

SPECIAL ATTRIBUTIONS AND DEONTOLOGICAL RULES OF REGISTRARS' PROFESSIONAL ACTIVITY REGARDING MARRIAGE AND DIVORCE

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Abstract

The Registrar is a civil servant with special attributions regarding marriage and divorce. In Romania the registrars' activity is established by Law no 119/1996 regarding the civil status documents with subsequent modifications and additions, Law no 189/1999 regarding the civil servant status with subsequent modifications and additions, the Civil Code, internal regulations of City Hall or Civil Status Service etc. In the present paper we aim to analyze the specific competences and deontological norms applicable to registrars in Romania on the occasion of marriage and the divorce by administrative procedure. If marriage procedure is an old, traditional attribution of registrars, its dissolution – the divorce through administrative procedure is a novelty as it has been recently established by our legislation. In our opinion the registrar's activity regarding marriage and divorce has a special social importance due to the effects and implications of these events in the lives of the beneficiaries. There for, we consider that the main aspects of these attributions include not only the verification of the procedure and of the supporting documents submitted, but also the communication of the values and respect for family life to the persons involved.

Keywords: professional deontology, registrar, civil status documents, professional conduct, morality.

JEL Classification: H83, K36

1. The legal framework for carrying out the work duties by the registrar in Romania

In Romania, the professional activity of Registrars is regulated by Law No. 119/1996 concerning the civil status documents, Law No. 188/1999 on the statute of the civil servant, Law No. 7/2004 on the code of conduct for civil servants, other special rules or internal regulations.

Given the special duties of this category of civil servants, we can say that civil servants perform an extremely important mission in the society. As expressly provided for by Article 3 (1) of Law No. 119/1996, including the subsequent amendments and completions, "the civil status duties are carried out by the county councils, respectively by the General Council of the Bucharest Municipality, by the local public community services for personal records, within the administrative-territorial units where they are established, as well as by the registrars within the town halls of the administrative-territorial units where the local public community services for personal records are not functioning."³

Furthermore, the same normative act, within Article 4, specifies which are the categories of registrars: mayors of localities and municipalities; heads of diplomatic missions and consular posts; commanders of ships and aircrafts with Romanian flag; "Registrars appointed by order of the Minister for National Defense or, as the case may be, of the Minister of Administration and Interior"⁴ (Article 3, paragraph 2, letter e of Law No. 119/1996), these being appointed if Romania is in state of mobilization, war or missions to participate in war actions on the territory of other states; persons delegated by mayors, heads of diplomatic missions and consular posts who are empowered to "carry out the duties of a registrar". The latter may be: the deputy mayor, the secretary of the administrative-territorial unit, other civil servants in their own department with competence in this field, and, as concerns diplomatic missions and consulates, are the diplomatic agents who carry out consular tasks or one of the consular officials. The same persons who have the

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³ Law no. 119/1996, regarding the Civil Status, republished in Official Gazette of Romania no. 339 from 18.05.2012, modified and completed.

⁴ *Ibidem*.

authority to delegate the duties of a registrar have also the prerogative to withdraw previously appointed officials, to appoint others or to perform these duties personally.

Regarding the restrictions, Article 3 (4) of the Law No. 119/1996 stipulates that the registrar cannot register documents in respect of which he is a party or declarant, in such cases following to be delegated another registrar to execute this task.

Concerning the observance of the rules of professional ethics and deontology, we consider that there are applicable the provisions of Article 1 (2) of the Code of Conduct for Civil Servants, according to which "the rules of professional conduct provided by this Code of Conduct are compulsory for persons who hold a public office within the public authorities and institutions of the central and local public administration, as well as within the autonomous administrative authorities, hereinafter referred to as public authorities and institutions"⁵, which means that its provisions are also mandatory for the registrars.

Thus, the provisions of this normative act establishes for all civil servants, and also of the registrars, to observe the following principles: "the priority of public interest over the personal interest of the civil servant"⁶ (provided by Article 3 letter a) of the Law No. 7/2004); "Ensuring the equal treatment of citizens before the public authorities"⁷ (provided by Article 3 b) of the Law No. 7/2004) which implies the same treatment for persons appearing before the public institution with similar problems (that is, in our case, mainly for registering births or deaths, marriage, divorce, etc.); a professional behavior, which means that "civil servants have the obligation to perform their duties with responsibility, competence, efficiency, fairness and conscientiousness"⁸ (provided by Article 3 e) of the Law No. 7/2004); "Performing the activities specific to the position with impartiality and independence, without being partisans or rejecting applications for political, religious, economic interests or of any other kind"⁹ (Article 3 e) of the Law No. 7/2004); during their professional activity, registrars must prove moral integrity and impeccable conduct, being "forbidden to request or to accept, directly or indirectly, for themselves or others, any advantage or benefit in view of the public office they hold, or to abuse in any way of this position"¹⁰ (Article 3 f) of Law No. 7/2004); to the extent that they comply with the rule of law and morality, registrars have the right to freedom of thought and the free expression of opinions (Article 3 g) of Law No. 7/2004); the honesty and fairness which consist of exercising the job duties in good faith (Article 3 h) of Law No. 7/2004); not in the least, these civil servants have to carry out their duties openly and showing transparency so that the main beneficiaries, that is the citizens are able to monitor and verify their activity (Article 3 i) of Law No. 7/2004) and thus being avoided any possible abuses.

In their professional activity, registrars must show respect for the public service beneficiaries, colleagues, hierarchical superiors, representatives of other institutions, etc.

2. Specific duties of registrars with the occasion of marriage

As a rule, the marriage is concluded at the headquarters of the City Hall or the Public Community Service of Personal Records where resides at least one of the future spouses or at the headquarters of another City Hall, with the approval of the mayor of that locality and provided that this aspect is notified the Service of Population Records/Civil Status Service in the place of residence of the future spouses, where the declaration of marriage will be published. The marriage can also be concluded at a place other than the headquarters of the city hall or public service concerned, whether it has been submitted an application reasoned in this respect and the application

⁵ Law no. 7/2004 regarding the Civil Servant' Code of Conduct republished in Official Gazette of Romania no. 525 from 02.08. 2007.

⁶ *Ibidem.*

⁷ *Ibidem.*

⁸ *Ibidem.*

⁹ *Ibidem.*

¹⁰ Law no. 7/2004 regarding the Civil Servant' Code of Conduct republished in Official Gazette of Romania no. 525 from 02.08. 2007.

has been approved by the mayor (obviously prior to the moment of concluding the marriage), as provided by Article 24 (1) - (4) of the Law No. 119/1996.

The registrar has the duty to check the proper and legal fulfilment of a number of formalities previous to marriage conclusion. First of all, the registrar has to verify the mutual communication of the state of health by the future spouses, this being an obligation established by Article 278 Sentence¹ of the Civil Code. The registrar may consider this obligation fulfilled if the future spouses have filed medical records (attached to the marriage application) from which it results their state of health and have filled in the declaration of marriage attesting by signature that they took note of the partner's state of health. The performance of this obligation does not require that the state of health of future spouses be perfect in order to be concluded the marriage, but that each of the future spouses communicated to each other about the possible diseases they suffer and the marriage is concluded knowingly. Also, from the medical records it should arise that none of them suffers from any of the diseases for which the Romanian law forbids the marriage, a matter explicitly enshrined by the provisions of Article 278, Second Sentence of the Civil Code, according to which "the legal provisions by which it is stopped the marriage of those suffering from certain diseases shall remain applicable"¹¹.

Verification of the compliance with the substantive conditions and of the lack of impediments to marriage is carried out by the registrar delegated based on the documents lodged to the marriage file (whose content we will detail below) and by analyzing the mentions entered in the civil status registers in the residence localities of the future spouses (from where it follows the marital status of these: if they have been married before, if they divorced, etc. knowing that a marriage concluded by a married person shall be null and void).

According to the provisions of Article 280 par (1) of the Civil Code and Article 25 par (1) of Law No. 119/1996, filling in and lodging the Declaration of Marriage and the attached documents are mandatory. Thus, the registrar will have to verify that the declaration is filled in personally, in writing, by the future spouses at the headquarters of the public community service for personal records, at the city hall, at the headquarters of the diplomatic mission or consular post where the marriage is to be concluded. Exceptionally, Article 25 par. (2) of the Law no. 119/1996 provides that if one of the future spouses is unable to move, he/she may fill in the Declaration of Marriage in the presence of the registrar, in a place other than those mentioned above (the registrar being the one traveling to the place where is the person who has to fill in the declaration for the purpose of marriage).

For the document to be valid, it is necessary the registrar finding that, from the contents of the Declaration of Marriage, there are no impediments to marriage conclusion, that the future spouses have specified the family name that each of them will bear after the marriage conclusion, as well as the matrimonial property regime that will govern the marriage.

As concerns the documents attached to the Declaration of Marriage, the registrar has the obligation to verify that the two future spouses have filed, depending on the *de facto* situation of each couple, the following documents that form the marriage file: their identity documents (according to Article 42 par. (2) of the Methodology dated 26 January 2011 regarding the unitary application of civil status provisions, proof of the person's identity "can be made with one of the following documents: a) for Romanian citizens - identity card, or provisional identity card; b) for the citizens of the European Union or the European Economic Area - the identity card or passport issued by the respective state; c) for stateless persons - passport issued based on the Convention regarding the status of stateless persons in 1954, accompanied by the temporary or permanent residence permit, as the case may be."¹²); birth certificates (original and copy); the medical certificates attesting the health status of each of the future spouses on a standardized form, with a registration number, a certain date (the act is valid for 14 days from the date of issue), the seal/stamp of the sanitary unit where it was drawn up and the signature and the seal of the doctor

¹¹ Civil Code of Romania, <https://legeaz.net/noul-cod-civil/>, consulted on 1.05.2018.

¹² The Methodology regarding the unitary application of the provisions on civil status published in Official Gazette of Romania no. 151 of 02.03.2011, http://www.dgepmb.ro/_docs/legi/HG%2064-2011.pdf, consulted on 1.05.2018.

and with the express mention of whether the concerned person is medically fit to get married; if one of the prospective spouses is divorced, he or she will have to lodge certified documents that would attest the dissolution of the previous marriage; if the marriage is to be concluded outside the city hall, it will be annexed the application approved by the mayor for this purpose, as well as the supporting documents based on which it was approved; "The consent of the mayor or the master of the ship, the consul, the diplomat with consular duties for concluding the marriage before or after passing 10 days from the date of registering the Declaration of Marriage upon the request of the person concerned"¹³ and the statements of the future spouses' own responsibility showing that there are no legal impediments to prevent the marriage conclusion.

If between the future spouses there is a troublesome degree of kinship (naturally or by adoption), to the marriage file will also be attached to the authorization of the guardianship court within the domicile of the person requesting the approval for marriage conclusion.

In the case of a marriage in which at least one of the future spouses is a minor, the registrar will have to find that the marriage file includes the medical permit, the proof of the parent's/guardian's consent, as well as the authorization of the guardianship court for concluding the marriage.

In case one of the future spouses is a foreign citizen, he or she will have to file the document issued or authenticated by the accredited diplomatic missions or consular offices of his/her country in Romania, from which to result that he/she is not married and that the substantive conditions imposed by his/her national law are fulfilled and therefore, there are no impediments for concluding a marriage in Romania.

If it is intended to be concluded a marriage on the Romanian territory between persons who do not know Romanian or between deaf-mute people, it is compulsory to be drawn up a report, concluded together with the authorized interpreter, that would show the valid consent of the future spouses, that they took note of the mandatory information with a view to concluding a valid marriage.

After filling in the Declaration of Marriage and submitting the marriage file by the future spouses, according to Article 283 Civil Code and Article 26 of Law No. 119/2006 concerning civil status documents, the registrar decides to be published by posting an extract from the Declarations of Marriage in a special place at the institution headquarters (the public community service for the personal records, city hall, at the headquarters of the diplomatic mission or the consular post where the marriage is to be concluded) thus ensuring the publicity of the future spouses' intention to get married and giving the persons concerned the opportunity to file possible opposition to the marriage conclusion.

Any person who knows reasonable grounds that prevent a valid conclusion of the marriage may oppose marriage on the strength of the provisions of Article 285 of the Civil Code, ex officio, by the registrar or by any person who considers that the marriage cannot be legally concluded. In order to be valid, according to Article 285 par. (2), Civil Code, the opposition must be filed in writing, reasoned and should include the indication of evidence on which it is based. As a last specification, the deadline for submitting the opposition is 10 days, including the day on which are posted the extracts from the Declaration of Marriage and the actual day of the marriage conclusion. "There can be identified three settlement ways of the opposition filed in the conditions provided by Article 285, Civil Code: acceptance of the opposition with the natural consequence of refusing to conclude the marriage, which is recorded in a report, if, on the basis of the verifications it has the obligation to carry out, of the opposition received or of the information it holds, to the extent that the latter is notorious, the registrar finds that the conditions provided by the law are not fulfilled. Against the registrar's refusal, the unsatisfied person may refer the case to the guardianship court in whose jurisdiction he/she resides."¹⁴

At the time of marriage conclusion, it is necessary to strictly comply with the rules concerning its publicity and solemnity. The solemnity of concluding a marriage involves an

¹³ Mareş, Cristian, *Dreptul familiei*, second edition, C.H. Beck Publishing House, Bucharest, 2015, p. 53.

¹⁴ *Idem*, p. 58.

important contribution of the registrar, who leads and carries out the event, makes sure of the presence of the two witnesses, at the place specifically established (which may be the headquarters of the local public community service for personal records, the headquarters of another city hall than the one in whose jurisdiction the future spouses have their domicile/residence, with the obligation to notify their city hall within their domicile/residence or another place previously approved by the mayor following the approval of a legitimate and reasoned application) and, last but not least, the presence of future spouses who validly express their consent. The marriage publicity implies that any interested person can participate in the marriage conclusion, but the presence of a public is not necessary, except for the two witnesses¹⁵.

After the ceremony celebration for marriage concluding, the registrar must proceed with registering the marriage in the Civil Status Register (signed by the two spouses, witnesses and the official who celebrated the marriage) in accordance with Article 290 of the Civil Code, to issue the marriage certificate and the family record book and to decide the identity card cancellation of the spouse who changed her name by marriage.

All this procedure of marriage conclusion is laborious and demands strictly complying with the terms and conditions of form. Given the particular social importance of building a family, the registrar bears both a legal (disciplinary, civil, contraventional and criminal) responsibility, as well as an extremely important moral responsibility, namely to transmit to the two spouses the importance of family values, the mutual respect and the care they should have for each other in the future.

Throughout the entire procedure of marriage conclusion, registrars have an obligation to inform future spouses in relation to all documents that have to be filed, with the need to update some of them (as the case may be), about the possibility to also conclude marriage in a place other than at the headquarters of the city hall or the civil status service, to provide appropriate assistance to foreign citizens, to give clarifications and explanations to all interested persons regardless of their social status, religion, ethnicity or race etc.

Also, when filing oppositions to marriage, it must review carefully the reasons and the evidence submitted, to ensure the right of the future spouses to file a defense or a point of view.

The marriage ceremony must be carried out in compliance with the legal rules and acquainting the future spouses with all elements necessary for a family life with the observance of the Civil Code rules and in which there is endearment, understanding and mutual moral support.

3. Duties specific to the registrars at the marriage dissolution

According to Article 375 par. (1) of the Civil Code "if the spouses agree to divorce and do not have minor children, born following the marriage, out of wedlock or adopted, the registrar or the public notary at the place of marriage or of the last common dwelling of spouses may find marriage dissolution by spouses' agreement, being issued to them a divorce certificate, according to the law."¹⁶

Pursuant to Article 376 par. (1) Civil Code, the application for divorce administratively must be filed in writing and signed personally by both spouses together, before the competent registrar. As a characteristic of this procedure, we should mention that it is not necessary to be specified the reasons for divorce and it is not allowed the default of spouses before the registrar, they having to be present personally at the filing and signing.

In the application, each spouse must declare under his/her own responsibility that he/she agrees to marriage dissolution, that he/she does not have minor children with the other spouse born from the marriage, out of wedlock, or adopted together with him/her; that he/she is not granted an interdiction; that he/she has not requested to other authorities the dissolution of marriage¹⁷; which is

¹⁵ Lupașcu, Dan; Crăciunescu, Cristina Mihaela, *Dreptul familiei*, Universul Juridic Publishing House, Bucharest, 2012, p. 75.

¹⁶ Civil Code of Romania published in the Official Gazette of Romania no. 255/2012.

¹⁷ Lupașcu, Dan; Crăciunescu, Cristiana Mihaela, *op. cit.*, pp. 234-235.

the address of the last common dwelling; the name that each of them or, as the case may be, only one of them will have after the marriage dissolution.¹⁸

The administrative marriage dissolution can be made after paying a fee of minimum lei 500 and maximum lei 600 provided by Law No.127/2013¹⁹. According to this normative act, the minimum fee is lei 500, but it can be increased by a maximum of 20% (ie another lei 100) by decision of the local council in the locality where the marriage is dissolved. The determination of the amount of divorce fee by law is welcome since before it could have changed significantly from a locality to another, ranging from lei 300 to lei 650, and in some localities there was no fee other than the stamp duties related to the procedure and this was discriminatory, as, in a random manner, (ie according to the locality of the last common residence), the citizen had to pay a maximum of lei 650 or, in the other extreme, no fee for one and the same service.

When receiving the divorce file, the registrar must verify that it includes: the birth certificates of the spouses, as an original and a copy; marriage certificate, as an original and a copy; identity documents (IC /provisional identity cards) of the spouses, valid at the time of filing the application, as an original and a copy and a receipt proving the payment of the divorce fee.

The registrar enters the divorce application accompanied with the specified documents, even on the day it was received, and establishes the date of divorce after the reflection period expiry of 30 calendar days (including the date of filing the application). The reflection period is given to the spouses in order to further analyze the situation that will result from the divorce and for a possible reconciliation, obviously accompanied by the withdrawal of the divorce application. In order to be ensured a maximum effectiveness of this period, Article 376 (1) of the Civil Code provides that the 30-day period cannot be shortened by the registrar who, upon receipt of the application, also establishes the date on which the marriage will actually be dissolved²⁰.

Upon expiration of the time, the spouses appear personally before the registrar at the headquarters of the city hall or the civil status service within the locality of their last common dwelling, namely where they lodged the divorce application. The registrar has the obligation to verify that the spouses insist on their decision to divorce and if the consent in this respect is unconfined and free of any undue influence or error. In the affirmative situation, according to the procedure, both spouses will give a written statement showing that they maintain their original application for marriage dissolution and the delegated registrar, ascertaining the agreement of the parties, will issue the divorce certificate, within which the civil servant cannot make any mention regarding the fault of one of the spouses in the marriage dissolution.

Prior to the actual settlement of the divorce application, the registrar has the obligation to request the allocation, out of the State Register for Divorce Certificates, of a number to be written on the divorce certificate, and if it is found that for the same divorce it has been already allocated a number upon the request of another registrar, the application for divorce certificate registration will be rejected "²¹.

The 30-day reflection period is a very important as it gives the spouses the opportunity to reconcile and give up the divorce. In order to give up the divorce and prevent the marriage from being dissolved administratively, it is necessary (and sufficient) that one of the spouses fills in, signs and submits the divorce waiver. In such a situation, the registrar will be unable to find the divorce administratively. Also, if the spouses do not appear together after the expiration of 30-day period from filing the application, on the set date, and do not fill in and sign the declaration to maintain the application for divorce, the competent registrar will close the file by drawing a reasoned report in this regard. The report is approved by the mayor of the locality.

To conclude, the registrar may propose that the application for divorce be closed in the following situations: if the spouses are not present at the date established for finding the divorce, if both spouses or one of them wish /wishes to show the willingness to waive the divorce and fill/fills

¹⁸ <https://www.dlep-iasi.ro/?page=diverse&Nume=divort-pe-cale-administrativa&id=1>, consulted on 1.05.2018.

¹⁹ Law no. 127/2013 for approving OUG no. 121/2011, <https://codfiscal.net/34565/legea-1272013-aprobarea-cu-modificari-a-oug-1212011-pentru-modificarea-si-completarea-unor-acte-normative>, consulted on 1.05.2018.

²⁰ Civil Code of Romania published in the Official Gazette of Romania no. 255/2012.

²¹ Gavrilă, Simona Petrina, *Dreptul familiei*, Galați University Press Publishing House, Galați, 2012, p. 127.

in this respect the divorce waiver; if, until the divorce procedure completion, one of the spouses is granted an judicial interdict as the consent to divorce of the interdicted person is not valid; if, until the divorce procedure has been completed, the birth of a child happens since there are no longer met the conditions referring to the administrative divorce, which require that the spouses should not have together minor children (in such case, if they insist on getting divorced, the two spouses may divorce before the notary or the competent court); if, before the expiration of the 30-day period, one of the spouses dies, in which case marriage ceases by death.

If the delegated registrar, on the occasion of the proper and responsible performance of its work duties, finds that there are not fulfilled the conditions provided by law for the dissolution of the marriage administratively, it has the obligation to draw up a proposal report for rejecting the application for divorce. Similar to the proposal for closure, this report is subject to the mayor approval.

Also, if the registrar finds that the spouses fail to reach an agreement regarding the family name they will bear following the divorce, he/she will make out a report through which is suggesting to the mayor to issue an order for rejecting the divorce application. In such a situation, he/she will proceed to guiding the spouses who insist on divorcing to the court, this being able to settle this aspect in the case of parties' misunderstanding.

No matter for which of the above mentioned reasons is given, there is no appeal against the document through which it is administratively rejected the divorce application. Thus, the persons dissatisfied with this decision and who insist on getting divorced must address to that end to the competent court: the court within the jurisdiction of the last common dwelling of the two spouses.

The final stage of divorce by administrative means, similar to marriage, involves finding marriage dissolution by spouses agreement and issuing the divorce certificate, which must be handed over to the former spouses within maximum 5 business days. The marriage certificate submitted as an original and retained in the divorce file is transmitted for cancellation to the issuing city hall on the issue date of the divorce certificate. "The divorce certificate shall be drawn up in three original copies, out of which two shall be given to the parties on the basis of the signature on the divorce application and in the General Record of Divorce Certificates and one copy shall remain in the divorce file"²².

At the same time, the delegated registrar cancels the identity card of the former spouse who changes his/her family name by divorce and returns to the name had before the marriage, the person concerned being given 15 days to change the identity card.

As concerns the divorce mention in the marriage document, Article 377 of the Civil Code provides that "when the divorce application is lodged in the city hall where the marriage has been celebrated, the registrar, after the divorce certificate has been issued, shall make the due mention in the marriage document."²³ If the administrative divorce has been carried out at the city in the jurisdiction of the last common dwelling of the spouses, the delegated registrar has an obligation to send a certified copy of the document finding the divorce to the city hall where the marriage has been registered, in order to be made the mention on divorce in the document of marriage.

If the registrar's refusal to find the divorce is not legal, the parties in question may apply to the competent court and "the liability of the registrar will be involved if the provisions of Article 1357 of the Civil Code in matters of civil liability are fulfilled cumulatively".²⁴

4. Brief conclusions

All Romanian legislation ensures the exercise, in optimum conditions, of all fundamental human rights, as well as the effective performance of the related obligations. Aspects regarding the person's civil status are of utmost importance, and for their regulation is applied the law of the

²² Lupașcu, Dan; Crăciunescu, Cristiana Mihaela, *op. cit.*, 2012, pp. 236-237.

²³ Civil Code of Romania published in the Official Gazette of Romania no. 255/2012.

²⁴ Nicolae, Ioana, *Dreptul familiei în context național și în raporturile de drept internațional privat*, Hamangiu Publishing House, Bucharest, 2014, p. 170.

individuals' state of origin. In this context, the role of the delegated registrar, who operates both within the city halls/ civil status services, Romanian flag vessels, diplomatic missions or consular posts, is an extremely important social role: they have the mission to validly conclude marriages, to register civil status documents, to enter mentions in the Civil Status Registers, etc. Obviously, registrars have far more duties than those we have analysed in this article, but the theme approached refers strictly to their duties as concerns the conclusion and dissolution of marriage, with the mention that obligations related to professional deontology extend to the entire professional activity of this category of civil servants.

Thus, in their activity, registrars must prove professionalism, respect for the public service beneficiaries, transparency, honesty, and at the same time they have the mission to watch the observance of all persons' interests and to avoid any form of abuse in the matter of concluding and dissolving marriage.

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