„LUCIAN BLAGA" UNIVERSITY OF SIBIU
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DOCTORAL THESIS

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ULBS

Universitatea "Lucian Blaga" din Sibiu

CIVIL STATUS AND CIVIL STATUS REGISTRATIONS

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The evolution of modern society has made the human being, man or person as a matter of law to participate, consciously or unconsciously to increasingly complex legal relations governed by different branches of law, being recognized and guaranteed, even by the rules of positive law, a series of rights, (we mean, especially subjective rights or "personality rights") that were unthinkable in the Roman law.

In modern society, need to differentiate between people, individualization or identification of individuals involved in legal relations is essential, both personal and for the State or public interest. The state itself is interested in each individual to be individualized in legal relations.

This work, without requiring as exhaustive, aims to address outstanding matters emphasizing the civil status and name (identification attribute and element of civil status act) and the documents that are designed to record and to prove issues of identity and legal status of individuals, both in terms of positive law in force until 1 October 2011, legal doctrine and jurisprudence, highlighting changes, additions and innovations in to the new civil Code entered into force on October 1, 2011.

It is structured in 11 chapters, we detail the legal aspects of civil status and civil status records, but have dedicated separate chapters to civil actions that can be promoted into justice and individual name as an identification attribute and, element of the act of civil status. Also, the book includes a chapter on comparative law in Romania and Greece, chapter placement was made after the visit at Law School of Aristotle University of Thessaloniki, Greece.

This abstract points out a few legal matters related to the notion of civil status, content and legal nature, importance and nature of legal civil status documents, and the individual name as an identification attribute and element of civil status documents.

For a correct approach is stipulated that the notion of act of civil status is susceptible of two meanings, namely: that the manifestation of the will of the

person or persons which results in birth, modification or extinction of rights and obligations as elements of civil status or that change their marital status (negotium iuris). In the second, the civil status is designated authentic documents proving the civil status acts and facts and elements of civil status (instrumentum probationes).

Individual identification or individualization is permanent and it must be done from birth to the death of the person. Thus, a first identification is when birth is registered, then marriage, divorce, adoption, etc.. have the effect of changing legal situation again requiring the individual to identify itself in different legal situations.

Ways and means of achieving concrete individualization or identification of the individual are the name, address and civil status - called attributes to identify the individual.

Before Law. 287/2009 of the Civil Code, the law has not defined and did not specify the content of the concept of marital status. Its content was determined by regulating various aspects of rights and obligations such as: the use of marital status, civil status documents, and the use of civil status. This made the notion of marital status to attract great interest in literature there are many debates. Expert authors have approached the subject with great interest, expressing different views on the essence of the notion, seeking definitions scientifically, often different, depending on the content of marital status was so determined.

Definition of marital status, being a matter of theoretical science has encountered numerous legal challenges during various stages of development of our civil law. Doctrinal guidelines are different, definitions include both positive elements, useful for accurately defining the concept of marital status and issues that do not contribute to the correct definition of this concept or are useless.

For emphasis we will give below some of the most important definition of the concept:

- The words "marital status, mean all elements that contribute to determine the legal personality of man. These elements are complex, except for nationality and genealogy, there are many circumstances that change legal status".
- Marital status of the person is a synthetic concept: it includes all elements that contribute to determining the quality of the human as law subject”.
- Marital status "includes a set of elements which individualizes a person, the subject of rights and obligations and sets its legal position to the family to which it belongs".
- The civil status of the person "means the sum of qualities and features which, by the consequences which the law requires to them, contribute to the individualization of the person in society and family".

Legal definition of art. 98 of Law no. 287/2009 of the Civil Code of civil status is that "marital status is the right of the person to identify itself in family and society, by means of personal qualities arising from facts and acts of civil status.", which states expresis verbis that marital status is also an identifier of the individual in family and society, and a sum of qualities which belong only to individuals that identified and are determined by legal facts and acts of civil status.

In addition to the two sources of marital status above (acts and deeds of civil status), the literature adds law and court decisions. We do not share this opinion because the law and court decisions indicate only the legal consequences of the acts and facts of civil status, the latter being those that determine the personal qualities that individualize the human in family and society.

Elements of marital status differ as it is viewed: as subjective right or as the amount of personal qualities.

The content of the subjective right of individuality by marital status includes the following privileges:

- human ability to individualize by its civil status,
- its claim to be individualized by others by its civil status,

- opportunity to appeal, if necessary, to the coercive force of the state.

In this respect the law provided the legal means which can be used to remove differences on marital status of individuals and in civil status records relating to him. Such actions are civil status or state actions, dealing with the change of marital status as well as reconstruction, subsequent registrations of civil status, cancellation, rectification, modification and completion of civil status registrations or the entries made on them.

Regarding civil status field content seen as the sum of the personal qualities of civil status, legal doctrine is an intense debate about whether or not it coincides with the content of civil status records.

As an inventory of personal qualities, the legal literature generally believe that marital status include: the marriage out of wedlock, born of unknown parentage or abandoned, adopted, married, unmarried, divorced, widowed, remarried; relative or close to someone, of a certain age, etc.., while records include marital status and other individual identifiers such as identification number, name, address, place and date of birth, male or female (sex), group blood, occupation, religion, quality of offender or the offender, citizenship - elements whose association with marital status is controversial, and there is no universally accepted list by expert authors.

Literature commonly emphasizes that civil status begins with birth and ends at death or judicial declaration of its death.

It is due to some legal facts that occur independently of human will, such as birth and death, and some events made in accordance with law, events that cause changes in marital status.

Law requires that all events held to alter the marital status to be made by authentic documents, listed in some records. These acts are acts of civil status.

Debate about the legal nature of civil status act occurs because civil status is established by a public authority, a public official and such subjects, in their current activity issue administrative acts endowed with public power.

As a result, some legal doctrine supports the view that civil status is an administrative act based on the fact that Civil Registration Officer is required to make checks on supporting parties, to review the legality of these claims and refuse drawing document if not complied with the law. It would have been an administrative act if Civil Registration Officer would have been entitled to make records against declarants and in this case the civil registration act would produce legal effect itself.

These documents do not themselves have legal effect but prove birth, marriage, death as defined in art. 1 of Law 119/1996 on civil status records. Their content does not establish new rights and obligations to the people but finds the production of legal facts (birth, death), and legal acts (marriage), without adding new legal effect of the products of such facts or legal acts.

Civil status registration is still an administrative activity - an administrative operation by which the public administration is realized in its material sense, the activity of organizing the implementation and practical application of laws.

The literature has expressed the view that civil status have complex legal or mixed legal nature, meaning their legal nature must be determined both in terms of civil law and in terms of administrative law. They are both authentic documents which identify individuals by their marital status attribute and civil legal acts giving rise to, modifying or extinguishing civil law relationships.

Concerning the name of the person law and doctrine do not use consistent terminology for the action to award the family's original name.

Sometimes the term acquisition of surnames is used, sometimes setting the surname or family or name determination.

In this paper we use for the original award of surname, the expression “the acquisition” of surnames, which can be also achieved by setting the name of the mayor.

Child's family name is acquired, by law, on the effect of parenthood. For children in marriage, filiation is established from both parents, which may have a common name, the child acquiring this name, or have no common name, the child takes the surname of one parent or their joint names. If parents can not agree on the child's name, the guardianship court will decide.

The law is mandatory, which means, in this case, that the guardianship court can intervene and determine the child's name only if his parents can not agree in this respect, but their hearing is required. Possibilities for parents and guardianship court are limited. For the child can be established only the surname of either parent or their joint names. The child can not acquire a different name in such situations. In this situation it is possible to set different surnames for successive copies of the same marriage. This opposes the concept of family unity.

According to art. 84 para. (2) of Law no. 287/2009 of the Civil Code "first name is determined at birth registration based on the declaration of birth", and to art. 2. para. (2) of O.G. no. 41/2003: "First name is determined at birth registration, birth on declaration made by the person declaring the birth".

Child birth declaration may be made by any person, because interest is that every birth is registered and first name is "enrolled" in this statement. But the declaration of birth is not the same with choosing of surname. It is impossible that the child's name to be given by anyone. It is determined by its parents.

It is prohibited for the officer of civil status to record indecent, ridiculous, and the like names, affecting public order and morals or interests of the child, as appropriate.

This provision prohibits strongly that parents choose for their children names consisting of words indecent or ridiculous.

According to art. Article 4. (2). of the Ordinance. 41/2003 name composed of indecent or ridiculous expressions is a good reason to change it through administrative channels.

In the literature it is considered that the officer of civil status and is able to refuse entry of an excessive number of name, based on legal provisions obliging public authorities to take action when the interests of the child and its right to identity are prejudiced. In such situations, parents may waive one or more of the selected name and keep a reasonable number of names, or they can address the court.

If parents can not agree on child surname (very rare, almost nonexistent in practice) will decide, by order, the mayor of the municipality where the birth records.

The same applies if the officer of civil status refused to record the first name, under paragraph 84. (2) of Law no. 287/2009 of the Civil Code.

Article 30. (7) in the Methodology regulates the mismatch between the child's name passed into the medical certificate of birth and verbal statement of the declarant.

Child's name will be that established by a written statement signed by both parents.

In case of disagreement between parents, the name will be established by the mayor of the place of birth registration, by order in writing.

If the child is found or abandoned by his mother in hospital, all the child's name are established by the mayor of the municipality where the birth records.

Individual surname once established is not subject to modification following changes in family status.

In conditions that were in force the Family Code and the Ordinance 25/1997 on adoption, repealed by Act 273/2004 on the legal status of adoption in the literature expressed the view that the name could be changed only administratively.

Legal doctrine criticized the approval some courts gave to change surname at the time of consent to adoption, an opinion with which we fully agree.

Under current legislation, "For good reasons, the court, when consenting to adoption, at the request of the adopter or adoptive family and child consent to the age of 10 years, may approve the child's surname change."

This article is identical to Art. 53 paragraph (3) of Law 273/2004 on the legal status of adoption.

Last name changes are a direct and exclusive effect of the changes in marital status of individuals.

Since changing the family name is possible only by law, cases and forms are specifically established by law.

Civil status changes leading to family name changes may be the consequence of only one of the issues listed below:

- Individual lineages change,
- Adoption of individual,
- Individual's marriage.

Concerning the change of surname due to changes in parentage, establishing parentage of child born from unknown parents entails, both for voluntary recognition and for the establishment of parenthood at a court judgment a change to the civil status of this child.

He becomes a child of the marriage or outside marriage, which alter the child's name and will apply the laws relating to name - art. 449 or art. 450 par. (1) of Law no. 287/2009 of the Civil Code.

If the parent with whom the child has established lineages have a different name at the time the child was born, the child will take that last name, because parentage is established retroactively.

Assuming the establishment of parenthood of a child out of wedlock to the second parent, too, legal problems, usually occur when the child lineage

outside marriage is subsequently to his father, because according to Romanian custom, further establishing parentage to his mother does not influence the child's name. This is because, usually, the child is called after his father.

Legal regulation is given by art. 450 par. (2) of Law no. 287/2009 of the Civil Code: "If filiation was established subsequently to the other parent, child, with parental consent, may take the surname of the father to whom he later established affiliation or their joint names. New surname of the child shall be declared by the parents, together to the state civil service which registers the birth. In case of no parental consent provisions of Art. 449 paragraph (3) ".

Irrevocable final judgment and admission of action in denial of paternity of the child in a marriage and admission or cancellation of recognition of parentage - whether it be recognition of maternity or paternity - are legally regulated in the present by art. 438. (1) of Law no. 287/2009 of the Civil Code. The court is asked to rule on the establishment of child's name, and that's why we consider the two situations together and not separately, as required by Family Code of the former regulation.

The situation is similar to establishing parentage of a child out of wedlock to the second parent, usually the father. In this case applies art. 438. Paragraph (1) of Law no. 287/2009 of the Civil Code.

We believe that in this case the court outcome can be only one of the above, namely:

- child name retains established at birth,
- the child's surname is that of the parent to whom parentage was later established, usually the father or
- joint names of his parents.

In all cases examined civil status change occurs retroactively, but his family name change will take effect only for the future.

Analyzing the change of surname due to the institution of adoption, it has the effect of changing civil status of person, which causes an impact on his family name.

The current regulation does not know the adoption of such small effects so that lineage and kinship of adoption shall be treated with natural lineage and kinship.

Effects of a declaration of adoption on adopted surname are regulated legally by art. 473 paragraph (1) of Law no. 287/2009 of the Civil Code which provides: "A child adopted acquires by adoption the name of the adopter" and art. 53 of Law no. 273/2004, "the adopted name is that of the adopter, acquired on the effect of adoption."

According to the law, whether adoption is made by two spouses or one husband adopts the child of the spouse and the spouses have a common family name the child will be called by this name.

If adoption is made by two spouses or the husband adopts the child of the spouse, and spouses do not have a common family name, at the declaration of adoption, spouses must declare the name the adopted is to wear. That may be the name of one or other of the adopters or their names together. In case of disagreement the court decides the dispute (Article 273 paragraph (2) of Law no. 287/2009 of the Civil Code).

"If adoption of a married person bearing a common name with the other spouse, the adopted spouse may take the adopter name, with the consent of other spouse, given in the court approving the adoption."

The literature has expressed the view that when, at the time of adoption, the adopted is married and has a common name with that of her husband, he will keep the common name after adoption. In the event of dissolution of marriage by divorce husband adopted to not return to maiden name but to the name that was supposed to acquire on the effect of adoption.

We believe that this hypothesis does not preclude husband adopted to change the common name during the marriage, as the effect of adoption, if the spouse consent.

In case of adoption termination, civil status change, civil kinship between the adopted and the adopter ends and trains and change of the surname of the adoptee.

According to art. 475 of Law no. 287/2009 of the Civil Code: "Adoption cease as a result of cancellation or of finding its nullity."

Legal regulation on the adopted name is given of art. 482 Paragraph (2) of Law no. 287/2009 of the Civil Code which provides: "Upon termination of adoption adoptee regains name and, where appropriate, name had before adoption approval. However, for good reasons, the court may allow it to keep the name acquired by adoption. "

When analyzing the change of surname due to marriage, Article 2. Paragraph 1 of O.G. no. 41/2003 provides that: the name "changes in civil status of individuals occur, as provided by law".

As already noted, in fact, we can not talk about surname changes, but modification of surname.

Even if changing and modifying the name have the same effect, the causes of the replacement differ.

Changing last name necessarily implies a change of civil status and it is a consequence of it.

The name change has nothing to do with the civil status of the one whose name changes.

In this case the status of the person remains the same even after changing the name. A person married, stay married and after the name change administratively. Marital status of married person changes only after the dissolution, annulment or termination of marriage.

It should be noted that modification applies only to the surname of the person, while the change may relate to both first name and surname of the individual.

According to marriage legislation "The future spouses may agree to retain maiden name, to bear the name or names of any of them combined. Also, a spouse may retain their maiden name and the other to bear their names together. "

In this case, by name legislator understands only the surname as first name does not undergo any change after the conclusion of the legal act of marriage.

Marriage does not always attract changing the surname of their husbands, although it always means changing their civil status.

The current legal regulation of divorce is given by art. 383 of Law no. 287/2009 of the Civil Code.

The new regulation leaves to free choice of spouse, name it will bear after the dissolution of marriage, respecting the principle of symmetry.

Judgment of divorce must contain express understanding of former spouses on the name that they will wear after a divorce.

The court may give permission to wearing name after a divorce only if the interested husband made a specific request, or based on an agreement or on the interest of the husband.

Reasonable grounds referred to in art. 40 consist of the husband that being known in one area or another of artistic creation, scientific or literary by the family name during the marriage or that he was awarded honors under this name. His interests would be harmed if he had to give up the name and return to maiden name before marriage.

Later, the divorced mother desire to have the same name as the name of a minor that resulted during the broken marriage whose care and education

entrusted was considered reasonable ground for keeping the same name as during marriage.

The literature has also discussed very intensively the possibility that former spouse after a divorce which bears the family name carried during marriage, may agree for this to become common name during the new marriage. The discussion becomes more interesting if the new family name is already formed of the union of two family names together.

Thus, in an opinion, it is argued that this may not be possible. Instead, this situation is possible because there is no legal provision to prohibit it.

We support the view that, by law ferenda, Romanian legislature, modeled on the French should establish limits on the exercise and to express such a right.

No previous law, nor in the present there is no special legal regulation in the material name when the cessation of marriage by death of a spouse or by judicial declaration of death.

Based on the practice court, the doctrine maintained, on the one hand that the surviving spouse is entitled to continue to bear the surname acquired by marriage, without being obliged to it. He has a right of option between carrying the family name worn during the marriage or resume to his old name.

In the literature, the absence of express provision was discussed extensively on the situation in which the surviving spouse, who enter a new marriage may continue to bear the death's husband name as his own or this name may become a common name during marriage. Thus, in an opinion, it is argued that this may not be possible. Instead, this situation is possible because there is no legal provision to prohibit it.

In this case we believe that the law ferenda legislature should establish limits on the exercise of the right to express such a name, so there is no possibility that the name become the common name in the new marriage.

Law does not specify on the effects on the family name of marriage annulment.

In the absence of explicit regulations on family name during the marriage invalid in light of the principles effect, the absolute nullity of marriage will always lead to resumption of maiden name without permission in court or an agreement to intervene and in case of relative nullity of marriage, it shall take effect, in the name, only for the future, whether husband or wife are in good faith or bad faith.