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CONSIDERATIONS REGARDING THE NEW LEGISLATIVE MODIFICATIONS AND AMENDMENTS IN THE MATTER OF CIVIL STATUS ACTS ¹

Irina APETREI²

Abstract

This paper aims at signaling the future legislative modifications and amendments in the matter of civil status acts, still at under discussions in the Bill for the modification and completion of Law no. 119/1996 regarding civil status acts, republished³, as well as for the abrogation of the Government Ordinance no. 41/2003 pertaining to the administrative modification and assignment of individuals' names.⁴ The Bill has been subject to public debate and later approved by the Superior Council of the Magistracy. The new normative act aims at creating the legal framework for the implementation of the project regarding the creation of the Integrated Computer System for the Issue of Civil Status Acts (SIIEASC), carried out by the Ministry of Internal Affairs, which will establish the electronic form for drawing up civil status acts, while ensuring the required computer network at a national level. The purpose of the new regulations is to harmonize the Romanian legislation in the field with the European legislation, given that Romania's adhesion to the European Union in 2007 implicitly triggered an increase of the international private law legal relationships. The bill aims at decentralizing certain activities by the transfer of attributions from the competence of public central administration to the competence of local public administration authorities, which will result in a decrease of the time required to settle a petition regarding civil status acts. Furthermore, the new law will also include the provisions of Government Ordinance no. 41/2003 for the administrative assignment and change of individuals' names, a normative act that it will also abrogate. To this purpose, the bill stipulates a simpler procedure for changing a name and, at the same time, a shorter time for this endeavor and,

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³ Republished in the Official Gazette, Part I, no. [339 from May 18, 2012](#).

⁴ Published in the Official Gazette, Part I, no. 68 from February 2, 2003.

with regards to the first name, parents won't be allowed to register more than three first names for their children.

Keywords:

New regulations; civil status acts.

1. Introductory Aspects

The goal of this paper is to conduct a theoretical analysis regarding new legislative background in Romania in the field of civil status acts as initiated in the bill for the modification and completion of Law no. 119/1996 regarding civil status acts, republished, as well as for the abrogation of Government Ordinance no. 41/2003 regarding the administrative assignment and modification of individuals' names.

The new regulations aim at a harmonization between our legislation and the European legislation in the field, being a natural consequence of our country's adhesion to the European Union in 2007 and, implicitly, of the increase of legal relationships in the sphere of private international law.

In that sense, the new regulation will create the legal background for the implementation of the project related to the Integrated Computer System for issuing civil status acts (SIIIEASC), carried out by the Ministry of Internal Affairs. This will establish the electronic form for the drawing up of civil acts, by means of a national wide computer network.

The bill aims at decentralizing certain activities, by transferring certain attributions from the competence of public central administration to the competence of the local public administration, which will also lead to a reduction of the time required for applications regarding civil status acts.

At the same time, the new regulation will abrogate the provisions of Government Ordinance no. 41/2003 regarding the administrative assignment and modification of individuals' names, which will be included in its own normative content.

Moreover, the bill stipulates a simpler procedure and a shorter time to change family names, while for first names parents won't be allowed to register more than three first names at the birth of their children.

2. The Notion of Civil Status

An individual's civil status provides, beside the name and residence, the means of identification of individualizing them in relationship to the

other members of society, given that each individual is unique (this unicity being also shown by the personal numerical code, in later stages).

From an etymological perspective, the term of “civil status” comes from the Latin “status civilis”, in the sense of required attributes for an individual to have legal personality.

Although the customary use of the civil status term refers rather to the quality of an individual as married or single, as we all know it, the term comprises several “ingredients”. Thus, in a larger sense of the term, the civil status refers to the legal condition of an individual within a state (nationality, namely Romanian or foreign citizenship), within society (male or female, major or minor, under interdictions or not, convicted), as well as within the smaller sphere of family (married, divorced, child from the marriage or outside marriage, adopted individual).

In a narrower sense, the civil status refers to a set of personal qualities by means of which an individual is differentiated by the others and for whom the law sets forth certain legal consequences.

The civil status comprises a set of elements that individualize a citizen as a subject of rights and obligations and that determine their legal position towards the family they are part of. It can be stated that the position of an individual in relation to their family is the most important element of civil status.

The current Civil Code defines civil status as “the individual’s right to differentiate themselves, in family and society, by strictly personal qualities deriving from their civil acts and deeds” (art. 98 Civil code).

The civil status is acquired following certain legal facts (birth, death), following the conclusion of certain legal documents (marriage, adoption) or following a final court order with effect on the civil status (divorce order, declaratory judgment of an individual’s death, etc).

3. Regulation

The New Civil Code regulates civil status acts in art. 98 – 103. In addition, we find civil status dispositions in Law no. 119/1996 regarding civil status acts, as well as in the Methodology for the unitary enforcement of these dispositions⁵, in Government Ordinance no. 41/2003 regarding the administrative assignment and modification of individuals’ names, in

⁵ Published in the Official Gazette, Par. I, no. 151 from March 2, 2011.

Government Emergency Ordinance no. 97/2005 regarding the registration, residence and identity documents of Romanian citizens, republished⁶, etc.

4. Legislative Novelties

4.1. Civil Status Acts in Electronic Format

According to the current regulation, civil status acts (birth, marriage and death) are filled in manually, in black ink, in two original copies, in the civil status registers.

The new bill stipulates that the first copy of civil status acts drawn up at Romania's diplomatic missions and consular offices also be filled in electronically.

Thus, according to art. 4 of the bill, as of the date the required computer infrastructure becomes available at a national level, the first copy will be filled in on hard copy, in the civil status registers, being also filled in electronically. The second copy will be filled in only electronically, both with regard to the civil status officers and Romania's diplomatic missions and consular offices. Subsequent mentions will also be filled in electronically in the same copy II, further to be submitted under the same form by the issuing officer to the town hall, which keeps copy I in the registers of civil status acts, in view of making the modification of the changes in the civil status of that particular individual. According to the previous procedure, every time there were modifications to the individuals' civil status, each civil status office that operated such modifications was bound to refer these modifications to the other civil status offices where records had been previously made regarding the civil status of that particular individual. In the end, all these modifications were centralized by the civil status office from the place of birth of individuals. This way, in agreement with the technological evolution, the previous difficult and time-consuming procedure is to be simplified.

Furthermore, as Romania is a member of the European Union, art. 7 line (2) of the Bill expressly stipulates the right of foreign citizens, of citizens of member states of the European Union, of those from the European Economic Space and the Swiss Confederation, with the residence in Romania or who are temporarily on Romanian territory, to apply for the registration of civil status acts under the same conditions as Romanian citizens (compared to the current regulation, which only uses the phrase

⁶ Republished in the Official Gazette, Part I, no. 719 from October 12, 2011.

“foreign citizens”, without the aforementioned details, mandatory for the time being).

The same article stipulates in line (4) that the Romanian citizens travelling abroad are bound to request the registration of the civil status acts and deeds at Romania’s diplomatic missions, namely consular offices or the competent local foreign authorities.

In view of operating these legislative modifications, the competent authorities will implement the Integrated Computer System for issuing civil status acts (S.I.I.E.A.S.C.). The bill fails to indicate a deadline when this system could operate at a national level.

As a necessity related to the technological evolution, art. 10 of the Bill consecrates the electronic signature of the civil status officer regarding the second copy of civil status acts, drawn up, as mentioned above, only under electronic form according to the future regulations.

To observe Romania’s obligations deriving from the country’s adhesion to Convention no. 16 of the International Commission of Civil Status⁷, art.14 of the Bill sets down the delivery of multilingual birth, marriage or death certificates/excerpts. These excerpts are valid only within the states that are part of this convention.

In view of correlating the new regulations with the provisions of the Convention no. 16 of the International Commission of Civil Status, but also to clarify certain situations that have occurred in the practice that could affect the validity of civil status acts, art. 14 of the Bill forbids unauthorized modifications or amendments to the civil status acts, as well as their lamination, otherwise becoming null. Our opinion is that in this case nullity is absolute, taking into account the breach of civil status of an individual. The regulation thus sanctions the case of lamination of civil status certificates, commonly met in practice. The use of laminated certificates is currently denied by the authorities; however, the current regulation fails to forbid the practice and apply the sanction of nullity.

The enforcement of the sanction of nullity will be assessed by the civil status officers from the Register Office and the administration of the databases (DEPABD) which will be set up within the Ministry of Internal Affairs or by the clerks of the community services of registration for

⁷ Signed in Vienna on September 8, 1976, to which Romania adhered by Law no. 65/2012, published in the Official Gazette no. 277 from April 26, 2012.

individuals. The Bill fails to detail the procedure to follow in view of assessing the nullity of those documents.

The same direction will follow in the future the competence to guide and control the activity in the field of civil status performed within local public communitarian/county services for the registration of the individuals, namely within the town halls of the administrative – territorial units (where there are no local public communitarian services for the registration of individuals), this replacing the current competence of the Ministry of Administration and Internal Affairs.

4.2. ISSUING THE BIRTH CERTIFICATE

In this matter, it is important to notice that certain operations related to issuing the birth certificate will be decentralized. Thus, the bill transfers certain attributions from the competence of the central public administration authorities to the local public administration authorities, reducing at the same time the time needed for settling certain categories of applications. In that sense, in case the birth is declared after the usual term of 30 days stipulated currently by the law, but within a year from birth, the future regulation will eliminate the approval of the county communitarian public services for the registration of individuals/The General Registration Office in Bucharest.

More specifically, with regard to issuing the birth certificate, according to the new regulation, when the birth is declared after the usual term of 30 days, but within 1 year from birth, the document will be issued only with the approval of the mayor of the administrative – territorial unit, namely of the head of Romania's diplomatic mission or consular office on the territory of which the birth took place. According to art. 19 of the bill, the birth is registered within 30 days from the date of the request, compared to the current regulation that stipulates a term of 90 days to settle the application.

For the valid issuance of the birth certificate, the Bill requires the approval of the County Communitarian Public Services for the registration of people/The General Registration Office only in the event the birth was declared after the expiration of the one year term.

Another modification refers to the issuance of the birth certificate in case of an abandoned child, the Bill stipulating that the certificate be issued in the same 30 days' term from the date the child was found, by the local public communitarian registration service or, as the case may be, by the town hall on whose territory the child was found and that a further authorization from the tutelary court is required, beside the report drawn up and signed by the public registration officer, by the representative of the competent police unit and by the doctor, so that urgent fostering measures could be taken for the protection of the child in this situation.

A useful modification is also the change of the competence for the issuance of the new birth certificate in case of an adopted child, the future regulation stating in art. 28 that it belongs to the civil status officer from the local public communitarian registration office or, as the case may be, from the town hall on whose territory the adopters' or sole adopter's residence is. In the current regulation the competence is determined according to the criterion regarding the adopted child's residence until the moment of approval of the adoption or at the headquarters of the foster unit who cared for the adopted child prior to the approval of the adoption. This reformulation was a must for the future regulation to be in agreement with the provisions of art. 46 line (1) of law no. 273/2004 regarding the legal regime of adoption, according to which, on the duration of entrusting the child in view of adoption, the child's residence is with the person or family to whom they were entrusted. Thus, a more appropriate criterion is set forth to determine the competence for the issuance of the birth certificate in case of an adopted child.

4.3. The regulation of a 3 first names limit

One of the most significant novelties of the future regulation regards the first name. This part of the name was created to make the necessary difference among the members of a family.

However, for a long time there has been in Romania a tendency of certain parents to assign a larger number of first names for their children, to satisfy their desires or, sometimes, those of grandparents or future god parents of the child.

We are of the opinion that, *de lege ferenda*, an express provision should be made to bind the civil registration officer to register as first names denominations of car brands, countries, indecent terms, etc. (and not only the possibility of denying it, as currently stipulated by art. 18 line (2) of law 119/1996) and to sanction with nullity the registration of such first names.

In the analyzed context, it is a good idea to set a three words limit with regard to the first name. More specifically, according to art. 22 of the bill, if the parents don't have a common family name or there is a disagreement between the child's name from the medical certificate that attests the birth and the name from the oral statement or if the name consists of more than three words, the birth certificate will be made based on a statement written and signed by both parents which indicates the family name and the first name of the child. This would be in fact the evidence of the parents' agreement with regard to the first name of the child.

4.4. Modifications in the field of the conclusion of marriage

Regarding the conclusion of marriages, the bill introduces a necessary clarification for the determination of the place of marriage in case of Romanian citizens who are abroad. In that sense, art. 29 stipulates the conclusion of the marriage by the civil status officer from Romania's diplomatic mission or consular office on the territory of which is the residence of one of the future spouses of Romanian citizenship.

Moreover, according to art. 30 of this Bill, the marriage can be concluded outside the local public communitarian registration office or, as the case may be, the competent town hall, with the approval of the mayor if, for solid reasons, one of the spouses is unable to walk. Therefore, the legislator appreciated as necessary the existence of solid reasons for the inability of one of the spouses to walk for a marriage to be concluded outside the aforementioned venues, forfeiting the future spouses' capacity of choosing the location of their marriage and imposing certain limitative conditions to this end.

A novelty is the condition of the mayor's approval in case of the marriage declaration made outside the local public communitarian registration office or, as the case may be, the competent town hall if, for solid reasons, one of the spouses is unable to walk to these venues, the legislator deeming as necessary the intervention of a competent authority to verify at the same time the solidity of the reasons invoked in such situations.

In view of clarifying the current regulating and of correlating it with the obligations acknowledged by Romania following the adhesion to Convention no. 16 of the International Commission of Civil Status, art. 31 of the Bill stipulates that the civil status officer who receives the marriage declaration will request the future spouses to show the identity documents, birth certificates, medical certificates attesting the health condition, with the supplementary mention that for the foreign citizen a bilingual birth certificate is required. Furthermore, in case of a previous marriage dissolved by a divorce decision or terminated following the death of one of the spouses, the bill expresses stipulates that the individual who is about to conclude a new marriage must make proof of dissolution/termination of the previous marriage.

The text of the bill is clearer with regard to the calculation of the term for the conclusion of marriage, stipulating in art. 34 that the marriage "is concluded" as of the 11th day from the submission of the marriage declaration, but not later than the 30th day (the terms remaining the same as those in the current regulation). Mandatorily, the bill offers, as it currently does, the possibility of concluding the marriage prior to the aforementioned

term, for solid reasons, also stating the necessity of supplying evidence for these reasons.

At the same time, the bill allows the spouses, in case their marriage was not concluded within the maximum term of 30 days from the submission of the marriage declaration, to modify their initial declaration regarding the name chosen for the duration of marriage or their future matrimonial regime, if they have meanwhile changed their minds and have other possible options.

The legislator deemed necessary to determine as well the competence of the diplomatic missions in the matter of marriage conclusion, stipulating that the heads of diplomatic missions and consular offices of Romania can conclude marriages between Romanian citizens or between Romanian and foreign citizens, provided that at least one of the future spouse, a Romanian citizen, has the domicile or residence in the consular circumscription of the diplomatic mission or consular office of Romania.

A new provision is that according to which the heads of Romania's diplomatic missions and consular offices cannot officiate marriages unless the accredited states acknowledge those marriages.

A necessary completion of the current regulation regarding the evidence of civil status, so that no other documents should be required for this purpose, is that stipulated in the text of art. 65 line (2) of the bill, according to which, in case of marriages dissolved by divorce/terminated due to the death of one of the spouses, the marriage certificate is issued only with mentions regarding those particular cases.

4.5. Declaration of death and issuance of the death certificate

According to the current regulation, the death of an individual should be declared within 3 days from the its occurrence, including the day of death and the day of the declaration.

The future regulation maintains the same short term of 3 days, without making further clarifications regarding the way of calculation of this term, indicating only that the "declaration of death is made within 3 days from the day the individual passed away". By eliminating the references regarding the means of calculation of this term, we understand that a death can be declared within maximum 3 days from the death of the individual, without taking into account the day that particular individual passed away but including the day of the declaration (we take into account the case when this is made on the last day out of the 3 days). The reformulation of the text of law is, indeed, welcome, as it fails to include in this term the day of death, a difficult moment for the closed relatives who are to make the declaration.

The bill makes a necessary amendment with regard to the calculation of this term in case of death following suicide, accident or other violent causes, as well as in the case of finding a corpse, stating that the term of 3 days will run from the date of issuing the medical certificate attesting the death (taking into consideration the special circumstances of the death and which require the intervention of a medical agent to certify the death, prior to issuing the death certificate).

Furthermore, the new regulation expressly stipulates, with regard to the competence of issuing the death certificate, beside that of the local public communitarian registration office, namely of the town hall of the administrative – territorial unit, the competence of Romania's diplomatic missions/consular offices on the territory of which the death occurred.

With regard to the drawing up of the death certificate based on a court's decision to declare death, the bill replaces the three possible locations where this act could have been drawn up, as currently stipulated⁸, with a single location, granting this competence to the civil status officer within the local public communitarian registration office/ the town hall of the administrative territorial unit from the last known residence of the individual declared dead, a necessary modification in view of correlating the current text of law with the provisions of art.947 line (2) of the Civil Procedure Code⁹.

To clarify certain situations that have occurred in practice, a new provision (line 4, art. 39) is introduced, which states that, in case the death is not certified by the court's decision, it will be deemed to be the place of registration of that particular death.

At the same time, a new article (39) determines the competence of the civil status structures in the country for the registration of the death certificates in case of Romanian citizens deceased abroad, who deaths have not been registered by the foreign competent authorities or by Romania's diplomatic missions or consular offices (after the Ministry of Internal Affairs

⁸ According to art.39, in this case the competence belongs to the local public communitarian registration office or the civil status official within the town hall of the administrative territorial unit from:

- a) The birth place of the individual declared dead;
- b) The domicile of the individual declared dead, if the birth certificate was issued by the local authorities abroad;
- c) The domicile of the person who requested the court decision to declare the death, in the event the place of birth and domicile of the deceased are unknown.

⁹ According to art.947 line (2) Civil Procedure Code, the "content of the decision will be communicated to the tutelary court from the last known domicile of the deceased, to appoint a curator, if applicable".

previously checks this non-registration abroad, with the help of the Ministry of External Affairs).

4.6. THE ADMINISTRATIVE CHANGE OF AN INDIVIDUAL'S NAME

In its amended and modified form, Law 119/1996 will also comprise the provisions of Government Ordinance no. 41/2003 regarding the administrative assignment and change of an individual's name, a normative act which will be abrogated once the future regulation becomes legally binding.

Therefore, naturally, we will have in a single normative act, all the provisions related to the family names and first names of individuals.

Among the significant novelties that have appeared in the matter, we would like to signal first the regulation of certain new cases of name change, more specifically the change of the first name, following certain situations that have previously appeared in the practice.

Thus, according to art.41 line (2) letter e), the first name of an individual can be amended if a person is known by a first name and they would like to add it to the initial name, complying with the provisions related to the maximum number of three first names accepted by the bill.

In the event one or both spouses wish to change the common or reunited family name they had during marriage, the agreement of the other spouse is requested in authentic form or in front of the civil status officer, thus supplying future evidence for the will of the spouses in this matter.

A new hypothesis is that in which a person has a name changed abroad and fails to have a foreign administrative document, the only evidence provided being the passport, namely the identity document issued by the foreign authorities. We understand from the formulation of the norm that an individual has a different name in the passport/identity document, without having taken the steps for the administrative change of their name. We cannot but wonder how the foreign authorities have issued such documents without there being a previous underlying administrative document to attest the change of the name? We are of the opinion that prior to the enforcement of this bill, the provision of art. 41 line (2) letter n) should be clarified.

Another situation that has occurred in practice and which is necessarily settled by line (3) letter d) of art.41, is the possibility that one of the spouses, who has kept their family name during the marriage, to return, using the procedure of administrative change of name, to the name held prior to the marriage (including the hypothesis of a name from a previous marriage, used after its dissolution) or the name acquired by birth (as currently regulated).

The same authentic form of the ex-spouse's consent (alternating with the consent expressed in front of the civil status officer) is requested by the future regulation, if the other ex-spouse wishes to use the family name held during the marriage after the divorce, to have the same name with the children resulted from that marriage.

Another newly regulated situation is that in which the parent requests that the minor child entrusted to them following the divorce should use the family name acquired following the conclusion of a new marriage, with the current spouse's consent, but also with the ex-spouse's consent, expressed under authentic form or in front of the civil status officer. We believe that the legislator has found a legally unique, simpler solution for the situation in which the current spouse consents to give their name to the minor child resulted from their spouse's previous marriage, without intending to adopt the child as well, thus dodging other legal effects of adoption.

From a procedural perspective, to the documents that have to accompany the application for the modification of the name stipulated for the moment, the legislator adds the identity act of the individual and replaces the approval of the tutelary authority with that of the tutelary court, in the event the applicant is a minor child and requires the intervention of a state authority to verify the compliance with the child's best interest.

In view of eliminating the cases when both parents request the change of the family name, omitting to request the change of the minor child's family name, art. 41, p. 7 of the bill stipulates that in such cases the change of the minor child's family name is mandatory and it is made automatically.

Moreover, to eliminate the events in which the application for the name change was made with the intention to dodge or hinder criminal charges, the bill stipulates that the application to change the first/family name will not be admitted if a court measure to limit the right to free circulation abroad (for the duration of such measure) has been ruled¹⁰ or if in the last 5 years the applicant was condemned for willful misconduct, namely if they were expelled or returned from the countries with which Romania signed agreements to this purpose.

In view of clarifying the cases when another administrative procedure (such as rectification, typing, recording the mention of name change performed abroad) or a court procedure (such as actions to amend or modify the civil status) should be followed, the text of art. 41, p. 11 stipulates that the local public communitarian

¹⁰ Under the conditions of Law no. 248/2005 regarding the regime of free circulation of Romanian citizens abroad, with its subsequent modifications and amendments

registration office or, as the case may be, the town hall which has received a name change application will have to communicate in writing to the applicant the reasons for which the application cannot be admitted.

A modification which must be mentioned is that regarding halving the time for the settlement of name change applications, the term for admission or rejection of such applications being reduced from 60 to 30 days [art.41 p. 14, line (2)].

In case the name change application is admitted, according to the new regulation the applicant should be informed as soon as possible in written form (which was not stipulated before). Unlike the current regulation, according to which the name change disposition becomes legally binding as of the date of registration of the mention on the side of the birth certificate, the future regulation stipulates that the disposition becomes binding on the date it is handed in to the owner. If the applicant who is informed with regard to the admission of the application fails to report to the local public communitarian registration office or, as the case may be, to the town hall to have the disposition handed in within 90 days, it will be returned to the issuer, which cancels it. After the 90 days term, the name/first name change application becomes obsolete.

With regard to the proof for the name change, if the current regulation stipulates that it is made with the disposition to admit the application or with the certificate issued by the local public communitarian registration office, based on this disposition, the future regulation states that the proof is made with the disposition to admit the name change and the new civil status certificate. The modification made serves to avoid the issuance of the identity act based on the disposition, without having the name change mentioned on the civil status document, the alternative criterion being replaced with a cumulative criterion.

Regarding the mentions made on the side of civil status documents (birth, marriage or death certificates), in case of modifications made to the civil status of an individual, beside the determination of filiation, rectification, amendment or cancellation of civil status acts, the change of gender, etc., the future regulation also adds two more cases: the adjudication of incapacity, typing or translating the name, being natural that these situations that occur in the civil life of an individual should also be found on the side of the civil status documents.

Conclusions

The future regulation will allow, as a form of quantification of this miniature biography, represented by the civil status of an individual and its constitutive components, to be in agreement with the modern operation means of civil status registration, while harmonizing the Romanian legislation with the European legislation in the field.

The bill simplifies a series of procedures, decreases or increases, as the case may be, a series of procedural terms in the matter and comes to the help of Romanian citizens living abroad, reuniting in one text of law of a special nature all the provisions regarding the civil status of individuals.

It is clear that only after the enforcement of this normative act can the practice underline possible flaws or lack of synchronization with future *de facto* situations, offering the occasion for new scientific research in this direction.

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