesses arising from implementation of the current laws on civil status to ensure the exercise of human rights include the following:

- Firstly, the system of legal documents on civil status is scattered in numerous sub law documents (including 05 decrees and 07 circulars), which has caused difficulties for citizens to meet requirements of civil status registration as is difficult to identify legal grounds to implement their own individual rights. It has also caused difficulties to officials in charge of civil status registration, especially officials in charge of judicial and civil status works in communes, in handling citizens' requests.

- Secondly, the current mode of civil status registration and data archiving is manual. Judicial officials in charge of civil status works, of Division of Justice or Department of Justice have to write down on the civil status record books and forms. When they want to search for information, they have to search in the correct type of registration record books. On the other hand, with regulations that entitle civil status events to be registered at places of residency of individuals, it has resulted in the fact that civil status events of individuals become incoherent, fragmented and unconnected with each others. Therefore, the practice of civil status management also becomes scattering with fragmented and unsystematic information, which makes it very difficult to share information with other sectors. When there are requests of information of the personal status of citizens, it is very difficult to handle such requests for both the State agencies and individuals.

- Thirdly, shortcomings in legal regulations for each type of civil status registration include the following:

Procedures of birth registration are complicated. Birth registration requesters shall have to submit several types of papers such as ID card to prove their record, residency registration papers to prove the righteous competence;

marriage certificate to prove the marriage relations of father, mother and/or child.

In accordance with Decree No. 158/2005/ND-CP, procedures of marriage registration do not require the Health Certificate of Vietnamese citizens for domestic relations. However, according to Decree No. 24/2013/ND-CP, dossiers for marriage registration with foreign elements require that each party should submit their mental health certificate. Therefore, there is lack of consistency and comprehensiveness in the legal system related to civil status.

In terms of procedures for guardianship registration: the 2005 Civil Code stipulates that there are two types of guardianship as follows: the natural guardian and appointment of a guardian. However, Decree No. 158/2005/ND-CP only stipulates procedures for registration of appointed guardians, but not natural guardians, which results in the lack of grounds for civil status registration agencies to handle individuals' requests of registration of national guardians.

In terms of registration procedures of recognition of father, mother or child: Decree No. 158/2005/ND-CP stipulates conditions for registration of recognition of father, mother or child, i.e. voluntary and conflict-free conditions. However, at the moment, there are no legal documents that identify the scope of conflicts. The registration procedures prescribed in the current Decree No. 158/2005/ND-CP remain simple; accordingly requesters shall not have to produce materials to prove the relations of father, mother or child. Therefore, in several cases, requests of recognition of father, mother or child are not true in practice and aim at profit seeking (e.g. to enjoy favorable policies for children of war invalids, revolutionary martyr, reunion requests).

In terms of procedures for registration of changes in, correction of civil status, re-determination of ethnicity, re-determination of gender, supplements to civil status, adjustment of civil status: According to the laws, after changes in, correction of civil status, re-determination of ethnicity, re-determination of gender, supplements to civil status, adjustment of civil status, if commune People's Committees handle such requests, it shall have to notify district People's Committees to update the Record Book (dual record book archived in districts) and vice versa. However, there are several cases which fail to notify after handling such requests, resulting in a stage of inconsistent information of individuals' civil status. Moreover, according to Clause 1 Article 38 of Decree No. 158/2005/ND-CP, requesters of changes in, correction of civil status; re-determination of ethnicity; re-determination of gender shall have to produce their original birth certificate. Such regulations are very difficult to implement in practice, it is due to the fact that the majority of cases has lost their original birth certificate. If it is necessary to comply with Decree No. 158/2005/ND-CP,

citizens shall have to request to re-issue of original birth certificates. Therefore, it shall emerge troublesome administrative procedures for citizens.

Moreover, Dr. Tran That also analyzes shortcomings and weaknesses related to legal regulations on birth/death registration, late registration of deaths; re-registration of births, deaths, marriages.

In order to overcome these shortcomings and weaknesses in the current legal system on civil status, Dr. Tran That believes that it is necessary to codify regulations on registration and management of civil status in Decrees of the Government, which have been tested in practice, ensuring the inheritance and development, as well as selective reference to experience of some countries who have developed civil status registration system which are suitable with the conditions of Viet Nam.

In the first working session, discussions focused on commenting on the Draft Law on Civil Status as follows:

- According to Clause 1 Article 35 of the Draft Law, in cases where children are born in Vietnam with their fathers or mothers being Vietnamese citizen and the others being foreigners or stateless persons who stably and permanently reside in Vietnam, district People's Committees where the mothers or fathers reside shall register the births for such children. It is believed that the condition of "stably and permanently reside" should be lifted off as it may restrict the right of birth registration for children in cases which fail to meet such condition.

- It is believed that the Draft Law should supplement regulations on issuance of marital status certification for citizens at their requests for the marriage purpose and other purposes.

- It is believed that the document drafting techniques should be reviewed in order to avoid general, unclear, unspecific or discretionary terminologies.

2.2. The second working session (the afternoon session on 09/10/2014)

- * The national expert delivers his presentation on the personal status rights prescribed in the Draft Law on Civil Status from the perspective of institutionalization of Resolutions of the Party, the Constitutions, laws and international treaties that Viet Nam is a member.

- * The expert then introduces directions and proposals for improvement in order to meet requirements of promotion of human rights, citizens' rights in the new context. He analyzes some theoretical points on compatibility/incompatibility of the Draft Law in comparison with the 2013 Constitution and other relevant laws that were adopted or are being amended, supplemented. He also shares some proposals, recommendations in order to

ensure the best, most effective and comprehensive implementation of citizens' rights, making contributions to improvement of the Draft Law before its submission to the National Assembly to be adoption in the 8th meeting session (October 2014).

* After the expert's presentations, the discussion continues to comment on the Draft Law on Civil Status:

- It is believed that it is infeasible and impractical when the Draft Law stipulates the two-day time limit for handling requests of correction of civil status, as judicial – civil status officials need more time to verify whilst they still have to handle many other works.

- It is believed that the Draft Law should have certain provisions in Article 3 and 27 to stipulate adjustments of civil status. Related to this issue, representative of the Bureau of Civil Status, Nationality, Authentication shares that the initial ideas of the Drafting Board is to attach provisions on adjustments of civil status with those on corrections of civil status.

- It is believed that form of death registration should be stipulated in order to facilitate citizens in civil status registration, as well as to help information of civil status registration remain consistent and accurate.

- It is believed that it is infeasible to stipulate as in Clause 2 Article 32 of the Draft Law: "If competence to register death ...cannot be determined, the commune-level People's Committee of the locality where such person dies or where the death body is found shall perform death registration". It is due to the fact that the commune-level People's Committee does not have information of the dead person in order to perform the death registration.

2.3. The third working session (the morning session on 10/10/2014)

The expert introduces the overall report of the Draft Law on Civil Status from the perspective of human rights protection on the basis of the research's results, proposals to improve the Draft Law in order to ensure implementation of human rights in the field of civil status. He analyzes the current practice of laws on civil status from the perspective of implementation of human rights; level of specific interpretation of the administrative reform into the Draft Law on Civil Status in order to promote human rights; proposals, recommendations to further supplement and improve the Draft Law in order to ensure human rights and its implementation after promulgation of the Law on Civil Status. Moreover, he also shares proposals, recommendations to improve the Draft Law on Civil Status in particular and laws on civil status registration in general. Accordingly, it is necessary to: i) expand the governing scope of the Law on Civil Status to ensure the comprehensiveness, sufficiency and consistency; ii) stipulate a mechanism to systematically update and keep tracks of civil status data of individuals and households, ensuring the continuity; iii) absolutely decentralize

the powers in civil status registration; iv) develop solutions for investments in science, technology, technical infrastructure for management of civil status, development of an electronic database on civil status; v) simplify administrative procedures for civil status registration, saving times in registration, reducing civil status papers for individuals, diversifying and modernizing modes of civil status registration.

After his presentation, the expert discusses with participants on relevant legal regulations on competence of registration, issuance of copies of civil status papers, civil status forms, principles of registration and management of civil status, etc.

2.4. The forth working session (the afternoon session 10/10/2014)

* Dr. Nguyen Cong Khanh explains in details articles of the Draft Law on Civil Status.

* Then there are discussions, exchanges of opinions on practical shortcomings in civil status registration, and comments on the Draft Law on Civil Status.

The majority of participants believe that the Draft Law on Civil Status reflects profound humanism. With the nature of a procedural law, the Law on Civil Status plays an important role in promotion, enhancement and guarantee of human rights in general and personal rights in particular. It is believed that the breakthrough throughout the Draft Law is the change of thought from “the State management” to “serving the people”. Specifically: regulations on powers and procedures are drafted under a simple, favorable and facilitating direction for the people; strong administrative reform, reducing paper works, expenses for compliance with administrative procedures; exemption of registration fees for the majority of civil status requests; development of an electronic database on civil status in order to enhance the possibility to exploit information and effectiveness of civil status registration for citizens, etc.

The workshop ends at 16.45 of 10/10/2014. Mr. Nguyen Quoc Cuong has the close remarks, noting the active participation, ebullient and enthusiastic discussions of participants. The Drafting Board of the Draft Law on Civil Status shall consider opinions, comments of participants to revise and improve the Draft before its submission to the National Assembly in November 2014. He hopes that the Law on Civil Status shall bring about a breakthrough in registration and management of civil status, ensuring human rights in the field of civil status.

3. Assessment of organization of the workshop

The workshop is held in accordance with the expected timeframe, venue, participants, experts and contents. The workshop has met the initial objectives

including exchanges and sharing of domestic experience, summary of practical shortcomings and proposals of officials, staff who are directly involved in registration and management of civil status at the grassroots level; hence summary of proposals of the best and most feasible solutions to simplify administrative procedures, citizenship papers in the Draft Law on Civil Status./.

Receivers:

- As above;
- Department of International Cooperation
(for coordination);
- Archives: VT. (V.A)

GENERAL DIRECTOR

(Signed)

Nguyen Cong Khanh