

THE INCONSISTENCY BETWEEN CIVIL STATUS AND CIVIL REGISTRY DOCUMENTS

R. MATEFI¹ N. CRĂCIUN¹

Abstract: *The present article aims to emphasize the potential inconsistencies which can occur in practice between a person's civil status and the civil registry documents which prove the respective status. Jurisprudence in this domain shows that there are numerous situations when a person's civil status is inconsistent with the civil status documents, an inconsistency which must be corrected. The lawmaker provides the necessary tools, such as rectification, when the civil status documents contain wrongful mentions, by way of administrative or civil action. In case the inconsistency occurs between the apparent civil status and the real one, the inconsistency must be corrected by legal action.*

Key words: *civil status, civil registry document, civil registry action, rectification.*

1. Civil status

In order to determine the relation between the civil status of a person and the documents which regulate this status, as well as the potential inconsistencies between the two, we must establish from the very beginning which is the content and the meaning of these two phrases.

Civil status has been given numerous definitions in the doctrine, as it is present in specialty literature as “an ensemble of elements whereby a person is individualized, as a subject of rights and obligations, thus establishing its legal position in relation to the family it is a part of” (Lupulescu, 1980, p. 5) or “as a legal means of individualizing a person by pointing out the personal qualities with this meaning” (Beleiu, 2007, p.234).

The esteemed professor Emil Poenaru defined civil status as containing “the elements which form a person's quality as a subject of law - different elements such as filiations, married or divorced status, age, whether the person is adopted or adopts a child and so on (Poenaru, 1996, p.234) ”.

Thus, we can conclude that marital status or the civil status of a person provides the elements by which a person is individualized in society and in the legal relations he is involved in, containing the previously stated elements.

The judicial characteristics of civil status

A first judicial character of civil status is its inalienability, as it can't be completely or

¹ Transylvania University of Braşov, roxana.matefi@unitbv.ro

partly alienated; a person is forbidden from concluding acts by which it forgoes its civil status or it alienates it to another subject of law. However, the law allows for the change of civil status, within the expressly stated limits.

At the same time, marital status is not subject to the statute of limitation. Thus, regardless of how long it would not be used, the person will not be deprived of it; similarly, a person can't acquire a marital status which does not belong to him, regardless of however long he used it.

Another characteristic of civil status is universality, as the right to have a civil status is acknowledged for every person.

“The legal provisions which establish the formal conditions of civil status documents are of imperative character” (Lupulescu, 1980, p. 5), thus resulting the mandatory character of civil status.

Another characteristic is individuality, as the attributes of civil status can only be personally exercised.

Proof of civil status is made, in accordance with the provisions of Law no 119/1996 regarding the civil status documents, with documents of civil status, as well as with certificates released based on the civil status documents.

From a historical point of view, civil status registries first appeared in 1832, created based on the Organic Regulations, as the priests were designated to draw up these registries. Until the Organic Regulations “our old law did not contain provisions regarding the drafting and conservation of special acts, which would acknowledge the events which modify a personality and legal capacity” (Hamangiu et al., 2002, p. 163).

2. Civil status documents

The definition of civil status documents is provided in the first article of Law no 119/1996 regarding the civil status documents, according to which these are “authentic documents which prove the birth, marriage or death of a person. These acts are drawn up in the interest of the state and of the person and provide information regarding the number and structure of the country's population, its demographical situation and the protection of a person's fundamental rights and freedoms”.

According to doctrine “civil status documents acknowledge, under the conditions stated by law, the legal acts and facts which form the elements of a person's civil status, (Lupulescu, 1980, p. 14)”; these acts are the birth certificate, the marriage certificate and the death certificate.

The civil status acts have a mixed legal nature, belonging both to civil law and to administrative law.

From a civil law point of view, it is an authentic document, from an administrative law point of view “the civil status document is an act which provides proof (*instrumentum probationis*) of the administrative act (*negotium iuris*), which is the registration in the civil status registries” (Urs, et al., 2007, p. 138).

3. The relation between civil status and the civil status documents and the inconsistencies between the two

It is only natural that there should be an agreement between a person's civil status and the documents which prove this status, and when this agreement is not achieved, as the

civil status is inconsistent with the civil status document, this inconsistency must be corrected.

If the inconsistency results from a material error which occurred at the time the civil status document was made or when a mention was made on that certain document, the inconsistency will be removed by way of rectification, which is “the operation of removing errors from the content of the civil status documents, errors which occurred at the time the document was made or the operation of aligning the information from the civil status documents with the real elements of civil status (Urs & Todică, 2007, p. 139)”.

Rectification of civil status documents as well as the mentions written on these documents is achieved by way of a directive issued by the mayor of the county which holds the civil registry. This can be achieved upon the request of the interested party, with previous notice from the Public Community Service of Personal Records. The procedure of rectification is stated in article 58 of Law no 119/1996 regarding the civil status documents.

Rectification will follow the administrative law, as “the request of rectification of civil status document and the mentions written in it, accompanied by all proving documents, will be filed at the Public Community Service of Personal Records or the city hall where the person resides. The request is solved within 30 days and is communicated to the interested party within 10 days from the date of issue” [Article 58, alignment (3) of Law no 119/1996].

In case “the inconsistency regards the civil status of a person, namely the legal position of this person in relation to their family, removing the inconsistency between an apparent civil status and an apparently real civil status can only be achieved by state action”(Lupulescu, 1980, p. 19).

Depending on their object, state actions are classified in: reclamation actions, contestation actions and modification actions.

A reclamation action ensures the obtaining of a civil status which is different from the one the person had when the complaint was filed. Such is the case for establishing maternity or establishing paternity for the child born outside of marriage.

The action for establishing maternity is regulated in article 422 of the Civil Code which states that “in case filiation in regard to the mother can’t be established for any reason, whether it can’t be established by the birth certificate or in case the reality of this certificate is contested, filiation in regard to the mother can be established by way of legal action, by entering any means of evidence”.

The performer of this action is the child, by his legal representative. This right is not subject to the statute of limitation.

“If the minor has no capacity of exercise or is placed under interdiction, the complaint will be filed by his legal representative; if the minor’s exercise capacity is restricted, he will be able to file the complaint, assisted by his guardian or his parent. In case the interest of the child conflicts with that of his legal representative, the court will name a special trustee who will file the complaint ” (Nicolae, 2014, p. 248).”

The lawmaker allows the heirs of the child to file this complaint or to continue it. The statute of limitation for this action is one year calculated from the time of the child’s death.

Thus, the only people who are acknowledged the right to file this complaint are the child and his heirs, as the mother has no active legal capacity in such a complaint. An

interesting case is the one filed before a Bucharest court, civil section of the second sector, settled by the legal decision no 6870/04.06.2014.

Thus, “through her complaint, filed before the court on 24.01.2014 and registered under the no X, the plaintiff A.M. filed a complaint against the defendant L.T. requesting the plaintiff to identify, by name and surname, a female person who studied at a certain high school and graduated between 2011-2013, born between 1992-1994, with brown eyes, dark long hair, narrow forehead, a height of approximately 1,70m, slender, with a nice physical aspect and resembling a person named Ajla Tomljanovic, born on 07.05.1993, a Croatian citizen, from Zagreb, requesting the court to establish filiation in regard to the mother by performing a DNA match test of her and the person who will be identified by the defendant.

Presenting the reason for this complaint, the plaintiff stated that she had met with this female person who can't hear and can't speak, and her maternal instinct told her that this person was her daughter. The female person resembles Ajla Tomljanovic, born on 07.05.1993, a Croatian citizen, from Zagreb. She knows that the child is normal and she can help her hear and talk. The certainty of maternity became clear to her once she took part in a church service for people who were having difficulties in speaking because of their shyness and inferiority complexes, emphasizing the quality of the person who can't express words and is required to be quiet and patient. She also took part in a catholic service where deafness was supposed to be cured by faith. The person she had met was not deaf and she made inquiries in this matter. She asked the principal of the high school to show her photographs of the students who graduated between xxxxx-2013. She stated that between August and December 1992 she was pregnant and registered at C. Clinic. In December she was subject to a surgical procedure. She believes the person she met had difficulties in hearing and speaking because of this procedure (...)

By analyzing this material, the court ruled that the plaintiff showed that during August-December 1992 she was pregnant and that in December 1992 she requested an abortion, which was performed at the C. Clinic. After having met a female person, who studies at the T .Special high school in Bucharest, who graduated between 2011-2013, born between 1992-1994, with brown eyes, dark long hair, narrow forehead and a height of approximately 1, 70 m, slender, with a nice physical aspect, resembling tennis player Ajla Tomljanovic, born on 07.05.1993, a Croatian citizen, from Zagreb, her maternal instinct told her that these two children were her twins, born in December 1992 (...)

Establishing filiation means proving the legal act or the legal fact which derives from the descendant relation between a child and each of his genitors; according to article 405 first alignment of the Civil Code, kinship is the connection based on the lineage of a person from another person or the fact that several people have a common ascendant. Filiation in regard to the mother comes from the act of birth and can be established by acknowledgement or by court order, as stated in article 408 first alignment of the Civil Code.

By considering the provisions of article 409-413 of the Civil Code and those of article 422-423 of the Civil Code it is acknowledged that the court must rule on establishing maternity, an action which can only be filed by the child or its legal representative if he is a minor. Thus, the plaintiff can't file such a complaint for establishing maternity for a child of age, born in December of 1992, a child she has no information about and has no evidence in regard to his existence” (<http://idrept.ro/DocumentView.aspx?DocumentId>).

The regulation of action in establishing filiation is regulated by the Civil Code only in

regard to children born after the Civil Code came into force; in regard to the children born before the Civil Code came into force, the provision of the old Family Code apply.

As for the action on establishing paternity, it will be filed in case the father of a child from outside of marriage does not acknowledge the child. This action can be filed by the child through his mother, even if she is a minor, or the child's legal representative. Also, the heirs of the child can file or continue the action.

“Present day DNA test allows establishing a maternity and paternity relation with a precision of 99, 99%. In regard to the necessity of finding out the truth over the biological ascendance and lineage, ECHR gave priority to reality. People want to know where they come from, from a biological point of view, and not knowing this aspect can cause psychological suffering, with a major impact on the normal development of a child” (Dobozi, V., 2013).

An interesting case than deserves to be analyzed is *Jäggi v. Switzerland*, from 2003, in which ECHR ruled to convict the defendant state, thus acknowledging a violation of article 8 of the Convention. “The plaintiff stated to the court that he was unable to perform DNA test on a deceased person, his alleged father, in order to establish the biological truth. The Court stated that it is the duty of member states to establish adequate means in order to ensure the respect of the provisions of article 8 of the Convention in all relations between its individuals, as there are different means to ensure the respect of private life and the nature of the obligation of the state depends on the aspect of private life which is involved in that certain matter. The Court also stated that article 8 protects two interests, namely the vital interest of every person to know its biological identity as opposed to the interest of preserving the intangibility of the deceased person and the respect owed to the dead, both threatened by the idea of forced DNA testing. The Court considered the public interest of legal security, endangered by the possibility of changing filiation” (Dobozi, V., 2013).

By contestation actions, a civil status which does not correspond with the real one is removed and is replaced with an allegedly real one. Such actions are - denial of paternity of the child born into marriage, challenging maternity and paternity, annulment of marriage.

As for the modification action, it implies changing a person's legal status in the future, such as divorce actions, as well as reversing an adoption procedure.

A second criterion for classifying civil status actions is considering the person who can file these complaints. Thus there are complaints which can be filed exclusively by the holder of the civil status, such as the divorce action; complaints which can be filed by both the holder of the civil status and his legal representative, such as the action of establishing maternity and actions which can be filed by any interested party, such as challenging filiation and annulment of adoption.

In regard to the statute of limitation, civil status actions are divided into actions which are not subject to the statute of limitation, as are most of the actions and actions which are subject to the statute of limitation (annulment of marriage, denial of paternity).

4. Conclusions

Starting from the content of the notions of civil status and civil status documents, the present article pointed out the hypotheses which are likely to happen in case there are inconsistencies between a person's civil status and the civil status act, as well as

identifying the means by which these inconsistencies can be removed.

We have described the civil action which can be filed, by presenting the specifics of each one from a theoretical point of view and by considering its practical applicability.

In regard to the practical aspects, we have described the action for establishing maternity, as well as the action for establishing paternity of the child born outside marriage in regard to the people who can file this action and the proof which is required.

We have included certain aspects from ECHR jurisprudence, which point out the conflict which can arise between the child's right to know their identity, as regulated by article 8 of the Convention and the alleged father's right to not be subjected to DNA testing.

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