SOME ADMINISTRATIVE ASPECTS ON ADOPTION

Ioana-Raluca TONCEAN-LUIERAN
tonceanioana@yahoo.com
“Dimitrie Cantemir” University, Târgu-Mureş, Romania

ABSTRACT
The adoption is one of the main institutions aimed to protect the child who is temporarily or permanently deprived of his family environment where he cannot be left anymore in order to follow his best interests. Regarded as a legal procedure, adoption creates the link between the adopter and the adoptee as well as kinship between the adoptee and the adoptive descendants, one the one hand, and the adopter’s relatives, on the other hand. These liaisons that arise are generically called civil relationship.

Among the consequences of establishing parenthood and civil kinship is the name change of the adoptee or the drawing up of a new birth certificate for the adoptee. However, the dissolution or the annulment of the adoption causes some effects over the kinship link created through the adoption. The study envisages some administrative aspects of the adoption, seen in terms of the adoption registration in the documents of civil status. We suggest the analysis of the legal provisions regarding the jurisdiction of the civil service, on what the adoption is concerned, the registration stages of the adoption and adoption entry features stipulated abroad in the civil status documents.

KEYWORDS: adoption, birth certificate, civil status documents

1. Introduction
The legal adoption document is of a complex nature, where there are stipulated features of the legal civil document, administrative and judicial one. For the adoption consent, it is necessary to complete some administrative steps, such as the evaluation of moral conducts and the financial status of the adopter, procedure that takes place before the General Directorate of Social Services and Child Protection. Once the adoption is approved, the adoption procedure carries on with the registration of the adoption in the civil status documents.

According to art. 451 of the Civil Code, the adoption is the legal procedure that creates the filiation bond between the adopter and the adoptee, as well as family ties between the adoptee and the adopter’s relatives. Thus, the main effects of the adoption, consists in the termination of the filiation between the natural parents and the adopted child, establishing the civil filiation between the adopter and the adoptee, the transfer of civil rights and parental obligations from the natural parents to the adopter or the adoptive family, the obligation of the adopter or the adoptive spouses to inform the child regarding the
fact that he is adopted, acquiring the adopter or the adoptive spouses name, the nationality change of the adoptee, in the case of an international adoption and last but not least, drawing up a new birth certificate for the adopted [1].

Adoption effects occur when the court decision on adoption became final.

2. Civil Services Qualified to Draw Up a New Birth Certificate

Art. 473 paragraph (5) of the Civil Code, stipulates that on the basis of the final declaration of adoption, the local public communitarian service of registry regarding the competent people, draws up according to the law, a new birth certificate for the child, in which the adoptive parents will be stipulated as the real ones.

Therefore, the Civil Code, refers to the provisions of Law 119/1996 regarding the documents on the civil status, according to which in art. 23 paragraph (1), in the case of an adoption a new birth certificate will be drawn up by the local public communitarian service of people’s registry or, if necessary, by the civil status officer of the administrative unit city hall near the adopter’s address or near the adoptee’s childcare headquarters.

If the adopters are foreign citizens or Romanian ones, domiciled or residing abroad, the new birth certificate shall be provided by the local public communitarian service of people’s registry or, if necessary, by the civil status officer of the administrative unit city hall near the adopter’s address or near the adoptee’s childcare headquarters.

Furthermore, if the adoptee is a Romanian citizen living abroad, the new birth certificate is drawn up by the Civil Status Department from the Public Directorate of Peoples Evidence and Civil Status from District 1 of Bucharest [2].

3. Adoption Registration Procedure

The adopters, personally or through a representative, can address civil services requesting the adoption registration by drawing up a birth certificate that meets the new civil status of the adoptee.

According to art. 9, paragraph a) of the Government Decision, no. 64/2011 for the methodology approval regarding the leveled application of the provisions on the civil status, in order to draw up the birth certificate, as a result of the adoption, the following documents are needed: the final legal judgment through which the adoption was approved, identity documents or passports of the adoptive parents, adoptive parents marriage certificate, if required.

The new birth certificate will be issued chronologically from that day on. The adoptees identity number acquired at the birth registration remains the same. Personal data of the child is filled in by the Civil Status officer, according to legal provisions.

3.1. Data on the adoptee

According to art. 473 paragraph (1) of the Civil Code, the adopted child acquires as a result of the adoption, the surname of the adopter. If the adoption is carried out by both spouses or by the spouse who adopts the other ones child, and the spouses have the same surname, in conformity with art. 473, paragraph (2) from the Civil Code, the child will acquire this surname. In the case when the spouses do not share the same surname, they are required to declare the new name of the adoptee, to the Legal Court that grants the adoption. If the spouses cannot agree on the adoptees surname, the Legal Court is the one who makes this decision. In the latter case, the Court of Law, in order to decide, has to take into account the child’s opinion according to art. 264 of the Civil Code. However, regardless the situation, the name of the adopted child must be established and recorded in the legal decision of the adoption placement [3].

Pursuant to art. 473 paragraph (3) of the Civil Code, for good reasons the Legal Court, that consents to the adoption, taking into account the adopter’s request or that of
the adoptive family along with the child’s consent that has reached the age of 10, can decide on changing the name of the adopted child.

Finally, pursuant to art. 473 paragraphs (4) of the Civil Code, in case of the adoption of a married person, that has the same name as her spouse, the adopted spouse can acquire the adopter’s name with the other spouse’s consent. This consent will be given also in the court that decides on the adoption. When the marriage is dissolved by divorce, the adopted spouse that had the same name acquired once the marriage has taken place will return to the adopter’s name, not to the name that he had before the marriage, because of the fact that the natural kinship ceased and the civil one took its place. The adopted husband, on the other hand, could have the common name from the marriage, even after the marriage ends [4].

Law no. 119/1996, regarding the documents of civil status, in art. 23 paragraphs (3), states that in the new birth certificate, under “Birth place” will appear the data from the original birth certificate. In the previous regulation under “Birth place” was stipulated the name of the administrative unit of the public communitarian service of citizen’s registry headquarter or according to the case, the city hall where the document was drawn up. It is to be noted the fact that, the legislator emphasizes again on the child’s right to know his roots.

Birth place and gender will be the same as in the original birth certificate.

3.2. Data regarding the adopter/adopters

In the spaces related to the natural parents, the adopters will be filled in as the biological parents of the adoptee.

If the person who adopts, is married to the adoptee’s mother or father, in the space from the birth certificate allotted to “The mother’s surname” and “The father’s surname” it is stipulated the surname obtained through marriage.

If the person who wishes to adopt, is married and her husband doesn’t wish to adopt, in the new birth certificate, only the spaces regarding the mother/father will be filled out and the spaces regarding to the other parent, will not be filled out. In the situation when subsequently the other parent adopts, a new birth certificate shall be drawn up.

If the adoption is done by a single person, the space regarding the mother/father of the child is filled out with the name and surname of the person who adopted [5].

3.3. Issuance of the new birth certificate

Based on the issued birth certificate, the Civil Status officer, shall issue the birth certificate, that proves the new civil status of the adoptee, that of descendent of the adopter or adopters.

The birth certificate is issued to the holder of the document or to the person who is empowered with a special mandate for people over the age of 18. For minors that don’t have an identity card, as well as those banned, the birth certificate is handed to the parent or the legal representative.

Subsequently to these procedures, the Civil Status officer, is delegated to withdraw the original birth certificate, and send it, for annulment, to the issuer. Thus, after issuing the new birth certificate, a reference is sent to the local public records town hall administrative unit, where the first birth certificated of the adoptee was issued, who will fill out the “Issued birth certificate” space with the specification “there will not be issued another birth certificate”. Therefore, the original birth certificate that proves the child’s birth parentage shall be kept at the authority that has stipulated it.

3.4. The situation of termination adoption

According to the art 71 of Law no. 273/2004 on the adoption procedures as amended and supplemented, the adoption is
terminated by dissolution or annulment under the law.

From the analysis of art. 475-478 of the Civil Code, it is understood that the adoption is legally terminated when the adopter or the adoptive spouses have died. In this case another adoption is granted. In the given situation, the previous adoption is considered terminated on the date when the new adoption is pronounced legally.

The adoption can be undone, if special protection under the law is needed, if the termination of the adoption is in the best interest of the child. In this case, the adoption is considered terminated from the date of the final judgment ordering the protection measures according to the law.

However, the adoption can be terminated, at the request of the adopter or the adoptive family, if the adoptee has jeopardized their lives or their descendant lives, as well as in the case when the adopted has committed felonies that ended up in an imprisonment sentence of at least two years. Finally, the adoption can be terminated as a request of the adoptee if the adopter is guilty of the offences stipulated above.

The adoption can be terminated at the request of any of the persons called upon to consent to its conclusion and of whose consent was vitiated by error of adoptee identity, fraud or violence. According to art 480 of the New Civil Code, fiction adoptions are not valid as well as the adoptions concluded with the violations of the structure or content of the conditions, only if the law does not declare relative nullity.

It is to be mentioned, that the court is entitled to maintain the adoption despite the case of an absolute nullity. Therefore, art 481 of the Civil Code, states that the court may refuse the request of adoption annulment, if it establishes that the adoption is in the best interest of the adoptee, whose obedience is absolutely mandatory [6].

The dissolution of the adoption leads to the termination of its effects, once the legal judgment becomes final. The adoption nullity, both the absolute and the relative one, has retroactive effects starting right from the day of its announcement. However, some of the produced effects cannot be removed, in the past, for example: having a name, citizenship, providing maintenance, minor protection.

At the moment of the dissolution, the filiation and the kinship as a result of the adoption, will be terminated, the natural parentage and kinship will become valid. At the annulment the parentage and kinship that appeared as a result of the adoption, they are no longer applicable in the past and future, the natural ones being considered the valid ones [7].

Pursuant to art 482 paragraph (2) of the New Civil Code, when the adoption is terminated, the adopted regains his prior name and surname. For good reasons, after listening to the adoptee, in conformity with the law, the guardianship court may allow that the adoptee keeps the surname and the name acquired as a result of the adoption.

Finally, according to art 47 of Law no. 119/1996, regarding the documents on the republished civil status, the dissolution, the annulment, or the nullity of the adoption, stated through a final and unchangeable legal judgment, has to be stipulated as a mention. On the birth certificate issued after the adoption under “Issued Certificate” is to be stipulated the specification “there will not be issued another birth certificate”. These specifications shall be written ex officio or at the request of the person concerned, based on the final and unchangeable judgment.

After stipulating all these mentions, the local community of people record service or according to case the administrative unit of the city hall where the first birth certificate was issued, has to make the same mention on the corner of the birth certificate and has to cancel the text from the “Issued Certificate” section, with an horizontal line in red ink. After these procedures, the birth certificate issued prior the adoption remains valid [8].
3.5. Features of adoption registrations stipulated abroad, in the documents of civil status

In the case of the adoptions carried out abroad, towards people having birth certificates and civil status documents issued in Romania are registered only by mention, if at the moment of the adoption they didn’t have Romanian citizenship, after their recognition by the court, on Romanian ground. Adoptions made abroad towards Romanian citizens, are registered by issuing a new birth certificate at the Civil Status Department from the Public Citizen Record and Civil Status from District 1 of Bucharest, on the basis of the documents issued by the foreign authorities, under the provisions of the law.

According to Art 93 paragraph (2) of Government Decision no. 64/2011, for the approval of the methodology regarding the leveled application of the provisions on the civil status, registration in the civil status documents of some provisions that refer to the civil status of Romanian citizens are made, after the recognition of the foreign decision of the competent court to solve the validation request and the county court were resides or has lived the interested party, without the approval of the Personal Record Directorate and the Database administration. The request is submitted at the local community individual service records or according to the case, at the entitled city hall and it will be accompanied by a copy of the foreign decision and its translation, the original final decision through which the foreign decisions were recognized in Romania, as well as any needed document for making this mention. Moreover, in the situations in which the foreign decisions are recognized, according to the Romanian law, the request of this person is sent, for approval by the authorized city hall to the Personal Record Directorate and the Database administration, along with the original document, a photocopy and the legalized translation in Romanian, of the document in question. In both cases listed above, the recognition from the behalf of the Romanian authorized Court is not necessary if the issuer country is member of the European Union.

4. Conclusions

Adoption has as consequence the creation of the filiation between the adopter and the adoptee. Furthermore pursuant to art. 471 paragraph (1) of the Civil Code, the adopter has over the adoptee the rights and duties of the natural parent. Thus, it is considered appropriate, the issuing of a new birth certificate for the child, in which the adoptive parents will be filled in as being the natural ones.

Also, changing the birth certificate of the adoptee protects him from any researches and searches from behalf of the natural parents. All these provisions are to be respected, without jeopardizing, the right of the child to know his origins, since the republished Law no. 273/2004, through art. 68, offers the possibility to the adoptee to request documents from the public authority registries, in which he can find the date and birth place, without revealing the identity of the natural parents.

REFERENCES

2. See art. 98 of Government Decision no. 64/2011 for the approval of the methodology regarding the leveled application of the dispositions on the civil status.

5. See art. 99, paragraph (b), (c), (d) of the of Government Decision no. 64/2011, for the approval of the methodology regarding the leveled application of the dispositions on the Civil status.


8. For further details see art. 102 of Government Decision no. 64/2011 for the approval of the methodology regarding the leveled application of the dispositions on the civil status.

**BIBLIOGRAPHY**


Government Decision no. 64/2011 for the approval of the methodology on the levelled application of the decisions regarding the civil status.

Law no. 119/1996, on the documents related to the civil status republished in the Official Gazette, part 1, no. 339 of 18th May 2012.

Law no. 273/2004, regarding the adoption procedure, republished in the Official Gazette, part 1, no. 339 of April 2012.

Law no. 287/2009 of the Civil Code.