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THESIS

CIVIL STATUS AND CIVIL STATUS DOCUMENTS

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KEYWORDS: *civil status, civil status documents, civil status certificates, acts and facts of civil status, registration of mentions, annulation, modification, rectification, completion*

SUMMARY



The doctoral thesis entitled “Civil status and civil status documents” approaches in detail the issue of civil status and civil status documents, providing in-depth, theoretical and practical analysis of the current internal regulations in the field.

The theme of the PhD Thesis presents a particular importance both for the individuals and for the public authorities and institutions of the state.

Also, it is analyzed the legislative perspectives in this field and I have grounded in the thesis proposals *for lex ferenda*, through which are made some amendments or completions of the Law no. 119/1996 on civil status documents, so as to eliminate some inaccuracies or legal gaps signaled.

The approach is structured in seven chapters, the content of which outlines a comprehensive and complete picture of the theoretical and practical issues of civil status and civil status in Romanian domestic law and in the comparative law.

In introducing the Thesis, I have specified the actuality and importance of the analyzed topic, presenting the objectives of the scientific research and the methods of scientific research used. Also, in this context, I presented a succinct but documented evolution of the internal regulations in the field.

In the introductory chapter, I chose as a starting point the presentation of the general conceptual aspects of the PhD Thesis theme, in particular those concerning civil status and civil status documents. In this sense, I have made a critical review of the main doctrinal options and have grounded my own variants.

The first chapter includes an in-depth analysis of the issue of civil status documents as an *instrumentum probationem*, presenting their quality as means of proof of civil status.

The same contributory perspective I sought to show in Chapter Two, entitled "Proof of civil status". This chapter is intended to analyze civil status regulations in terms of evidential value.

In Chapter III, entitled "General aspects regarding the drawing up of civil status documents", I have systematically and systemically analyzed the issues specific to the drawing up of civil status documents, respectively the entering of the mentions on their borders.

In this chapter, in addition to the in-depth analysis of the basic rules, I have presented some of the pertinent aspects of the regulations in question, suggesting some changes *to the lex ferenda*.

Chapter IV, entitled "Preparation of various civil status documents", contains four sections, which deal in detail and critically with the rules for the preparation of the main civil status documents, namely the drawing up of the act of birth, the act of marriage, the act of death and the special case of drawing up these civil status documents of Romanian citizens living abroad.

Also, detailed aspects of the procedure specific to each civil status document are presented in this Chapter, highlighting the particularities and technical norms foreseen.

Chapter V is intended for the analysis of internal regulations devoted to "entering of mentions, annulment, modification, rectification and completion of civil status documents".

Within this Chapter I have defined the basic concepts, giving some clarification about the way the legislator has expressed and presented the procedure for each operation.

Chapter VI, entitled "General aspects of civil status and civil status documents in comparative law," is the result of comparative analysis of relevant regulations in some legal systems.

On this line, I performed a comparative analysis of the Algerian, French, English and Hungarian law systems, highlighting the similarities and differences between them and the Romanian law system.

The last chapter of the thesis, entitled "Annexes with civil status documents and the mentions on them", offers the practical presentation, in terms of form, of the civil status documents and their mentions.

The last part of the thesis entitled "Conclusions and proposals *of lex ferenda* " describes the main contributions that I have proposed to the legislator for the improvement of the regulations in the field.

In the light of those evoked and exploring a vast bibliographic material, I believe I am entitled to say that the proposed scientific research objectives have been achieved and the

proposed thesis offers a complete and complex picture of the current legal regime of civil status and civil status documents in the system of Romanian law.

PREFACE



Civil status is a right recognized by all individuals, having the role of individualizing them in family and society.

The proposed doctoral thesis provides a comprehensive picture of the theoretical and practical issues regarding the legal institution of civil status and civil status documents, being a possible working tool available to those with theoretical or practical concerns in the field.

In elaborating the PhD Thesis, I sought to contribute to the logical and legal definition of the terms and phrases used in the field regulations, to identify any inadequacies or normative gaps and to substantiate the relevant proposals *of the lex ferenda* to remedy them.

Lex ferenda proposals are the results of a fundamental research, which I aim to achieve the objectives set in the plan for scientific research.

The documentary database is extensive, including reference works from the romanian and foreign literature.

Through its theoretical and practical content, the doctoral Thesis addresses all those who have concerns in the field of civil status and civil status documents, whether they are theoreticians or practitioners of law.

2. INTRODUCTION

Civil status documents, in which the elements of civil status belonging to the individual are recorded, have an important role, both from the perspective of the public authorities and institutions of the state, as well as of the citizen.

For the public authorities and institutions of the state, by organizing and carrying out the activity of registering the acts and the facts of civil status it is ensured the permanent knowledge of the number and structure of the population, as well as the demographic situation, with all the practical present and future consequences that can result from obtaining of these data.

For citizens, this activity contributes to the protection of rights and of their fundamental freedoms. Various qualities, such as minor or major, mother, father or child or husband, are taken into account both in substantiating legal regulations and in respecting the rights specific to these categories of persons.

For civilians, civil status documents are evidence that, being used to prove civil status, are indispensable for the exercise of rights and the substantiation of obligations arising from their civil status. For example, the affiliation established by the act of birth or the marriage recorded in the act of marriage generates specific rights and obligations between parents and children, respectively between spouses.

Given the obvious and major social importance of civil status documents, the Romanian legislator has been constantly concerned over normalization of civil status (in connection with births, marriages, adoptions or deaths) over time.

In this introductory framework, without proposing a detailed presentation of the evolution in time of the regulations in the field, I consider it useful to evoke the main temporal moments in this normative process.

Until the middle of the 17th century, in the Carpathian- Danubian- Pontic space, elements of the civil status of the individual were established by witnesses or family documents and had as their basis the *notoriety* of their long-term use. The first normative document, Matei Basarab's "Great Rule", gave the competence of the Muntenia Metropolitanate the activity of recording divorces, funerals and other civil status events.

Subsequently, the Calimach Code in Moldova, and the Caragea Code in Wallachia, taking over the previous regulations from *ius valahorum* (the habit of the earth or the custom), provided for the establishment of convoys in each county for the registration of civil status events. The organized introduction of records of civil status acts and facts was done only after the adoption of *the Organic Regulation* in Muntenia and Moldova.

The Romanian Civil Code of 1864 marked not only an amplification of regulations in the matter of civil status records, but also the beginning of the process of registering the activity of recording legal acts and facts of civil status. If previously this activity was under the exclusive competence of the church authorities, under the Civil Code of 1864, it was assigned to state administrative authorities (secular). The Romanian Civil Code of 1864 regulated the subject matter of civil status documents in Title II (Articles 21-86) of Book I (about persons) and art. 151-161 (about marriage formalities). Relatively numerous normative solutions provided by the Romanian Civil Code from 1864 were taken up to date in relation to the general legal regime of civil status acts and facts.

In Romania, the secularization of this area had a constitutional consecration in the Constitutions of Romania in the years 1866, 1923 and 1938.

Until the adoption of Law no. 119/1996 on civil status documents, this matter was regulated successively by Law no. 493/1928 regarding the civil status documents and Decree no. 272/1950 on civil status documents.

By proposing as the main objective of scientific research the in-depth, logical- judicial, systematic and systemic analysis of Romania's current internal regulations on civil status documents, I would like to address issues such as the following: General aspects of civil status and civil status documents (Chapter I); proof of civil status (Chapter II); general aspects regarding the drawing up of civil status documents (Chapter III); preparation of various civil status documents (Chapter IV); entering of mentions, annulment, modification, rectification and completion of civil status documents (Chapter V). In a distinct chapter, I will present aspects of comparative law, using both the laws of some European states and others on other continents.

The choice for this scientific objective has been greatly enhanced by my previous concerns in the matter, but also by the fact that currently in the Romanian doctrine of the field there is a lack of a monographic work on the subject. At the date of elaboration of the PhD

thesis in Romanian literature, this topic is generally dealt with in the context of individualization aspects of the individual.

In-depth analysis of Romania's internal regulations on civil status acts is not a purpose in itself, but a scientific approach that aims, on the one hand, to facilitate the correct interpretation and practical application of legal norms in the field and, on the other hand, identifying possible inaccuracies or regulatory gaps, and formulating proposals *for lex ferenda* to remedy them.

For the scientific substantiation of the thesis, I understand to use as working instruments, in particular, works by Romanian doctrines, among which I refer to the following: D. Lupulescu, G. Penculescu, M. Anghene, I. Reghini, Ș. Diaconescu, O. Ungureanu, Al. Bacaci and C - C. Hageanu. Also useful for me are the studies published by my scientific leader, prof. univ. dr. T. Bodoașcă, on various issues regarding the civil status and the civil status documents in the Romanian legal system after the elaboration and the entry into force of the current Romanian Civil Code.

As methods of scientific research, I understand to use, in particular, the historical, analytical and comparative method. The historical method will help me to address some aspects of the evolution of the intended regulations of civil status and civil status documents. The analytical method will allow me to analyze logical-juridical the rules established in this field, to correctly interpret, in accordance with the will of the legislator, to identify any legislative gaps or inconsistencies and to base solutions *lex ferenda* in order to eliminate them. Finally, the comparative method will be used to identify the similarities and differences between the current and previous internal regulations of Romania and, on the other hand, between these and similar regulations in other legal systems.

3. CHAPTER I - GENERAL ASPECTS ON CIVIL STATUS AND CIVIL STATUS DOCUMENTS

3.1. CIVIL STATUS

3.1.1. Definition and legal nature of civil status

From the etymological point of view, the expression *civil status* or *civil statute* (of the individual) derives from the association *status* terms (with the meaning of status or situation or, according to some authors, attributes necessary to have legal capacity) and *civis* (with the meaning of citizen).

Art. 59 of the Romanian Civil Code (2009), under the marginal name "identification attributes", stipulates that "every person has the right to name, to a home, to a residence and to a *civil status*, acquired under the law" (s.n.). If art. 59 C. civ. only evokes civil status, art. 98 C. civ. establishes its significance. This article, under the marginal name "civil status", provides that "civil status is the right of the person to be individualized in the family and society through strictly personal qualities arising from acts and facts of civil status."

In accordance with the title of Chapter II of the Title II (person) of Book II (about individuals), the attributes of identification and, within them, the civil status, constitute a distinct category of rights inherent in the individual.

The role of civil status is to *individualize* the individual in the *family* and *society*. In order to complement the legal image of civil status, I consider it appropriate to provide some explanations regarding the terms *individualization*, *family* and *society*.

As a non-patrimonial right, civil status gives the individual the opportunity to be individualized (customized or identified) by virtue of the qualities resulting from the legal acts and facts of civil status in which he participated.

In view of the above, they define the civil status of that " *non-patrimonial right of the individual to be individualized in his family and society through a set of personal qualities resulting from legal acts and facts of civil status in which he is involved, proven by the civil status documents* ".

3.1.2. Legal characters of civil status

3.1.2.1. Preliminary remarks

In the doctrine, as a rule, the following legal characters of civil status are examined: legality, indivisibility, indispensability, personality, imprescriptibly, universality and nationality.

3.1.2.2. Legality

Legality, a principle specific to the rule of law, characterizes the civil status of the individual, just as all his rights are recognized.

Legality is based on the fact that the existence of the civil status of the individual is interested, as previously stated, by the society represented by the state institutions and authorities. In this sense, in doctrine, it was suggestively stated that "civil status is therefore in the field of law, and not in the field of individual will".

3.1.2.3. Indivisibility

Indivisibility consists in the fact that, at a certain moment, the individual has only one civil status, even if it is made up of a sum of elements between which there is relative independence.

Indivisibility is intimately linked to the unity and *uniqueness* of civil status, but also to its resilience *erga omnes*. Because of these links, in a legal relationship they participate, a natural person cannot use certain elements of civil status only in relationships with certain individuals and ignore them in relation to others.

3.1.2.4. Unavailability

Unavailability is explained by the fact that the civil status and its component elements cannot be subject to any alienation or renunciation. Moreover, civil status cannot be the subject of a transaction, renunciation or revocation.

3.1.2.5. Personality

The *strictly personal nature (intuition personae)* consists in the fact that, in principle, civil status is not susceptible to exercise by way of representation.

This particularity of civil status results also from the fact that it is, in reality, a non-patrimonial right which, as a rule, can only be exercised by its holder.

3.1.2.6. Imprescriptibly

In doctrine, most authors believe that civil status is imprescriptible both extintively and acquisitively. This thesis has a legal basis, since the prescription, whether it is extinctive or acquiring, concerns, in principle, only patrimonial rights, and civil status is, as stated above, a *non-patrimonial right*.

3.1.2.7. Universality

Universality consists in the fact that all individuals, indifferent of their age and exercise capacity or their physical, mental, professional or social situation, are entitled to civil status. This circumstance is easily apparent from the fact that art. 59 C. civ., referring to the identification attributes, states that *any person* is entitled to them. In the same sense, art. 98 C. civ., which refers without distinction to the *person*.

3.1.2.8. Nationality

By virtue of this character, the Romanian citizen has, as a rule, the same civil status, whether on the territory of Romania or of another state.

3.1.3. Sources of civil status

3.1.3.1. Preliminary remarks

Sources of civil status are legal acts and legal facts of civil status that determine, modify or extinguish civil status items. The conclusion is based on the provisions of art. 98 C. civ., previously analyzed, which refers to "*acts and facts of civil status*".

3.1.3.2. The law

It is the law that determines the sphere of civil status of the person. However, the incidence of the law is preceded by the conclusion of legal acts or committing legal facts of civil status. Therefore, the pre-requisite situation governed by the law is conditional upon the conclusion of certain acts or committing legal acts.

3.1.3.3. Legal acts of civil status

"*Legal acts of civil status*" (those regarded as *negotium*), in their capacity as sources of civil status, must be considered as manifestations or voluntary agreements, made in order to produce certain legal consequences.

According to the current Civil Code, the following can be analyzed: marriage (Article 271 and following), divorce by consent of the spouses (article 374 and following), recognition of parentage (article 415 and following) and adoption (451 and following).

Must be considered civil status documents court judgments handed down in the settlement of civil status actions.

3.1.3.4. Legal facts of civil status

The birth and death of the individual are considered legal facts of civil status. Some authors also add the person's sex. In my opinion, sex is not a legal fact, but a *state of anatomical fact* of the individual. Neither the birth nor the death of the individual are not actually *legal facts*.

3.1.4. Content of civil status

In the absence of a legal text to convey its content in doctrine, some authors have expressed the idea that it differs as civil status is viewed as a fundamental right of the individual or as a sum of personal qualities.

In the sense of the *fundamental right of the individual* to be individualized in the family and the society to which he belongs, in doctrine, the authors are unanimous about the content of the civil status. In this regard, there is unanimity in the sense that the civil status of the individual involves the following possibilities: to be individualized through her civil status; to require the other person, including state authorities, to be individualized through her civil status; to appeal, if necessary, to the coercive force of the state for the protection of these prerogatives.

In contrast, in terms of *personal qualities* that can be included in the content of civil status, in doctrine, there is a real diversity of opinions and even controversy.

At present, doctrinal disputes on "*civil status content*" are left out of the art. 98 C. civ., the provisions of which were previously analyzed.

3.1.5. Overview of civil status actions

3.1.5.1. Preliminary remarks

Civil status actions, known as *state actions*, are a variety of civil actions.

Civil status actions are, in principle, unavailable, imprescriptible, and *intuitu personae*. These particularities are borrowed from civil status, as a legal means for individualizing the person in the family and society as a subject of law (natural person).

3.1.5.2. Classification of civil status actions

A. Preliminary remarks

As a rule, in the specialized literature, most authors group civil status actions according to the criterion of the object or their procedural purpose and the persons entitled to promote them.

B. Classification of civil status actions by their procedural object or procedural purpose

C. Classification of civil actions in relation to persons exercising them.

3.1.5.3. Effects of court judgement handed down in matters of civil status

Since court decisions in civil matters will be analyzed in detail in the issue of civil status proof, in order to avoid repetition, in this context, I would point out only that, under art. 100 C. Civ, "civil status may be modified on the basis of an annulment, completion or modification decision of a civil status document ..." [para. (3)] and that such decisions are opposable *erga omnes* [para. (4)].

3.2. CIVIL STATUS DOCUMENTS AS AN *INSTRUMENTUM PROBATIONEM*

3.2.1. The meaning of the expression "civil status documents"

As we have already stated, in doctrine, most authors analyze the phrase "*civil status acts*" from two points of view: *negotium* or manifestations or agreements of wills made with the intention of generating, modifying or extinguishing various legal effects in the civil status ; as *instrumentum probationem* or various documents by means of which the legal acts or legal facts of civil status are considered as *negotium* .

They include marriage, divorce by spouses consent and adoption in the category of civil status acts. They may be considered legal acts of civil status other legal acts, such as the recognition of parentage and the dissolution of adoption.

As a matter of principle, such legal acts are considered to be those which generate, modify or extinguish various civil status effects, without the legal relevance of the nature of the document in which they are incorporated.

In my opinion, some documents that, even if they are drawn up by an administrative, judicial or notary authority, produce civil status consequences, may be included in the category of civil status documents. I evoke, in this context, by way of example, the "*divorce certificate*

". They also have this quality and the court decisions delivered in cases are dealing with the settlement of civil status actions.

In their quality of *instrumentum probationem*, civil status acts are drawn up in civil status registers. In this respect, some authors have stated that the civil status document (*instrumentum probationem*) is nothing more than the "tab in the civil status register completed by the civil status officer".

In order to more faithfully reflect their legal purpose, is required that, for *lex ferenda*, the first category should be called " *legal acts of civil status* " and second " *civil status documents* ".

3.2.2. Definition of civil status documents

Personally, I have defined the civil status documents (*instrumentum probationem*) as "those authentic documents drawn up under the conditions provided by law by civil status officers or persons delegated by them, in the civil status registers, for the purpose of proving legal acts and legal facts of civil status of individuals ".

3.2.3. Legal nature of civil status documents

In doctrine, almost all of the authors claim that civil status documents (*instrumentum probationem*), having a *complex legal nature*, must be analyzed from two perspectives - civil law and administrative law.

Civil status documents (analyzed as *instrumentum probationem*) are, as expressly qualifies them in art. 1 sentence I of Law no. 119/1996 and art. 99 par. (2) C. civ., *authentic documents*. Since these are just *documents*, they do not have the power to generate, modify or quit legal relationships. As a rule, legal relationships have their source in legal acts (considered as *negotium*), regardless of whether they are civil, administrative or judicial. *The civil status documents* only have the role of proving the existence of *legal acts* or *legal facts of civil status* (analyzed as *negotium*).

The prominent mention of the evidence of civil status documents (*instrumentum probationem*) cannot be disputed, since it is explicitly provided by art. 1 sentence I of Law no. 119/1996 and art. 99 par. (2) C. civ.

3.2.4. Civil Status Certificates

In doctrine, it was appreciated that civil status documents (*instrumentum probationem*) can be analyzed in a broad *sense* (*lato sensu*) and a narrow *sense* (*stricto sensu*). In the broad sense (*lato sensu*), these are the act of birth, marriage and death, as well as the certificates corresponding to them (acts). Instead, in *narrow sense* (*stricto sensu*), they designate only the proper documents of civil status (birth, marriage and death).

Specialized literature highlighted important differences between civil status documents and certificates issued on their basis

The evidential power of the civil status certificate is evoked in the context of the provisions of art. 99 C. civ and art. 12 of the Law no. 119/1996.

4. CHAPTER II - THE PROOF OF CIVIL STATUS

4.1. GENERAL ASPECTS ON THE PROOF OF CIVIL STATUS

Proof of civil status is governed by art. 99 and art. 103 C. civ., as well as by art. 12-13 of the Law no. 119/1996. On the other hand, particular aspects are provided both in the Civil Code and in Law no. 119/1996.

The comparative analysis of the provisions of the Civil Code, devoted to civil status acts, with some provisions of Law no. 119/1996 raises the question of the utility of the first and observance of the principles of competition between general and special rules.

4.2. PROOF OF CIVIL STATUS WITH CIVIL STATUS DOCUMENTS AND CERTIFICATES

Art. 99 para. (1) C. civ. categorically states that "the civil status is proved by the acts of birth, marriage and death, drawn up, according to the law, in the civil status registers, as well as by the civil status certificates issued on their basis".

This text refers to *civil status documents*, writings in which is recorded the fact of the birth, the legal act of marriage, respectively the fact of the death of the person.

The principle in matter of proof of civil status is the consequence of the significance the law provides for it. Practically, as a result of its civil status, the person is individualized by the strictly personal qualities resulting from *legal acts and facts of civil status*. Legal acts and legal facts of civil status (as *negotium*), evoked in art. 98 C. civ., are recorded in civil status documents (*instrumentum probationem*).

Regarding as *instrumentum probationem* , civil status documents record both civil status legal acts analyzed as *negotium* and civil status legal facts.

Even if civil status documents and certificates are listed cumulatively by art. 99 par. (1) C. civ., they are in an accessory report.

Civil status documents and certificates, being authentic documents, are subject to the provisions of art. 99 para. (2) C. Civ and art. 269-271 C. pr. civ.

As special authentic documents, according to art. 99 para. (2) C. civ., "the civil status documents proof until they are entered into false, for what constitutes the personal findings of the civil status officer and, to the contrary, for the other mentions."

In relation to *the evidential value of civil status certificates* , it is identical to the civil status documents.

The authentic nature of civil status certificates easily results from the corroboration of the provisions of art. 10 and art. 11 of Law no. 119/1996 with art. 269 para. (1) Thesis I C. pr. civ.

4.3. THE ROLE OF STATE POSSIBILITY IN CIVIL STATUS PROVING

State ownership or the use of civil status is the actual status of the child's corresponding to the connection with his or her filiation and consanguinity. Currently, the general legal regime of state ownership is regulated by art. 410-413 C. civ.

Regarding the legal role of state ownership, according to the unanimous and constant position of the doctrine in the field, it is exclusively probatorial and can be analyzed under two aspects, deduced from the provisions of art. 411 para. (1) and (2) and art. 421 para. (2) C. civ.

4.4. PROOF OF CIVIL STATUS WITH COURT DECISIONS IN THE MATTER OF CIVIL STATUS

Art. 434 C. pr. Civ. states categorically and without distinction that "the court decision has the probative force of an authentic document". As a result, civil court judgments have the same probative force as that provided for by law for civil status documents and certificates.

The provisions of art. 99 para. (3) C. civ. constitutes an application *in concreto* of the provisions of the provisions of art. 435 par. (2) C. pr. civ. According to them (art. 435 par. (2) C. pr. Civil) in general, the judgment "is objectionable to any third person as long as this one

does not, under the law, prove otherwise." In the case of civil court judgments, according to art. 99 par. (3) C. civ., the *contrary* can be done only "by a new decision". Practically, the provisions of art. 99 par. (3) C. civ. particularizes the *conditions of the law*, evocate in art. 435 par. (2) C. pr. civ.

4.5. PROOF OF CIVIL STATUS ELEMENTS

4.5.1. Proof of marriage

4.5.2. Proof of filiation

4.5.3. Proof of the concept with "scientific evidences"

4.6. PROOF OF CIVIL STATUS WITH OTHER MEANS OF EVIDENCE

4.6.1. Proof of civil status in the cases provided by art. 103 Civil Code

Article 103 of the Civil Code, under the marginal name "other means of proof of civil status", states that "civil status can be proved before the court by any means of proof if:" there were no civil status registers "[Lit. a)]; "civil status registers have been lost or have been destroyed in whole or in part" (lit. b)]; "it is not possible to obtain from abroad the civil status certificate or the extract from the civil status act" (lit. c)]; "the drawing up of the civil status act was omitted or, as the case may be, refused" (lit. d)].

With minor differences of expression, previously, these situations were provided by art. 16 of Law no. 119/1996 and art. 24 of Decree no. 31/1954.

4.6.2. Proof of maternal affiliation by any means of evidence

5. CHAPTER III - GENERAL ASPECTS REGARDING THE DRAWING UP OF A CIVIL STATUS DOCUMENT

5.1. CATEGORIES OF REGISTRATIONS IN CIVIL STATUS REGISTERS

5.1.1. Preliminary remarks

From the content of Law no. 119/1996 and the Methodology, found that the records take two forms: "the drawing up of the civil status documents" (1), respectively "entering the mentions of the borders of the civil status documents" (2).

5.1.2. Records by drawing up civil status documents

5.1.2.1. Situations in which records are made by drawing up civil status documents

According to Law no. 119/1996, the birth, marriage and death of the natural person is registered.

5.1.2.2. Persons empowered to draw up civil status documents

Article 3, para. (1) of the Law no. 119/1996, establishing public authorities in Romania that fulfill the civil status attributions, refers, first of all, to the "*civil status officers*".

The civil status officers operate both in the municipalities (communes, cities, municipalities and sectors of Bucharest) and within SPCLEP.

Article 3, para. (2) of the Law no. 119/1996 provides for the categories of persons having the quality of civil status officer, as follows: "mayors of municipalities, sectors of Bucharest municipality, towns and communes" (lit. a); "The heads of the diplomatic missions and of the Romanian consular career offices" [lit. b)]; "Commanders of ships and aircraft" [lit. c)]; "Officers designated by order of the Minister of National Defense or, as the case may be, of the Minister of the Interior" d)].

5.1.2.3. The competence of civil status officers to draw up civil status documents

Interestingly, the general aspects regarding the competence of civil status officers are governed by the Methodology and not by Law no. 119/1996. Since we are in the presence of people invested in the exercise of public authority, it would be normal for these issues to be regulated in the texts of this law.

Article 2, para. (1) of the Methodology evokes that civil status officers have *material competence* and *territorial jurisdiction*.

5.1.3. Records by entering of mentions

As this issue will be analyzed in detail in Chapter V of the PhD thesis, in order to avoid repetitions, in this context, I refer only to the cases provided by the Law no. 119/1996 and Methodology in which civil status acts are mentioned.

In this respect, art. 43 of this law provides for eight typical situations.

5.1.4. Registration of civil status acts and facts of foreign citizens and persons without citizenship

For foreign citizens and persons without citizenship, art. 4 of Law no. 119/1996 sets out some special rules regarding the registration of legal acts and civil status legal facts.

5.1.5. Registration of civil status documents in special situations

5.1.5.1. Preliminary remarks

Law no. 119/1996 provides for various special rules on the registration of birth or death in the event of events occurring in a train, aboard a ship or aircraft or other means transport, while traveling on the territory of Romania. Similarly, derogatory rules on the registration of civil status acts in the event of mobilization, war or the participation of armed forces in missions outside the territory of the Romanian State are established.

5.1.5.2. Registration of the birth and death in a train, on board of a ship or aircraft or other means of transport during a trip on the territory of Romania

5.1.5.3. Registration of birth or death on board of an aircraft outside the territory of Romania

5.1.5.4. Registration of civil status acts produced on board of a ship during a trip outside Romanian territorial waters

5.1.5.5. Records in the logbook or in road book

5.1.5.6. Registration of civil status documents in case of mobilization, war or participation of armed forces in missions outside the territory of the Romanian state

5.2. COMMUNICATION OF INTERVENTION CHANGES IN CIVIL STATUS OF THE PERSON

Civil status documents recorded in civil status registers must accurately mirror the civil status of the individual at each point in their life. The principle is imposed due to the role of civil status, individualization of the person in the family and society.

For these reasons, changes in civil status must be communicated, within 10 days, to SPCLEP or, as the case may be, to the civil status officer competent to enclose those entries. In this respect, the provisions of Art. 8 par. (1) of the Law no. 119/1996.

Communications with civil status changes are sent to SPCLEP or "to the civil status officer who issued the act of birth, marriage or death", depending on the nature of the legal act or legal status of civil status modifying civil status and various special legal provisions.

5.3. ISSUANCE OF CIVIL STATUS CERTIFICATES

The provisions of art. 10 and art. 11 of Law no. 119/1996 establish the general legal status of civil status certificates.

They are issued for the act of birth, marriage, and death.

The birth certificate and marriage certificate are issued to "holders or their legal representatives" and the death certificate to the members of the deceased's family or other interested persons. The law also regulates the possibility of issuing civil status certificates to other persons.

5.4. CIVIL STATUS REGISTERS

In Romania, "civil status registers" were introduced in 1832 by the Organic Regulation. At present, the legal regime of civil status registers is provided by art. 2 and fol. of Law no. 119/1996.

The civil status registers contain, in fact, standardized forms for the act of birth, marriage and death.

The civil status registers are completed in two copies, both original. "Copy I" is kept at SPCLEP or in the mayoralty of the administrative-territorial unit where the civil status document was drawn up. Instead, the "copy II" shall be submitted to the county council or to the General Council of the Municipality of Bucharest, as the case may be, within 30 days from the date when all filings in the register have been completed.

5.5. TECHNICAL RULES ON REGISTRATION OF CIVIL STATE DOCUMENTS

Legal acts and legal facts of civil status are recorded on request, following a declaration by the person having such an obligation or ex officio, according to art. 5 par. (1) of the Law no. 119/1996. The same procedure is followed when making claims.

Statements on the registration of legal acts or legal facts of civil status are made verbally, in the case of birth and death, and in writing, for marriage.

The civil status officer or the person delegated by him / her shall have the duty to verify the "content of the statement", as well as its consistency with the "documents submitted by the declarant or in the civil status record".

6. CHAPTER IV – PREPARATION OF VARIOUS CIVIL STATUS DOCUMENTS

6.1. PREPARING THE BIRTH ACT

6.1.1. Preliminary remarks

The drawing up of the birth document is regulated by art. 14-23 of Law no. 119/1996 and art. 28-40 of the Methodology. References to various aspects of the act and the birth certificate are also found in the Civil Code. Also, within the framework of child rights law, Law no. 272/2004 includes incidents also in case of birth registration and drawing up the birth documents.

Jurisdiction for the preparation of the birth documents belongs to the persons having civil status attributions within SPCLEP or the civil status officer or his / her delegate from the town hall in whose administrative-territorial district they were born or, as the case may be, the head of the diplomatic mission or of the Consular Career Office.

In the case of the child found and abandoned by mothers in sanitary units, current regulations in the field lay down derogating rules from common law.

6.1.2. Childbirth declaration

6.1.2.1. Persons required to declare childbirth

6.1.2.2. Form of the child's birth declaration

6.1.2.3. Time limits for declaring childbirth

6.1.2.4. Documents on which the birth of the child is registered

6.1.2.5. Tardive birth declaration

6.1.2.6. The actual preparation of the act of birth

6.1.3. Drawing up the act of birth in case of the found child

This hypothesis is regulated by art. 19 and art. 21 of Law no. 119/1996. Also, art. 33, art. 34, art. 36 and art. 37 of the Methodology details the provisions of art. 19 and art. 21 of Law no. 119/1996. Finally, art. 10 par. (2) and Art. 14 of the Law no. 272/2004 contain some provisions on the registration of the child found.

In the case of the found child, the birth certificate is drawn up on the basis of the report of a SPAS representative. A police representative and a doctor participate in the preparation.

The preparation of the birth certificate for the child found as such is done within 30 days from the date of the finding. If, after the birth was registered, the child's parents are identified, or the parent has been identified, SPCLEP or the competent civil status officer asks the court to annul the act of birth. If the original birth certificate is canceled, another birth certificate will be made, either by SPCLEP or by the civil status officer at the place where the child was born.

6.1.4. Drawing up the act of birth in the case of the abandoned child

This situation is regulated by art. 20-21 of Law no. 119/1996 and art. 35-38 of the Methodology. Also, as outlined above, aspects regarding the birth of this child are provided by Law no. 272/2004 (Articles 10, 12-14 and Article 16). To avoid repetition, in the following, I will only resume those issues that were not presented in the analysis of the birth of the found child.

The main difference between this situation and the previous one is the fact that the mother, after giving birth to the child (and was established the *birth*), left him in the sanitary unit where the event took place. Taking into account the sanitary authorities' obligations to register the patients at the admission and the births taking place within them, in the case under consideration, both the identity of the mother and of the child and the fact of the *birth*, should be known. This circumstance is adequately reflected in the content of the rules governing the procedure for the birth of the act of birth.

6.1.5. Drawing up the act of birth in case of adoption

In the case of the adopted child, the birth of the act of birth is regulated by art. 23 of Law no. 119/1996. Currently, art. 23 par. (1) of the Law no. 119/1996 states that "in the case of adoption, a new birth certificate shall be drawn up by SPCLEP or, as the case may be, by the civil status officer of the mayoralty of the administrative-territorial unit in the district of which the adopted person was domiciled until the moment of the consent adoption or headquarters of the care institution in whose care the adopter was prior to the adoption consent".

6.1.6. Drawing up the act of birth for the baby born dead

In the case of a child born dead, only the act of birth is drawn up. The question is why the act of death is not written. The explanation is simple. If the act of death were to be drawn up, it would be inferred that such a child died after the moment of birth, which is not the case. Moreover, the current normative solution is likely to discourage any temptation of killing the child as soon as it was born.

6.2. PREPARING THE MARRIAGE ACT

6.2.1. Preliminary remarks

The term *marriage* can be considered in at least five aspects: the fundamental law of civilian nature of the man and woman who are nubile in age; legal act civil *sui generis*; secular or religious ceremony; legal status of spouses during marriage; legal institution of family law. In the analysis proposed by this doctoral thesis, marriage is relevant as a "civil law *sui generis* act".

In turn, the legal act of marriage can be considered as *negotium* and as *instrumentum probationis*. As *negotium*, the legal act of marriage is the concordant expression of consent by a man and a woman in order to become spouses of each other and thus to give rise to family legal relationships. As *instrumentum probationem*, marriage involves the drawing up of the *marriage act* in the register of civil status and the issue of the appropriate marriage certificate.

The drawing up of the act of marriage is regulated by art. 24-31 of the Law no. 119/1996 and, in some particular aspects, by art. 279 and followings C. Civ. In concretization of these legal provisions, art. 41-53 of the Methodology details the procedure for drawing up the act of marriage.

6.2.2. General aspects of concluding marriage

6.2.2.1. The competence of the civil status officer to conclude marriage

Under the aspect of discussion, art. 24 para. (1) of the Law no. 119/1996 establishes both a norm of material competence and the rule of territorial jurisdiction with the regard to the preparation of the act of marriage (*instrumentum probationem*). From the material point of

view, the preparation of the act of marriage is "the competence of the civil status officer". On the other hand, in territorial terms, the civil status officer is the mayor's office in whose administrative-territorial jurisdiction the domicile or residence of any future spouse is located.

In the doctrine, the problem of legal remedy was raised when the person who celebrated the legal act of marriage did not have the status of civil status officer or was not delegated to perform his duties. In my opinion, in the presented situation, there must be analyzed the validity of the legal act of marriage, considered as *negotium*, as well as the act of marriage, as *instrumentum probationem*.

6.2.2.2. Place of concluding a marriage

Art. 24, para. (1) of the Law no. 119/1996, which provides for the place of the marriage, stipulates that it is "at the seat of the local community public service of the evidence of the persons, of the town hall in whose territorial jurisdiction the domicile or residence of one of the future spouses or, as the case may be, other place for this purpose, set by the mayor of the respective administrative-territorial unit".

This rule governs, on the one hand, the material and territorial competence of the civil status officer as regards the celebration of marriage as a *negotium* and, on the other hand, establishes the place where marriage can be celebrated. The place where marriage can be celebrated may be the SPCLEP headquarters, the headquarters of the administrative-territorial unit or a headquarters for that purpose. In my opinion, if there is a special headquarters for this purpose, marriage will be celebrated in this place. These places are the common law. Depending on the circumstances, the legal act of marriage can also be celebrated elsewhere.

6.2.2.3. Declaration of marriage

6.2.2.4. Opposition to conclude a marriage

In my opinion, with regard to the explanations I will present below, I define the opposition to marriage as "the notification made by a person to the civil status officer by means of which he notifies him of the existence of circumstances that contradict the legal provisions for the valid celebration of the marriage".

Art. 285 C. civ gives any person the right to oppose marriage, provided that there is a legal impediment or other requirements of the law not to be fulfilled. This article also requires the opposition to be made in writing and by indicating the evidence on which it is based.

6.2.2.5. Refusal of the civil status officer to celebrate marriage

This refusal is regulated by art. 9 and art. 287 C. civ., as well as by art. 28 of the Law no. 119/1996.

In particular, art. 286 C. civ provides the possibility for the civil status officer to refuse the celebration of marriage, "... if, on the basis of the checks which it is required to carry out, the objections received or the information in its possession to the extent that the latter are notorious, finds that the conditions stipulated by the law are not fulfilled".

"The disgruntled person may file a complaint with the court of guardianship in the district where he is domiciled", under the conditions of art. 28 para. (2) of the Law no. 119/1996.

From the material point of view, the court is competent, according to art. 94 para. (1) pct. (1) letter a) C. pr. civ. On the other hand, territorially, the jurisdiction lies with the court in whose territorial jurisdiction the disavowed person resides, according to art. 28 par. (2) of the Law no. 119/1996. Guardianship court hearing the case may admit the application by which the disgruntled person attacks the refusal to celebrate the marriage only if it finds that the refusal is ungrounded or / and illegal. If the application is admitted, the refusal, being declared inappropriate or / and unlawful, the civil status officer has the obligation to proceed to the celebration of the marriage. On the other hand, if the refusal of the civil status officer is thorough and lawful, the guardianship court will reject the request. In this case, the disaffected person will be able to make a new marriage statement only after he has fulfilled the legal requirements, the failure of which the civil status officer based his refusal to celebrate the marriage.

6.2.2.6. Renewal of marriage declaration

As a novelty, art. 284 C. civ. regulates the renewal of the marriage declaration. In particular, on the basis of this, "if the marriage is not completed within 30 days of the date of the declaration of marriage, or if the future spouses wish to amend the original declaration, they must make a new marriage declaration and order its publication".

From the economy of the provisions of art. 284 C. civ., it appears that "a new marriage declaration" can be made in two situations: the marriage did not end within 30 days from the date when the extract was displayed at the mayoralty or on its website; future husbands want to change their initial statement.

6.2.2.7. Conclusion of a marriage

- A. The date of marriage
- B. Communicating health status by future spouses
- C. Celebrating marriage
- D. Moment of marriage

As a novelty, art. 289 C. civ. determines the moment of marriage. Thus, according to him, "marriage is concluded when, after the consent of each of the future spouses, the civil status officer declares married to them."

6.2.2.8. Particular aspects of marriage in Romania by foreign citizens

6.2.3. Drawing up the marriage act

After the legal act of marriage (as *negotium*) has been concluded, "the civil status officer shall immediately draw up the marriage act, which shall be signed by the spouses, by the two witnesses and by the officer, in the register of civil status documents civil status", according to art. 290 C. civ.

It has been consistently and unanimously decided in the jurisprudence and literature that marriage registration in the civil status register "is not part of the solemnity of the marriage", regarded as *negotium* .

6.2.4. Prove of marriage

Analyzed as *negotium*, marriage is, in fact, a legal act of civil status, according to art. 1 and 2 of Law no. 119/1996. Instead, regarded as *instrumentum probationem*, the act of marriage

is an authentic document, according to art. 1 of the Law no. 119/1996 and art. 99 par. (1) C. civ.

The legal act of marriage (analyzed as *negotium*) is proven by means of marriage (viewed as *instrumentum probationem*) .

6.3. PREPARING THE ACT OF DEATH

6.3.1. Preliminary remarks

From the perspective of the theme of the doctoral thesis and of the *act of death*, it is important to *note the death* of a person, which is why I will synthetically present the rules regulated by the law: the physical finding of death; the court declaration of death.

6.3.2. Physical finding of death

As a rule, the death of a person is noted by the medical examination of the body, identified as the body of a particular person. In fact, the physical finding of death cannot be made on the basis of statements of witnesses or presumptions.

Following the physical finding of death, the *medical certificate* of death is drawn up and issued, under the conditions of art. 35 of Law no. 119/1996. This certificate records the date of death, which marks when the individual ceases to be the subject of law.

6.3.3. Legal finding of death

6.3.3.1. Preliminary

In situations where the body does not exist and the physical finding of death is impossible, but there are sufficient and clues about the death of a person, the death sentence is declared.

The current Civil Code regulates a general case (art. 49) and two special cases (art. 50) to declare the death of the individual.

6.3.3.2. Cases where may be ordered a judicial declaration of death

A. The General Case

"Where a person is missing and there are indications that he has ceased to exist, he may be declared dead by court order at the request of any interested person, provided that he has been in custody for at least two years from the date of receipt of the latest information or clues from which it appears that he was alive ", according to art. 49 para. (1) C. civ.

In this case, for the admissibility of the application, the following conditions must be met cumulatively: the individual is missing; there are indications that the person is dead; since the latest information or indications that the person is alive have passed at least two years.

B. Special cases

The first special case is provided by art. 50 par. (1) C. civ. "The missing person in special circumstances, such as floods, earthquakes, rail or air disasters, wreckage, in the course of war or other similar circumstances, which justifies the death, may be declared dead if at least 6 months have elapsed since the date of the circumstance in which the disappearance took place."

For the existence of this case, the following conditions must be met: the physical person's disappearance occurred in a particular circumstance; the particular circumstance must justify the assumption that the person has died; at least 6 months have elapsed since the date of the occurrence of the disappearance.

The second special case is regulated by art. 50 par. (3) C. civ. "When it is certain that death has occurred, although the corpse cannot be found or identified, death can be declared by court order, without waiting for any term to end."

In this case, it is necessary to meet the following conditions: the death is certain; the body was not found or identified.

6.3.3.3. Procedural aspects of judicial declaration of death

6.3.3.4. Nullity of the court's declaration of death

6.3.3.5. Rectification of the date of death

6.3.4. Jurisdiction of the civil status officer to draw up the act of death

6.3.5. Declaration of death

6.3.6. Medical certificate of death

6.3.7. Death Act

From the analysis of the provisions of art. 32 par. (1) of the Law no. 119/1996 that the act of death is drawn, first of all, on the basis of the "medical certificate establishing the death". Also, at the base of drawing up the act of death stands the declaration of death made by the persons and under the conditions set forth above.

When the person death is violent (suicide, accident etc.) or body is found and the cause of death is unknown, the medical certificate which was found death must be accompanied by findings (evidence) the police or prosecutor, following their complaint about the production of the death. In the situation in which the police bodies or the prosecutor establish the identity of the deceased after the drawing up the act of death, the identity of the deceased person shall be recorded in the act of death by the procedure of the mention.

6.4. PREPARING CIVIL STATUS DOCUMENTS OF ROMANIAN CITIZENS ABROAD

6.4.1. Preliminary remarks

Section 4 of Chapter II (art. 40-42) of Law no. 119/1996 regulates the procedure for the drawing up of civil status documents concerning the Romanian citizens who are abroad. The Methodology establishes Section 7 of Chapter II (art. 70-84) of the procedure for the registration of civil status documents in the case of these Romanian citizens. These civil status documents are drafted, as the case may be, "at the diplomatic missions or consular offices of Romania" (the first thesis) or "at the competent local authorities" (second sentence), according to art. 40 par. (1) of the Law no. 119/1996.

6.4.2. Particular aspects related the drawing up of civil status documents regarding the Romanian citizens abroad by the diplomatic missions or the consular offices of Romania

Art. 40 para. (3) and art. 41 para. (1) of the Law no. 119/1996 refers to the drawing up of the act of birth and of the marriage concerning Romanian citizens living abroad.

Art. 41 para. (1) of the Law no. 119/1996 grants the heads of the diplomatic missions and the consular offices of Romania the right to celebrate the legal act of marriage in case the future spouses or only one of them is a Romanian citizen. In both situations, marriage must be in accordance with the provisions of the law of the state in which they are accredited. Also, the future spouse or at least one of them, who has Romanian citizenship, must have "domicile or residence in the consular district of the diplomatic mission or consular career."

6.4.3. Particular aspects related the drawing up of civil status documents regarding the Romanian citizens living abroad by the competent foreign authorities

This possibility is evoked by art. 40 para. (1) the second sentence of Law no. 119/1996. The drafting procedure is fully governed by the internal regulations of the state to which the competent local authorities belong.

6.4.4. Registration in Romanian civil status registers from the diplomatic missions and consular offices of Romania of the civil status certificates issued by the competent foreign authorities

The natural persons, the Romanian citizens who have their domicile or residence on the territory of another state and to whom the competent local authorities have drawn up civil status documents, have the possibility to request the registration of the civil status certificates issued on this occasion "in the civil status registers of diplomatic missions or career consular offices of Romania ", according to art. 40 par. (2) of the Law no. 119/1996.

6.4.5. Enrollment or transcription in Romanian civil status registers of civil status documents regarding Romanian citizens drawn up by competent foreign authorities

In principle, according to art. 41 par. (3) sentence I of Law no. 119/1996, in order to acquire the probative power before the Romanian authorities, civil status documents concerning Romanian citizens drawn up abroad by authorities belonging to foreign states must be subjected to the enrollment or "transcription in the Romanian civil status registers".

6.4.6. The drawing up of civil status documents regarding the Romanian citizens living in Romania and belonging to Romania, but in the present, they are found on the territory of other states

The drawing up of civil status documents in this situation is subject to the provisions of art. 41 par. (6) of the Law no. 119/1996. The application may be addressed to SPCLEP or the town hall of the locality in whose territory the person concerned is domiciled. In such cases, for the preparation of new civil status documents, the requesting authority has the obligation to request the National Archives extracted from the civil status documents archived here. On the basis of the extracts received, SPCLEP or the civil status officer draws up the new civil status act.

6.4.7. Updating of the National register of persons evidence with data contained in certificates or extracts of civil status issued to Romanian citizens by foreign authorities who have been entered / transcribed in the Romanian civil status registers

7. CHAPTER V – ENTERING OF MENTIONS, ANNULMENT, MODIFICATION, RECTIFICATION, AND COMPLETION OF CIVIL STATE DOCUMENTS

7.1. ENTRY OF MENTIONS INTO CIVIL STATUS DOCUMENTS

7.1.1. Preliminary

Art. 43-51, making Chapter III of Law no. 119/1996, contain rules on the entering of mentions in civil status documents. In particular, the following are regulated: cases in which civil status documents are mentioned (art. 43); the entering of mentions in civil status documents of Romanian citizens living abroad (art. 44); entering of mentions in civil status records in an information system (art. 45); special rules for the entering of mentions in various cases (art. 46-50); the issue of civil status certificates with the entries in civil status documents (art. 51).

In turn, art. 85-120 of the Methodology, making Chapter III, under the heading "entering of mentions in the civil status registers" (s.n.), contain rules relating to: mentions (art. 85-94); registration of recognition or establishment of parentage (art. 95-97); enrollment of the adoption, annulment or dissolution of the adoption (art. 98-102); registration of divorce, annulment or termination of marriage (art. 103-105); the registration of the change of name and / or the name by administrative means (Articles 106-114); registration of the change of names / surnames registration with the spelling of the Romanian language (art. 115-116); the entering of mentions of the change of names or surnames occurred abroad (art. 117-118); the entering of mentions regarding the granting or renunciation of Romanian citizenship (art. 119-120).

I signify the existence of a significant difference in the titles of the two chapters. Thus, while the title of Chapter III of Law no. 119/1996 refers to the "entry of the mentions in civil status documents", that of Chapter III of the Methodology refers to the "entry of the mentions in the civil status registers" (s.n.).

7.1.2. General rules for making the mentions on civil status documents

As a general rule, claims are made on the basis of legal acts or legal facts of civil status (analyzed as *negoum*), under the law. The entries of mentions are made "ex officio or upon request".

7.1.3. Cases where civil status records are made

7.1.3.1. Preliminary

In this respect, art. 43 letters a) - i) of the Law no. 119/1996 evokes nine cases. For the cases provided by art. 43 lit. a), c), d), e) and f), this law contains special provisions. Instead, in the situations referred to in subparagraph b), g), h) and i) only bordered to evoke them.

7.1.3.2. Entering of the mention on the recognition or establishment of the parentage

This mention is entered usually "on the border of the act of birth". In the case of married and deceased persons, the mention of the recognition or establishment of parentage by court decision is also made on the act of marriage, respectively of death.

7.1.3.3. Entering of the mention on the dissolution, annulment or declaration of nullity of adoption

Under art. 47 of the Law no. 119/1996, the dissolution, annulment or nullity of the adoption shall be entered by mentions, as the case may be, on the following civil status documents: the original birth certificate of the adopted one; the birth certificate resulting from the adoption consent, if there is the case; the marriage act of the adopted person; birth certificates of the minor children of the adopted person. If the adopted person has major children, the entering is only made at their request. The entry is filed ex officio or at the request of the person concerned.

7.1.3.4. Entering of the mention on the ending, nullity or dissolution of marriage

- A. Entering of the mention of the marriage
- B. Entering of the mention of marriage nullity
- C. Entering of the mention on the dissolution of the marriage by divorce

7.1.3.5. Entering of the mention on change the name

This mention is entered, according to art. 49 of Law no. 119/1996, "under the *law*". In practice, the *law* to which this article refers should be identified. *The law*, to which art. 85 C. Civ. and art. 49 of Law no. 119/1996 is, in fact, "Government Ordinance no. 41/2003 on acquiring and changing by administrative means the names of the natural person". Art. 15-16 of this Ordinance refers to "the entering of mentions of the name change by administrative means".

7.1.3.6. Entering of the mention of granting or losing Romanian citizenship

The legal regime of this mention is provided by art. 43 lit. e) and art. 50 of Law no. 119/1990, as well as by art. 119-120 of the Methodology. These mentions are entered on the birth and marriage act (if applicable), based on the communication made by the Ministry of Internal Affairs, under the conditions of Art. 50 of Law no. 119/1990.

7.2. CANCELLATION, MODIFICATION, COMPLETION AND RECTIFICATION OF CIVIL STATE ACTS

7.2.1. Preliminary precisions

The provisions of art. 57-59 of Law no. 119/1996 make up the legal regime regarding the "annulment, amendment, rectification or completion of civil status documents and of the

mentions". Also, Chapter V of the Methodology (art. 125-130) contains technical rules in this respect. Finally, art. 100 C. civ. regulates, in various aspects, these operations. The legal provisions referred to concern civil status documents, namely civil status documents analyzed as *instrumentum probationem* and not legal acts of civil status regarded as *negotium*. Operations of annulment, completion, modification or rectification may be performed only on the basis of a final court decision, according to art. 100 par. (1) C. civ. These provisions are reproduced by art. 57 par. (1) of the Law no. 119/1996, respectively by art. 125 par. (1) of the Methodology. Also, the provisions of art. 99 par. (3) C. civ., previously analyzed.

7.2.2. Special rules for the annulment of civil status documents

The nullity that I analyze in this context does not concern the legal acts of civil status (analyzed as *negotium*), but the civil status documents or, in other words, the civil status documents analyzed as *instrumentum probationem*. Nullity or annulment of civil status documents are governed by art. 100 par. (1), (3) and (4) C. civ., art. 57 of the Law no. 119/1996 and art. 125-128 of the Methodology.

7.2.3. Special rules for completing civil status documents

Completion is regulated by art. art. 100 par. (1) and par. (4) C. civ., art. 57 and art. 59 of the Law no. 119/1996, respectively art. 125 par. (1), art. 126 and art. 128 of the Methodology. In addition to completion, the civil status act is completed with existing civil status data but omitted to be recorded on the occasion of their preparation.

7.2.4. Special rules for modifying civil status documents

The modifying is evoked by art. 100 par. (1), (3) and (4) C. civ., art. 57 and art. 59 of the Law no. 119/1996, respectively art. 125, art. 126 and art. 128 of the Methodology. Modifying of the civil status documents has the significance of changing its form and / or its content to conform to legal requirements.

7.2.5. Special rules on the rectification of civil status documents and the mentions entered on them

This operation is provided by art. 100 par. (1) and (2) C. civ., art. 58 of Law no. 119/1996, respectively art. 125 par. (2), art. 129 and art. 130 of the Methodology. Rectification has the meaning of "correcting or straightening of the material mistakes streaked in the content or form of civil status document". Thus, through rectification, only material errors can be corrected committed during the preparation or on the occasion of making the entries on civil status documents.

7.2.6. Rules of procedure on the annulment, completing and modifying of civil status documents

Actions for the annulment, completion or modification of civil status documents are different "civil status actions" (of the state). Art. 57 par. (2) - (4) of Law no. 119/1996 provide for a series of procedural rules on the annulment, completion or modifying of civil status documents.

8. CHAPTER VI - GENERAL ASPECTS OF CIVIL STATUS AND ACTS OF CIVIL STATUS IN COMPARATIVE LAW

8.1. PRELIMINARY PRECISIONS

Because of its multiple importance, each country has its own system of registration of civil status acts and facts, based on a legal framework. This system is modeled by the history and culture of each country and reflects the level of development of its legislative and administrative system.

Registration systems for civil status acts and facts are generally similar in various national law systems, but with many particularities of detail from one state to another.

8.2. ALGERIA

8.2.1. Preliminary

The judiciary system, together with other aspects of Algerian culture, shares the characteristics of its French and Arabic traditions. After gaining independence on July 5, 1962, the Algerian government decided to create a new judicial system that would eliminate the French colonial heritage and more faithfully reflect the national ideological orientation of the new state, which was built both on the basis of socialism and of the Arabic and Islamic tradition.

During the period of the colonial state, civil status was regulated by the law of March 23, 1882, promulgated by the French authorities, for the indigenous Muslims of Algeria. The process of establishing the system of registration of acts and civil status deeds lasted twelve years, between 1882 and 1894. After this period, the administration forced native Algerian citizens to declare all births and deaths.

8.2.2. Recording of civil status acts and facts

8.2.2.1. General aspects

Civil status is a service of the local administration, the city hall has the attributions of registration of births, deaths, marriages and divorces. As in the Romanian system, civil status documents serve as a means of proving the civil status of the individual.

8.2.2.2. Birth registration

Any child born in Algerian territory must be declared within five days of the birth of the civil status officer from the place of birth under the sanction provided for in art. 442 par. (3) of the Algerian Criminal Code.

8.2.2.3. Marriage registration

Islamic law regards marriage as a private agreement between two families. The presence of two witnesses is sufficient to ensure the validity of the marriage. Original Islamic texts did not require marriage registration with civil or religious authorities.

At present, contrary to Islamic tradition, civil registration of marriage is mandatory. Article 4 of the Algerian Family Code defines marriage as a legal contract between a man and a woman.

8.2.2.4. Death registration

Art. 79 of the Ordinance no. 70-20 / 1970 provides that the death certificate shall be drawn up by the registrar of the deceased's locality on the basis of the declaration of a relative of the deceased or of a person who has the most complete and accurate information possible on the civil status of the deceased. Anyone who knows about the death of another person is required to inform the civil status officer.

8.3. FRANCE

8.3.1. Preliminary

Regarding the civil status, among all the systems of European law, the French one presents the most similarities with Romania's regulations in the field.

In the contemporary form, the foundations of the civil status legal regime were laid down by the Decree of September 20, 1792. By this Decree, the civil status registers were established, and the municipal administrative authorities were tasked to register the legal acts and the legal facts civil records in these registers.

Over time, regulations on civil status have continued to improve. An important moment in this respect is the adoption of the Napoleonic Civil Code in 1804, which largely took over the provisions of the Decree of 1792. The second part of Book I of the French Civil Code was devoted to civil status. Another important and very recent moment was the adoption of Decree no. 890/2017 on civil status.

The French civil status system operates on the principle that civil status records are based on civil status events and acts, analyzed as *negotium*.

8.3.2. Recording of civil status acts and facts

8.3.2.1. General aspects

According to the French Civil Code are five kinds of civil status document: birth certificate (*acts naissance*), marriage certificate (*acts of Marriage*), the death certificate (*acts of death*), the act of recognition (*acts reconnaissance*) and the act of the child born dead (*acte d'enfant sans vie*). Frequently, the registration takes the form of a mention on the border of the existing records, in particular of birth registration. Registers in which birth documents are kept are central registers and play a major role in ensuring stability, accuracy and publicity of civil status.

In principle, as in the Romanian legal system, third parties do not have access to the civil status registers, nor can they obtain photocopies of them. But, they can get copies of them.

8.3.2.2. Birth registration

The French Civil Code provides in art. 55 that the birth must be declared to the civil status officer within 5 days. This term begins to run from the birthday. If the distance between the place of birth and the place of residence of the civil status officer is high, the time limit is 8 days. In case when the birth is not declared within the legal term, it can be entered in the civil status register only on the basis of a court decision. Jurisdiction shall lie with the court in whose territorial jurisdiction the child is born.

The act of birth must be made immediately after the moment of the declaration. On the basis of the act of birth is issued the birth certificate, which must indicate the day, time, place of birth, sex of the child, surname, name of the child, as well as surname, name, age, profession and address of each parent, according to art. 57 C. civ.

8.3.2.3. Marriage registration

In France, as in Romania, civil marriage does not exclude religious marriage. On the contrary, civil marriage is a prerequisite and mandatory condition for the celebration of religious marriage. The marriage celebration takes place in the locality where one or both spouses are domiciled. Future spouses are required to participate directly, one in the presence of the other, at the conclusion of the legal act of marriage and meet the requirements laid down by law. The marriage celebrated by a French authority is registered in the marriage register. Marriage is also mentioned on the act of birth of each husband, indicating the name of the other spouse, under the conditions of art. 76 C. civ. The marriage act must be drawn up immediately after the civil ceremony and be signed by spouses, witnesses and the civil status officer.

8.3.2.4. Death registration

The French Civil Code does not, at least in principle, require the obligation to declare death, which is normally found by a doctor appointed by the mayor. According to art. 79-3 The French Civil Code, the civil status officer must mention or ask for the mention of death on the birth of the act of birth.

8.4. United Kingdom

8.4.1. Preliminaries

In the United Kingdom, the organization of the registration of civil status acts and facts is different for each of the three constituent states, with its own legal systems and specific competencies for the application of the relevant regulations when registering civil status elements. Although the principles governing the registration of civil status acts and facts are, in many respects, similar, the three systems present major differences in their practical application.

In the UK, the registration of legal acts and civil status acts is decentralized, each component part having its own *Registrar General*, the *General Register Office* and its own jurisdiction to enforce civil status registers.

Currently, the framework of civil registration in England and Wales are based on Births and The Deaths Registration Act 1953, the Marriage Act 1949, and the Registration Service Act 1953. The Birth and Death Record Act of 1953 sets out the detailed procedure for the birth registration of *still-* born children and deaths in England and Wales.

The provisions of these normative acts establish the responsibilities of the civil status officers, the Superintendent Officer, the General Officer and the persons providing the information that is the basis for the registration of civil status events (declarants).

8.4.2. Recording of civil status acts and facts

8.4.2.1. General aspects

Certificates obtained when registering various civil status events are copies of entries made in civil status records and have the same evidential force as those entries. The main events, as in Romanian law, are birth, marriage, and death, but adoption, parental order, recognition of a person's sex and civil partnership have been added to the list of these events.

8.4.2.2. Birth registration

A child born in England or Wales must be registered within forty-two days of birth in accordance with Section 2 of the Act on Birth Registration and Deaths of 1953. To ensure that each birth is registered, avoid multiple registration of the same birth and protect against

fraudulent registrations, the birth attendant must carry out checks on the birth lists kept by the local health authority.

The legal responsibility for declaring a child is first and foremost to its parents. Other persons obliged to act as birth declarants are the head of the medical institution where the birth occurred, the persons present at birth and the persons responsible for the child.

After the registration is completed, the birth certificate is issued to the person who declared the birth. The certificate has the written form.

8.4.2.3. Marriage registration

The English Law recognizes two types of family relationships: marriage and civil partnership. Both are relationships that are based on a status recognized by law, through which the parties fulfill the formalities prescribed by it.

All marriages and civil partnerships in England and Wales must be registered. The responsibility for the registration lies with the person who performs the ceremony or who is appointed for the purposes of registration pursuant to Section 53 of the Marriage Act 1949.

8.4.2.4. Death registration

The law requires a person's death to be registered at the headquarters of the local registry within a maximum of 5 days, which runs from the date of death or from the date of finding the corpse. According to Section 16 (3) and 17 (3) of the Act on the Registration of Births and Deaths of 1953, the person has to declare the death of a person to the Local Registry is any of the relatives of the deceased present at the time of his or her death, the relative who lives or is in the circumstance where the death occurred, any person who was present at the time of death, any homeowner who learned of death or any other person with reliable information.

Once the death has been recorded, the Local Registry Officer issues the funeral or incineration certificate. The burial or incineration of the corpse cannot take place without the certificate.

8.5. HUNGARY

8.5.1. Preliminary

The registration of civil status elements in Hungary is the responsibility of the competent authorities of the state as early as October 1, 1895 and aims to keep records of births, marriages, registered partnerships and deaths of Hungarian, foreign or stateless citizens living on the territory of Hungary.

8.5.2. Recording of civil status acts and facts

8.5.2.1. General aspects

The civil status attributions belong to the public administration bodies and are hierarchically returned to the Ministry of the Interior, the Central Civil Status Body, the Central Evidence Body, the Governmental Office at the Capital / City level, the Civil Status Authority and the Civil Status Officer.

The law expressly stipulates that there must be at least one civil status officer in each locality within the representative body, and there must be at least two civil status officers in cities, municipalities and in each neighborhood of the city, who carry out the tasks of civil status.

8.5.2.2. Birth registration

According to art. 61 par. (1) of Law 1/2010, birth must be declared on the first working day after birth. This term of declaring the birth is five days in the case of births produced outside hospital units. Birth registration is made on the basis of a birth statement or ex officio. In the case of births at home, the birth declaration is made within a short time, only 48 hours from the time of the event. In the case of twin births, each child is registered separately. In the act of birth of each of them is mentioned the fact of the twin birth.

As of 1 January 1983, only live- born children are registered in Hungary. The record of dead born babies is kept only within the sanitary unit where the event occurred.

8.5.2.3. Marriage registration

In Hungarian law, besides traditional marriage, among persons of different sex, registered partnerships are also recognized. These partnerships record private law relations and are governed by the Civil Code and the special law.

The marriage procedure goes through two stages. The first, before the marriage, is to declare the intention of marriage, and the second to the marriage itself.

The legal act of marriage is concluded, as in Romania, before the civil status officer. Also, at least two witnesses chosen by future spouses must attend the marriage celebration. Immediately after the moment of marriage termination, the civil status officer has the obligation to draw up the marriage act in the register of civil status documents.

8.5.2.4. Death registration

The death of a person must be declared on the first working day after the occurrence of the event to the civil status officer. Simultaneously with the declaration of death, the person who declared him / her must communicate and prove all the data necessary for his / her registration.

9. CHAPTER VII - ANNEXES WITH CIVIL STATUS DOCUMENTS AND WITH THE MENTIONES ON THESE

9.1. CIVIL STATE ACTS

9.1.1. Act of birth

9.1.2. Act of marriage

9.1.3. Act of death

9.2. MENTIONS ENTERED ON CIVIL STATUS DOCUMENTS

9.2.1. The mentions for birth registration in special cases

9.2.2. The mention for marriage registration in special cases

9.2.3. The mention for death registration in special cases

9.2.4. The mention for marriage registration applicable to the act of birth

9.2.5. The mention for death applicable to the act of birth

9.2.6. The mention for death to be applied to act of marriage

9.2.7. The mention for recognition of maternity/paternity

9.2.8. The mention for paternity denial

9.2.9. The mention for establishment of filiation

9.2.10. The mentions for endorsement of adoption with full effects

2.9.11. The mentions for the divorce

9.2.12. The mentions for change of name

9.2.13. The mentions for correcting certain rubric on acts of marriage

2.9.14. The mentions for the rectification of the personal numerical code on the act of birth

9.2.15. The mentions for the rectification of the personal numerical code on the act of marriage

10. BIBLIOGRAPHY

11. CONCLUSIONS AND PROPOSALS *FOR LEX FERENDA*