

Some Considerations on the Adoption Registration in the Civil Registry

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Abstract: Filiation is, in a broad sense, an identity element, dependent or not on the biological relationships, that represents, in some situations, either a condition for the existence of a right (e.g. the right to inheritance) or for example to conclude a legal act (e.g. marriage). The proof of filiation is the birth certificate drawn up in civil registry or on the material basis of birth, or on the basis of the adoption judgment. In this paper, we aimed at analyzing the final part of the adoption procedure, the subsequent stage for becoming final the adoption judgment, which sets face to face the adopting person or family and the administrative authority, obliged to execute the judge's decision, i.e. to create a filiation relation between the adopted on the one hand and the adoptive parent or parents.

Keywords: individualization of the physical entity; marital status; birth certificate; exequatur adoption judgment

1. General Information about the Adoption

Defined by creating a link of filiation between the adopter and the adoptee, on the one hand, and on the other the extent of this relationship established as such, as well as its relations with the biological parentage, the adoption² is, par excellence, a legal arrangement, designed to imitate nature. These legal constructs, the law (mainly art. 451- 482 of the New Civil Code³, Law no. 273/2004 on the procedure of adoption⁴ and Government Decision no. 350/2012 approving the Methodological Norms for the application of Law no. 273 / 2004 and the

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² On the definition of adoption and the legal nature of adoption, see (Avram, 2013, pp. 409 and 439-440.)

³ Law no. 287/2009 on the Civil Code, republished in the Official Monitor of Romania, Part I, no. 505 of 15 July 2011, rectified in Official Monitor of Romania, Part I, no. 246 of 29 April 2013. See (Lupșan, 2011, pp. 61-65).

⁴ Republished in the Official Monitor of Romania, Part I, no. 259 of 19 April 2012.

Regulation of organization and functioning of the Coordination Council attached to the Romanian Adoptions Office¹) gives today after a series of legislative reforms which were carried out in a fast pace in the last 20-25 years², a thorough regulation of all conditions and the procedure for the approval of the application for adoption that must cover separately and together, all the “characters” involved, whether it is about the minor child or the child of age, about the adopter or adoptive family or about the natural parents of the child.

Technically, for the adopter or adoptive family, the ultimate goal of adoption is establishing the filiation to the adopted child. However, this goal is materialized in obtaining the birth certificate for the adopted child that reflects this new affiliation towards the new parent or parents and the new civil status of the adoptee.

2. General Information on the Civil Status of the Individual

The means of individualization of any physical entity in the family and society, i.e. the civil status has a complex content, consisting of determinant elements, expressly stated by the legislator in the act of civil registry (filiation, gender, citizenship), on the one hand, and on the other hand, other elements which, although are not significant at this level, however, they contribute to the individualization of the person concerned (e.g. the profession).³

The facts (birth, death) and some legal documents (marriage, recognition of the filiation of a child by the mother or father) and some decisions in filiation matters (e.g. judgment on establishing paternity, the denial of paternity judgment, judgment on the declaration of adoption, invalidity of adoption) are the sources of civil status.

The civil status of each person, determined at the time of birth registration, undergoes, throughout the life line and sometimes even after death, a series of amendments / changes to civil status, especially with regard to filiation.

¹ Published in the Official Monitor of Romania, Part I, no. 268 of 23 April 2012. By this act there were repealed expressly the Methodological Norms for the application of Law no. 273/2004, approved by Government Decision no. 1435/2004. Further, any reference to G.D. no. 350/2012 will be made *brevitatis causa*, by using the abbreviation “Methodological Norms”.

² On the evolution of legislation, see (Nicolae, 2014, pp. 278-284; Lupșan, 2011, pp. 789- 800)

³ Approved by G.D. no. 64/2011, published in the Official Monitor of Romania, Part I, no. 151 of 2 March 2011.

3. Registration of Internal Adoption in the Civil Registry

Rules concerning the registration of adoption are determined by the legislator and they are interested in two aspects: the competent authority to draw up a new birth certificate, on the one hand, and the manner in which the registration of adoption is achieved, on the other hand.

Thus, according to article 98 of the Methodology for unitary application of the provisions on civil status matters¹, the service of civil status, competent to draw up a new adoptee's birth certificate is the one in whose jurisdiction the domicile of the adopter or adopting family is or the care facility headquarters. Or, as according to article 43 of Law no. 273/2004, during the custody proceedings for adoption, the child's domicile is the domicile of the adopter or adoptive family, it results that in all cases where a judgment was passed for adoption, there is an identity of domicile for the adoptee and adopter.

A special case is when the adopted person domiciled abroad, in which case the jurisdiction rests to the adoption registration status service - the City Hall of Bucharest, Sector 1. (Negruț, 2008, p. 163)

Based on the final judgment of adoption, the competent civil service prepares a new birth certificate of the child, the adopter or adopters will be registered as the natural parents. The adopters, personally or through a representative by authentic and special proxy, address the civil service with an application requesting that, based on the judgment of adoption and the old birth certificate of the child in original, the officer of civil status should proceed with the registration of adoption, by issuing a birth certificate, corresponding to the adoptee new civil status according to art. 98-101 of the Methodology.

The entries on the data about the child in the birth register are to be completed by the officer of civil status according to the adoption judgment, namely:

- a) *surname* and forenames are ordered by the court by the judgment;
- b) *the date of birth* of the adoptee remains unchanged;
- c) *the place of birth* will be filled in with the location where the civil service draws up the new birth certificate. It is therefore possible that after the adoption to change their child's birth (e.g. the child was born in the city of Timisoara and he is adopted by a family residing in Iasi, a situation in which the civil service competent to draw

¹ On the individualization of physical entities, see (Ciucă, 2009, pp. 154-180)

up the new birth certificate of the child is within the Local Council of Iasi city, changing the place of birth, which in this case will become Iasi);

e) *gender, citizenship and nationality* remain unchanged, as indicated by the old birth certificate of the adoptee.

The entries relating to parents, the officer of civil status writes the surname, first name, date and place of birth, citizenship, nationality and domicile of the adopter or adopters, as they result from the judgment of the court. Of course, as it is not about a birth, the entry referring to the medical certificate of birth is not filled in, it shall be noted that the preparation of the birth certificate was based on a judgment of adoption declaration.

The new birth certificate has the registration number in the chronological order of the day. The identity number of the adopted person, acquired at birth, remains unchanged.

Based on the drawn up birth certificate, the officer of civil status shall issue a birth certificate that proves the new civil status of the adoptee, the one as descendent of the adopter or adopters, as appropriate. One can observe that the legislator wished to facilitate the registration method of the adoption, to put the child in the shelter of any search and research from natural parents. For this, it was provided that in the new birth certificate to have filled in as the place of birth the domicile of the adopter or adopters. This provision does not bring any prejudice to the right of the child to know his origins, since it is the law that gives the possibility to the adoptee to request extracts of the public authorities from the registry whose contents attest, the date and place of birth, but it does not reveal the identity of the natural parents (art. 67 of Law no. 273/2004), except under the conditions expressly provided.

Parallel to these operations, the officer of civil status is required to notify the local government of registration of the birth of the adopted (the original birth certificate) about drafting the new act of birth, and this authority, after operating the mentioning of the adoption under the column “issued certificates” it writes the following text: “it will not be issued any certificate”. So the birth certificate of origin, proving the biological filiation of the child, is kept by the authority which drew it up.

4. Registration of International Adoption in the Civil Registry

In terms of adoption, it is becoming international, according to art. 2 letter c) and d) of art. 52-65 of Law no. 273/2004 on the procedure of adoption, reported to art. 453 of the Civil Code when the habitual residence of the adopter or adoptive family and child are in different states, and the approval of adoption involves moving the child at the residence located in another state (e.g. a Romanian citizen residing abroad adopts a Romanian child residing in Romania, a family of French citizens residing in France adopting a Romanian child residing in Romania).

The norms of jurisdiction are provided for by art. 1078 pt. 2 of the New Code of Civil Procedure and Law no. 273/2004 (the Romanian courts have jurisdiction only if the adopted person is resident and he is a Romanian citizen or a stateless person), and, where appropriate, some bilateral conventions to which Romania is a party¹. There are also incident the provisions of the Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption, concluded in Hague on May 29, 1993, ratified by Romania by Law no. 84/1994.²

Once being final a decision for the approval of adoption, it shall proceed in recording the adoption by the Civil Service from the child's domicile, by issuing a new certificate of birth. Based on the birth certificate, the adoptee shall prepare a passport, mentioning that his residence is abroad, in the receiving State.

If from the date of declaration of adoption by the foreign authority, the adopted no longer has the status of Romanian citizen, according to art. 100 of the Methodological Norms, the adoption registration is only achieved by mentioning it based on the birth certificate from the Romanian civil registries.

If the adoptee is a Romanian citizen at the time of the achievement of the adoption abroad, after obtaining the adoption judgment issued by the competent foreign authority, it shall be established in Romania, at the request of the persons concerned, a new birth certificate by the competent authority of Bucharest, Sector 1 fulfilling the requirements of article 93, paragraphs (2) and (3) of the Methodological Norms, namely: automatic recognition (article 1094 of The Code of Civil procedure); obtaining recognition based on exequatur procedure, according to article 1095 of the Code of Civil procedure by the competent court.

¹ For example, conventions concluded by Romania with Italy regarding the adoption of minors, Albania, Czech Republic, Moldova, Serbia, Ukraine.

² Published in the Official Monitor of Romania, Part I, no. 298 of October 21, 1994.

5. Conclusion

As a general rule, the adoption responds to the emotional reality under which law sets artificially and irrevocably, by court order, a bond of filiation between a child without parental protection, on the one hand, and a person or family able to adopt, holding a certificate to that effect. The main effect of adoption - creating filiation with full effects, which lead to full integration of the adopted child in the new family, sweeping away all traces of biological filiation - is reflected in civil status documents, by drawing up a new birth certificate for the adopted and issuing it accordingly.

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