

PROCEDURE OF RECOVERY, CANCELLATION, MODIFICATION, COMPLETION OR RECTIFICATION OF CIVIL STATUS DOCUMENTS

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ABSTRACT: According to the law, marital status proves to the acts drawn up in the registers of civil status (original acts of civil status), as well as with the civil status certificates issued on the basis thereof. Civil status documents provide proof to the finding of false by a final judgment for other entries, until proof to the contrary, issue, cancellation, rectification or completion or reconstruction of civil status acts, as well as any registrations made on the civil status acts, pursuant to a final and irrevocable judgment or under an administrative provision may be relied on by any person until proof to the contrary. We have proposed in this paper to present the procedure by which acts of civil status can be reconstituted, canceled, corrected, amended and supplemented in order to proof civil status.

KEY-WORDS: civil status documents, cancellation, modification, completion, rectification, civil status

JEL CLASSIFICATION: K10, K36

1. CONCEPT OF CIVIL STATUS DOCUMENTS

The doctrine uses the word “document” with double significance. The first significance refers to the manifestation of will with the purpose of producing civil legal effects (for this significance, the formula *negotium juris* is used or the word *negotium* – meaning legal operations).

The second significance designates the certificate of findings (result of the manifestations of will), which is the material support on which the expressed manifestation of will is recorded (for this sense, the formula *instrumentum probationis* or the term *instrumentum* is used). This sense is considered to be used as a means of proving the source of the concrete civil legal relationship, which is the authentic document or the one under private signature.

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These meanings also apply to civil status documents. The expression “civil status document” was used when the “civil status sources” were researched. In this context, a “civil status document” means a concrete source of civil status, in the sense of *negotium juris* (legal operation), such as: adoption, marriage, filiation recognition.

This time, we use the same term, “civil status document”, considering the second sense, which is that of a document ascertaining civil status, namely *instrumentum probationis*.

Considering this latter sense, the civil status documents have both a restrained content, namely, designating the three drawn up civil status documents: the birth certificate, the marriage certificate and the death certificate, and a general content, taking into account the three civil status certificates (the birth, the marriage, the death), but also the certificates that have been issued to their holder and their counterparts.

Legally, civil status documents are authentic documents which prove the birth, marriage or death of a person (Art.1 of the Law no. 119/1996). The Art. 99 Para. 2 and 3 of the Civil Code stipulates that “The civil status documents are authentic documents and they prove the personal ascertainments of the registrar, until they are proven to be forgeries and, until proof to the contrary, the other mentions¹”.

The court ruling given with regard to a person’s civil status is opposable to any other person as long as the contrary has not been decided through a ruling”.

On the basis of the above-mentioned, we shall define civil status documents as those authentic documents, drawn up in the registrar’s books, in which the details regarding the civil status of an individual are entered by the competent authorities, according to the law².

2. LEGAL NATURE

The civil status document has a *mixed* legal nature, a nature which is determined concretely both from the point of view of civil law and administrative law.

From the point of view of the *civil right*, civil status documents are a *species of authentic documents*³, according to Art. 269 of the Code of Civil Procedure, with all legal consequences deriving from this qualification, especially regarding validity and proof value⁴.

From the point of view of administrative law, the civil status document is the ascertaining document – *instrumentum*- of the individual administrative document – *negotium* – which is the very legal operation (registration) of civil status.

¹ Terzea, V., 2011, *Noul Cod civil adnotat cu doctrină și jurisprudență*, Universul Juridic, Bucharest, p. 128.

² Hageanu, C.C., 2012, *Dreptul familiei și actele de stare civilă*, Hamangiu, Bucharest, p. 322.

³ Tăbărcă, M., 2013, *Drept procesual civil*, Second volume, Universul Juridic, Bucharest, p. 313; Ciobanu, V.M & Nicolae, M., 2013, *Noul Cod de procedură civilă comentat și adnotat*, Universul Juridic, Bucharest, pp. 703-705.

⁴ According to Art. 269 of the Code of Civil Procedure “Authentic document is the document drawn up or, as the case may be, received and authenticated by a public authority, a notary public or other person vested by the state with public authority, in the form and conditions established by law. The authenticity of the document refers to the ascertainment of the parties’ identity, their consent manifestation as concerns the content, signature and date of the document. It is also authentic any other document issued by a public authority and whom the law gives this character”.

For administrative law, it is also a means of keeping track of the population, as it was used for drawing up statistic reports⁵.

3. THE RECOVERY OF CIVIL STATUS DOCUMENTS

The recovery of civil status documents is possible according to the law, when a civil status document existed, but it cannot be procured, due to some circumstances which are provided for by the law, as follows:

- a) if the registrar's books were lost or destroyed, totally or partially;
- b) if the civil status document was drawn up abroad and the certificate or excerpt of this document cannot be procured.

The recovery procedure is an administrative one, rather than a judicial one (as the document is recovered upon request by the competent community service or the public community service belonging to the domicile of the interested party). The request shall be solved within 30 days through a mayor's order, which is communicated to the applicant, within 10 days of its issue. In the event that the request is rejected, the ruling can be impugned in the court of law in whose jurisdiction the issuing authority is sited, namely in court⁶.

4. THE SUBSEQUENT DRAWING UP OF CIVIL STATUS DOCUMENTS

The subsequent drawing up of civil status documents is regulated by the law in two special cases:

- a) when the drawing up of the birth or death certificate was overlooked or denied, although the documents necessary for its issue had been produced;
- b) when the drawing up of the marriage certificate was left out, although the consent of the spouses had been registered by the Registrar.

The procedure to be applied is the same as the one for the recovery of civil status documents.

5. THE CANCELLATION OF CIVIL STATUS REGISTRATIONS

As it is not defined by the law, it must be understood as a penalty imposed on failure to observe the legal requirements regarding the validity of civil status documents and it shall only occur on the basis of a final court ruling⁷. The ruling on cancellation may be pronounced upon the request of the interested person, the local government, the county council or the public prosecutor's office, in the event that: a) the civil status document has been drawn up in the wrong book; b) the document should not have been drawn up at the town hall in question (general, material or territorial incompetence, as the case may be); c) the civil status fact or act does not exist; d) the legal provisions were not observed when

⁵ Trușcă, P., 2007, *Drept civil. Introducere în dreptul civil. Persoana fizică. Persoana juridică*, Universul Juridic, Bucharest, p. 384.

⁶ Tănase, A.R. & Coroian, R., 2011, *Manual de stare civilă și evidența persoanelor*, Alpha MDN, Buzău, p. 33.

⁷ "The registrar's delegate is not entitled, on his own initiative or upon the request of other person, to carry out the annulment, the rectification or the completion of an entry, as long as there is no final court ruling which authorizes this". The Higher Court, Ruling no. 286/1968 in C.D., 1968, p. 58.

the civil status document was drawn up; e) the mention was written on another civil status document; f) the mention was operated with the wrong text (Art. 127 Para. 1 of the methodology for the unitary enforcement of the stipulations of the Law no. 119/1996).

The competence to solve the request falls on the court that corresponds to the plaintiff's abode or headquarters, on the basis of the investigation carried out by the police and the public prosecutor's conclusions.

6. THE RECTIFICATION, AMENDMENT AND COMPLETION OF CIVIL STATUS DOCUMENTS AND MENTIONS

According to Art. 100 Para. 2 "*The rectification of civil status documents and the mentions written down on them may be done ex officio or upon request, only on the basis of the mayor's order from the town hall where the civil status document is kept*".

The rectification, amendment and completion of civil status documents and mentions are ways of removing or correcting the errors that occur in the civil status document upon registration⁸.

The rectification is the correction of some material errors which have been committed upon civil status registration or lining up between the data of civil status documents (the document in relation with the certificate) and the real elements of civil status. The rectification cases provided by the doctrine and practice are: a) the lack of lining up between the two copies of civil status books; b) under the section reserved for parents, the wrong name has been entered in the birth certificate; c) disparities occurred between the registration and the real elements of the civil status after civil status registrations⁹.

*Rectification and completion*¹⁰ represent the registration of a mention which has been left out, in the event that, for some reason or another, some sections have remained unfilled. The *amendment* is a new concept which was introduced by Law no. 119/1996 and it refers to changing some mentions in the document, which had been correctly entered initially, but they are no longer valid¹¹. Such hypotheses are provided in the methodology for the enforcement of Law no. 119/1996 as follows:

a) the registration of the recognition or subsequent determination of filiation; b) the registration of the adoption, its annulment or dissolution; c) the registration of the change of the last name and/or the first name through administrative channels; d) the registration of the divorce or the annulment of the marriage; e) the registration of the mention regarding the person's sex, whether it was entered correctly, or changed afterwards.

Procedure. According to the law, the rectification, the amendment or completion of civil status documents and the mentions written down on them may be achieved through a

⁸ Reghini, I., Diaconescu, Ș. & Vasilescu, P., 2008, *Introducere în dreptul civil*, Sfera Juridică, Bucharest, pp. 186-192.

⁹ Ungureanu, C.T., 2012, *Drept civil. Partea generală. Persoanele*, Hamangiu, Bucharest, pp. 360-361.

¹⁰ According to Art. 100, Para. 3 and 4 of the Civil Code "The civil status can only be modified on the basis of a decision of annulment, completion or amendment of a civil status document only if an action aimed at changing the civil status has been brought, approved by a final court ruling. The court ruling which decides the annulment, completion or amendment of a civil status document, as well as the registration made on the basis of such a decision are opposable to any other person as long as a new ruling has not decided otherwise. The administrative act through which the rectification of a civil status document was disposed, as well as the registration made on its basis are opposable to any person until proof to the contrary".

¹¹ Boroî, G., 2010, *Drept civil. Partea generală. Persoanele*, Hamangiu, Bucharest, p. 385.

court action. The object of the action in cancellation, rectification, alteration or completion is also represented by civil status acts of civil status registers, which form the basis for other mentions pursuant to a final court ruling¹².

The procedure of the annulment, amendment, rectification or completion of civil status documents involves the following rules established by Law no. 119/1996:

- *the court is notified* by the interested party, the local government authority, the county council or the public prosecutor's office (Art.57, Para. 2);

- *the competent court* for solving such requests is the court that belongs to the area where the petitioner's office or abode is located. When the request is made by a foreign citizen or a Romanian citizen living abroad, the only competent authority is the Court of the District 1 of Bucharest (Art. 57, Para. 3);

- *the judgment of the request* shall be performed on the basis of the investigation carried out by the public community service for persons' record and the conclusions of the public prosecutor; in the case of the admission, annulment, amendment, rectification or completion of a civil status document or a mention written on it, decided by a final court ruling, they shall be registered on the civil status document only by means of a mention.

When the entries made in the book are corrected following a court ruling, but only the civil status certificate issued on the basis of the document is wrong or incomplete, the rectification or completion of this certificate is given by the town hall that issued it, and the procedure is an administrative one¹³.

The actions of annulment, rectification, amendment or completion of civil status documents shall not be mistaken with civil status actions. There are important differences of legal regime between these two categories of actions, from various points of view, such as:

- *the different legal grounds* – the actions of annulment, rectification, amendment or completion are regulated: by Art. 57 – 59 of the Law no. 119/1996, while the civil status actions (state complaint; state contestation; state amendment) are regulated by the stipulations of the Civil Code;

- *different objects*: the actions of annulment, rectification, amendment or completion of civil status documents refer only to civil status entries (civil status documents regarded as *instrumentum*), whereas the immediate object of civil status actions comprises an element of the civil status itself (as a legal instrument *negotium* or as a legal fact that generates effects of civil status);

- *different effects of court rulings*: the rulings given in the first actions have an impact only on civil status registrations, without affecting the person's civil status, while the rulings given in state actions have a direct and immediate impact on civil status, which they change (a change that must be recorded by the entry of the corresponding mention on the margin of the civil status document);

- *territorial competence*: the court belonging to the plaintiff's abode¹⁴ is competent for the actions under the first category, whereas for state actions, the territorial competence

¹² Hageanu, C.C., 2012, *Dreptul familiei și actele de stare civilă*, Hamangiu, Bucharest, pp. 332-333.

¹³ See the Decision No. 9 / 1961 of the plenum of the Higher Court, in C. D., 1961, p. 85.

¹⁴ See the Higher Court, Civil Section, Decision 728/1982 in the Romanian Magazine of Law no.11/1983, and also the Art. 57 Para. 2 of the Law no. 119/1996.

may involve the court belonging to the defendant's abode or that belonging to the last common abode of the spouses who are getting divorced etc.;

- *extinctive limitation*: the actions under the first category are always indefeasible, whereas some state actions may be subjected to limitation¹⁵.

- the rules regarding judiciary probation are different: for the actions under the first category, only the lack of lining up between the registration and the uncontested civil status of the person must be proved, whereas for state actions, the very elements of the civil status to which the action refers must be proven.

The opposability erga omnes of the court rulings given to civil status as well as that of civil status registrations made on the basis of court rulings. This special effect is regulated by the law as follows:

According to Art. 23 Para. (2) of the Decree no. 31/1954: "Drawing up or rectification of civil status documents, made under a court ruling *is opposable also to the third. However, they are entitled to prove the contrary*".

We point out that the opposability *erga omnes* provided by the quoted Art. 23 Para. 2 is reverted also by Art. 15 of Law no. 119 whereby it is stipulated that: "The drawing up, annulment, rectification or completion or the recovery of civil status documents, as well as any entries made on civil status documents, on the basis of a final court ruling, or on the basis of an administrative document, are *opposable to any person until proof to the contrary*".

The opposability *erga omnis* of the *mentioned* rulings does not observe the principle of the relativity of the effects of court rulings (*res inter alios judicata, aliis neque nocere, neque prodesse potest*).

This derogation is the natural consequence of the indivisible nature of civil status. This nature also involves the opposability *erga omnes* of civil status registrations, made on the basis of a final court ruling given on the matter of civil status.

This opposability to third parties is only relative, and the contrary can be proven.

7. THE PROOF OF CIVIL STATUS

According to Art. 99 of the Civil Code:

"Proof of the civil status is produced by means of birth, marriage and death certificates, lawfully drawn up in registrar's offices, as well as by the certificates of civil status issued on their basis.

The civil status documents are authentic documents and they prove the personal ascertainments of the registrar, until they are proven to be forgeries and, until proof to the contrary, for the other mentions.

The court ruling given with regard to a person's civil status is opposable to any other person as long as the contrary has not been decided through a new ruling.

If a court ruled on a certain civil status of a person, and a subsequent court ruling admitted an action through which such civil status is impugned, the first ruling stops producing effects upon the date when the second ruling is declared final".

¹⁵ In this sense, we point out as extinctive limitation state actions: a) the action of relative annulment of marriage (which, according to the Art. 301 of the Civil Code prescribes in 6 months); b) the action of denial of paternity by the mother's husband (it prescribes in 3 years) etc.

Exceptionally, the civil status may be proven, before the court, by any proof means, provided (Art. 103 by the Civil Code):

- a) there were no registrar's books;
- b) the registrar's books were lost or destroyed totally or partially;
- c) the civil status certificate or the excerpt of the civil status documents cannot be procured from abroad;
- d) the drawing up of the civil status document was left out or rejected, as the case may be¹⁶.

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¹⁶ Ungureanu, C.T., 2012, *Drept civil. Partea generală. Persoanele*, Hamangiu, Bucharest, p. 365.