

# **Brief Considerations Regarding the Competence of the Central Authorities in Matters of Filiation, in the Context of the Proposal for a Council Regulation on the Creation of a European Certificate of Parenthood<sup>1</sup>**

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*The study aims to present and analyse the competence of the central authorities in the matter of filiation according to the Proposal for a Council Regulation on jurisdiction, applicable law, recognition of decisions and acceptance of authentic instruments in matters of parenthood and on the creation of a European Certificate of Parenthood<sup>2</sup> and according to the regulations in Romanian law such as: Civil Code, Law no. 119/1996 regarding civil status documents, Government Ordinance no. 84/2001 regarding the establishment and operation of community public services for the registration of persons. The authors present due clarifications regarding the dichotomy of the provisions of Romanian law (Romanian private international law, civil law and the regulations from the normative acts stipulated in the paragraph above) and the correspondence with the Council's Proposal for a regulation on filiation, noting the competence, the applicable law, respectively the recognition. Next, the paper will present the competent authorities from the perspective of the proposed Regulation and Romanian law. In conclusion, the authors will present *de lege ferenda* what changes would be made to the provisions of Romanian law by adopting the Proposal for a Regulation of the Council regarding jurisdiction, the applicable law, the recognition of court decisions and the acceptance of authentic documents in matters of filiation and regarding the creation of a European certificate of filiation considering that there will be rules of immediate application.*

**Keywords:** *Central authorities; Child; Filiation; Parents; Private international law; Romanian law.*

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<sup>2</sup>[https://eur-lex.europa.eu/resource.html?uri=cellar:01d08890-76e7-11ed-9887-01aa75ed71a1.0001.02/DOC\\_1&format=PDF](https://eur-lex.europa.eu/resource.html?uri=cellar:01d08890-76e7-11ed-9887-01aa75ed71a1.0001.02/DOC_1&format=PDF)

## **Introduction - The Legal Provisions relating to the Competence of the Central Authorities in the Matter of Filiation**

Book VII entitled "Provisions of private international law from the Civil Code" (arts. 2557–2663) contains Chapter II "Family" (arts. 2585–2612) which dedicates the Section II "Filiation" (arts. 2603–2606) regulating in subsection I "Filiation of the child from marriage" (arts. 2603–2604) and in subsection II "Filiation of the child out of wedlock" (arts. 2605–2606). Analysing these articles, we observe that they are not dedicated to the competence of the central authorities in the matter of filiation.

However, art. 2557 paragraph (3) of the Civil Code provides that the articles from Book VII apply in situations where "international conventions to which Romania is not a party, Union law European or the provisions of special laws do not establish another regulation."

Thus, considering that Romania is a member state of the European Union and taking into account art. 2557 paragraph (3) Civil Code, we will take into account the provisions relating to the competence of the central authorities in the matter of filiation established by Regulation (EU) 2016/1191 of the European parliament and of the council of July 6, 2016 regarding the promotion of the free movement of citizens by simplifying the requirements for presenting certain official documents in the European Union and amending Regulation (EU) no. 1024/2012<sup>3</sup>. Thus, art. 2 with the marginal name "Scope" stipulates that the legal rules of this regulation apply "with regard to official documents issued by the authorities of a Member State in accordance with its internal law which must be presented to the authorities of another Member State and whose purpose principal is to establish one or more of the following elements: (a) birth; [...] (i) parentage; [...]".

Art. 3 of the Regulation defines in point (2) the notion of "authority" as "a public authority of a member state or an entity acting in an official capacity and authorised under domestic law to issue or receive an official document that falls under the scope of this regulation or a certified copy thereof" and in point (6) the notion of "central authority" as "the authority or authorities that (have) been designated (designated) in accordance with Article 15 by the member states to perform functions related to the application of this regulation."

Public authorities in Romania designated to act in an official capacity and authorised under domestic law to issue or receive an official document that refers to the civil status that must be presented to the authorities of another member state and whose main purpose is to establish the birth and filiation (in the present work) are provided in art. 3 of Law no. 119 of October 16, 1996 regarding republished civil status documents<sup>4</sup> with subsequent amendments<sup>5</sup>.

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<sup>3</sup><https://eur-lex.europa.eu/legal-content/RO/TXT/PDF/?uri=CELEX:32016R1191>

<sup>4</sup>republished in M. O. no. 339 of May 18, 2012.

<sup>5</sup>Law no. 105 of 20 April 20, 2022.

## Competence of the Central Authorities in the Matter of Filiation

EU member states according to art. 15 paragraph (1) of the Regulation shall designate at least one central authority competent to issue official documents relating to birth and parentage that must be presented to the authorities of another member state.

In the situation where several central authorities are designated in a member state, that state has the obligation to designate, according to art. 15 paragraph (2) of the Regulation, the central authority to which communications of any kind can be addressed to be forwarded to the competent authority within the other member state that requested the respective document.

Art. 16 of the Regulation stipulates that "the central authorities provide assistance in relation to requests for information made pursuant to article 14<sup>6</sup> and in particular:

- (a) transmit, receive and, where necessary, respond to such requests;
- (b) and provide the necessary information on such requests.

Art. 3 paragraph (1) of Law no. 119/1996 stipulates that they have the competence to issue or receive an official document that refers to the civil status that must be presented to the authorities of another member state and whose main purpose is to establish birth and filiation (in this work) county councils, respectively the General Council of the Municipality of Bucharest, the local community public services for records of persons, in the administrative-territorial units where they are constituted, as well as the civil status officers within the town halls of the

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### <sup>6</sup>Article 14 **Requests for information in cases of reasonable doubt**

1. Where the authorities of a Member State in which a public document or its certified copy is presented have a reasonable doubt as to the authenticity of that public document or its certified copy, they shall take the following steps to dispel their doubt: (a) check the available models of documents in the repository of IMI as referred to in Article 22; (b) if a doubt remains, submit a request for information through IMI: (i) to the authority that issued the public document or, where applicable, to the authority that made the certified copy, or to both; or (ii) to the relevant central authority.

2. A reasonable doubt as to the authenticity of a public document or its certified copy as referred to in paragraph 1 may relate, in particular, to: (a) the authenticity of the signature; (b) the capacity in which the person signing the document acted; (c) the identity of the seal or stamp; (d) the document having been forged or tampered with.

3. Requests for information made under this Article shall set out the grounds on which they are based.

4. Requests for information made under this Article shall be accompanied by a copy of the public document concerned or of its certified copy, transmitted electronically by means of IMI. Such requests and any replies to those requests shall not be subject to any tax, duty or charge.

5. The authorities shall reply to requests for information made under this Article within the shortest possible period of time and in any case within a period not exceeding 5 working days or 10 working days where the request is processed through a central authority. In exceptional cases where the time limits referred to in the first subparagraph cannot be adhered to, the requested authority and the requesting authority shall agree upon an extension of the time limit.

6. If the authenticity of the public document or of its certified copy is not confirmed, the requesting authority shall not be obliged to process them. See Regulation (EU) 2016/1191.

administrative-territorial units where local community public records services do not operate.

According to art. 3 paragraph (2) of Law no. 119/1996 civil status officers are:

- a) mayors of municipalities, sectors of the municipality of Bucharest, cities and communes;
- b) the heads of diplomatic missions and career consular offices of Romania;
- c) ship and aircraft commanders;
- d) civil status officers appointed by order of the Minister of National Defence or, as the case may be, of the Minister of Administration and the Interior, according to the provisions of art. 7 para. (7)" of the law<sup>7</sup>.

Para. (3) of art. 3 of Law no. 119/1996 stipulates that the exercise of civil status officer duties can be delegated:

- either to the vice-mayor, or to the secretary of the administrative-territorial unit, or to other civil servants from the own apparatus with competence in this field by the mayor;
- either to the diplomat who performs consular functions, or to one of the consular officials, or to one of the consular employees with competence in this field by the heads of diplomatic missions and career consular offices of Romania.

Also according to para. (3) of art. 3 of Law no. 119/1996 the status of civil status officer can be withdrawn either by the mayor, or by the heads of diplomatic missions and career consular offices of Romania.

As an exception, paragraph 4 of art. 3 of Law no. 119/1996 stipulates that another person will be delegated to draw up civil status documents if the civil status officer is a party or declarant.

In the case of Romanian citizens who live abroad, according to art 40 paragraph (1) of Law no. 119/1996, the issuance of civil status documents is done at the diplomatic missions, at the consular offices of Romania or at the competent local authorities.

From the provisions of art. 40 para. (3) from Law no. 119/1996 it is noted that the competent authority in the matter of population records in the state where the Romanian citizen is located "distributes to the diplomatic missions and consular offices of Romania lists with pre-calculated numerical codes, in order to enter them in the birth certificates drawn up and in the certificates issued based on them."

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<sup>7</sup>Art. 7 paragraph (7) of Law no. 119/1996.

**General Directorate for Records of Persons and Public Local Community Services for Records of Persons (Romanian abbreviation - S.P.C.L.E.P.)**

The General Directorate for the Records of Persons is a specialised body of the central public administration, with legal personality, it is part of the order and public safety structures under the Ministry of Internal Affairs and is a component part of the Department of Order and Public Safety.

Government Decision no. 1367/2009 stipulates that the Directorate for the Records of Persons and the Administration of Databases is established by merging the National Inspectorate for the Records of Persons and the National Centre for the Administration of Databases of Data on the Records of Persons, which is abolished.<sup>8</sup>

The Directorate has the following main attributions:

- a) organises, coordinates and monitors the way of application, in a unitary manner, by the community public services for records of persons, of the legal regulations in the field of records of persons, civil status and the administrative change of the names of natural persons;
- b) elaborates the working norms and methodologies used by the community public services for the registration of persons;
- c) updates, uses and valorises the data from the National Registry of Persons, according to the law;
- d) provide, in accordance with the law, personal identification data, requested by authorities and public institutions, economic operators and other legal entities for the performance of actions of general interest, regulated by normative acts;
- e) solves the requests submitted by Romanian citizens who established their domicile abroad before 1989 or by their legal representatives regarding the communication of the identification data with which they appear in the records;
- f) establishes the characteristics and security elements of identity cards and voter cards;
- g) manages and administers the National Information System for population records;
- h) is responsible for the implementation of the regulations regarding the confidentiality and protection of personal data, processed at the level of the Directorate;

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<sup>8</sup>E.g. in the territorial administrative unit Timiș County, based on Ordinance no. 84/2001 approved by Law no. by Decision no. 17, the Timiș County Council approved the establishment of the Timiș Persons Registration Directorate, public service community of county interest, with legal personality, subordinated to the Timiș County Council, which has been operating since 01.02.2005. The Directorate was established, mainly, by reorganizing the civil status activity of the Timiș County Council and the population record activity within the Timiș County Service for computerised records of persons. As personnel, the Directorate took over, through transfer, the personnel from the structures of Civil and evidential status of the population: civil servants, contractual staff and policemen. [https://dept.cjtimis.ro/infiintare\\_v1/](https://dept.cjtimis.ro/infiintare_v1/)  
The organisational regulation can be accessed at <https://dept.cjtimis.ro/wp-content/uploads/2020/07/Regulament-de-Organizare-si-Functionare.pdf>

- i) ensures the provision of community public services for the registration of persons with registers and civil status certificates, as well as with the necessary materials for the production of identity cards and voter cards;
- j) participates in the activities of initiation, training and professional development of the staff of the community public services for records of persons;
- k) collaborates with the other specialised bodies of the central public administration for the establishment of permanent registers, according to the law.

The normative acts that regulate the organisation, operation and resolution of issues within the competence of the General Directorate for the Records of Persons are<sup>9</sup>:

1. Law no. 329/2009 regarding the reorganisation of some public authorities and institutions, the rationalisation of public expenses, the support of the business environment and the observance of framework agreements with the European Commission and the International Monetary Fund,<sup>10</sup>
2. Government Decision no. 1367/2009 on the establishment, organisation and operation of the Directorate for the Registration of Persons and the Administration of Databases<sup>11</sup>;
3. Government Emergency Ordinance no. 97/2005 regarding the records, domicile, residence and identity documents of Romanian citizens, republished, with subsequent amendments and additions<sup>12</sup>;
4. Government Decision no. 64/2011 for the approval of the Methodology regarding the unitary application of the provisions on marital status<sup>13</sup>;
5. Government Ordinance no. 84/2001 on the establishment, organisation and operation of community public services for records of persons, with subsequent amendments and additions<sup>14</sup>;
6. Government Decision no. 2104/2004 for the approval of the Methodology regarding the criteria for dimensioning the number of functions in the apparatus of community public services for records of persons, the establishment of patrimony and the management of human, financial and material resources, with subsequent amendments and additions<sup>15</sup>;
7. Law no. 119/1996 regarding civil status documents, republished with subsequent amendments<sup>16</sup>;
8. Order of the Minister of Administration and Interior no. 1260/2006 for the approval of the Methodology regarding the organisation and operation of

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<sup>9</sup>On the website of the Timiș County Council, Government Decision no. 1723/2004.

<sup>10</sup>Published in the Official Gazette, Part I no. 761 of November 9, 2009.

<sup>11</sup>Published in the Official Gazette, Part I no. 802 of November 25, 2009.

<sup>12</sup>Republished in the Official Gazette, Part I no. 719 of October 12, 2011.

<sup>13</sup>Published in the Official Gazette, Part I no. 151 of March 2, 2011.

<sup>14</sup>Published in the Official Gazette, Part I no. 544 of September 1, 2001

<sup>15</sup>Published in the Official Gazette, Part I no. 1146 of December 3, 2004

<sup>16</sup>Republished in the Official Gazette, Part I no. 339 of May 18, 2012.

- the one-stop shop within the local community public services for the registration of persons<sup>17</sup>;
9. Government Ordinance no. 69/2002 regarding some measures for operationalizing the IT system for issuing and circulating electronic identity and residence documents, with subsequent amendments and additions<sup>18</sup>;
  10. Government Decision no. 1982/2004 regarding the approval of methodological norms for the application of Government Ordinance no. 69/2002 regarding the legal regime of the electronic identity card, republished, as well as the form and content of the electronic identity card, with subsequent amendments and additions<sup>19</sup>;
  11. Government Decision no. 220/2006 for the approval of the Working Norms regarding the procurement and transmission abroad of certificates and extracts from civil status documents, as well as data regarding the domicile and residence of certain persons<sup>20</sup>;
  12. Government Ordinance no. 33/2002 regarding the regulation of the issuance of certificates and certificates by central and local public authorities, approved with amendments and additions by Law no. 223/2002<sup>21</sup>;
  13. Law no. 105/2022 for the amendment and completion of Law no. 119/1996 regarding civil status documents, as well as for the repeal of Government Ordinance no. 41/2003 regarding the acquisition and administrative change of the names of natural persons<sup>22</sup>;
  14. Law no. 248/2005 regarding the regime of free movement of Romanian citizens abroad, with subsequent amendments and additions<sup>23</sup>;
  15. Law no. 544/2001 regarding free access to information of public interest, with subsequent amendments and additions<sup>24</sup>;
  16. Government Ordinance no. 27/2002 on the regulation of the petition settlement activity, with subsequent amendments and additions<sup>25</sup>;
  17. Law no. 202/2010 regarding some measures to accelerate the resolution of processes<sup>26</sup>;
  18. O.U.G. no. 97/2005 regarding the record, domicile, residence and identity documents of Romanian citizens, republished, with subsequent amendments and additions<sup>27</sup>;

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<sup>17</sup>Published in the Official Gazette, Part I no. 383 of May 4, 2006.

<sup>18</sup>Republished in the Official Gazette, Part I no. 844 of September 15, 2004.

<sup>19</sup>Published in the Official Gazette, Part I no. 1113 of November 27, 2004.

<sup>20</sup>Published in the Official Gazette, Part I no. 205 of March 6, 2006.

<sup>21</sup>Published in the Official Gazette, Part I no. 88 of February 2, 2002.

<sup>22</sup>Published in the Official Gazette, Part I no. 412 of April 29, 2022. Government Ordinance no. 41/2003 regarding the administrative acquisition and change of the names of natural persons, with subsequent amendments and additions, in force from February 2, 2003 until May 1, 2022, when it was repealed by Law no. 105/2022.

<sup>23</sup>Published in the Official Gazette, Part I no. 682 of July 29, 2005.

<sup>24</sup>Published in the Official Gazette, Part I no. 663 of October 23, 2001.

<sup>25</sup>Published in the Official Gazette, Part I no. 84 of February 1, 2002.

<sup>26</sup>Published in the Official Gazette, Part I no. 714 of October 26, 2010.

<sup>27</sup>Republished in the Official Gazette, Part I no. 719 of October 12, 2011.

19. O.U.G. no. 82/2012 for the amendment and completion of some normative acts regarding the record of persons, the identity documents of Romanian citizens, as well as the residence documents of citizens of EU member states and the European Economic Area residing in Romania<sup>28</sup>;
20. H.G. no. 727/2013 regarding the application of the Methodological Norms for the implementation of the provisions of Convention no. 16 of the International Civil Status Commission regarding the issuance of multilingual extracts of civil status documents, signed in Vienna on 09/08/1976<sup>29</sup>;
21. Law no. 235/2013 regarding the approval of GEO no. 82/2012 for the amendment and completion of some normative acts regarding the record of persons, the identity documents of Romanian citizens, as well as the residence documents of citizens of EU member states and the European Economic Area residing in Romania<sup>30</sup>;
22. H.G. no. 801/2016 for establishing the procedures for collecting and deleting the data of persons with declared identity, as well as for the modification and completion of some normative acts regarding the uniform application of the provisions in matters of civil status and records of persons<sup>31</sup>;
23. Law 287/2009 Civil Code, republished<sup>32</sup>;
24. O.U.G. 57/2019 regarding the Administrative Code<sup>33</sup>;
25. Regulation (EU) no. 679/2016 for the protection of natural persons with regard to the processing of personal data and regarding the free movement of such data and repealing Directive 95/46/EC (General Data Protection Regulation)<sup>34</sup>;
26. Regulation (EU) 2016/1191 of the European Parliament and of the Council of 06.07.2016 on promoting the free movement of citizens by simplifying the requirements for presenting certain official documents in the European Union and amending Regulation (EU) no. 1042/2012<sup>35</sup>;
27. Law no. 162/2020 for the amendment and completion of normative acts that include provisions regarding the record of persons and identity documents of Romanian citizens<sup>36</sup>.

Thus, the General Directorate for Personal Records is a specialised body of the central public administration, which operates within the Ministry of Administration and Interior, being established in 2009, by abolishing the National Inspectorate for Personal Records, in accordance with the provisions of Law no. 329/2009 regarding the reorganisation of some public authorities and institutions, the rationalisation of

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<sup>28</sup>Published in the Official Gazette, Part I no. 838 of December 12, 2012.

<sup>29</sup>Published in the Official Gazette, Part I no. 608 of September 30, 2013.

<sup>30</sup>Published in the Official Gazette, Part I no. 442 of July 19, 2013.

<sup>31</sup>Published in the Official Gazette, Part I no. 883 of November 3, 2016.

<sup>32</sup>Republished in the Official Gazette, Part I no. 505 of July 15, 2011.

<sup>33</sup>Published in the Official Gazette, Part I no. 555 of July 5, 2019.

<sup>34</sup><https://eur-lex.europa.eu/legal-content/RO/TXT/PDF/?uri=CELEX:32016R0679&from=EL>

<sup>35</sup><https://eur-lex.europa.eu/legal-content/RO/TXT/PDF/?uri=CELEX:32016R1191>

<sup>36</sup>Published in the Official Gazette, Part I no. 698 of August 4, 2020.



public expenses, the support of the business environment and the observance of framework agreements with the European Commission and the International Monetary Fund, and Government Decision no. 1367/2009 regarding the establishment, organisation and operation of the Directorate for the Records of Persons and the Administration of Databases.

The records of Romanian citizens domiciled in the country are kept according to the principle of their place of residence, and of Romanian citizens domiciled abroad according to the principle of the last domicile held in the country and according to the residence declared in Romania.

As regards the community public services for records of persons, they are organised at the level of the local councils of the communes, cities and municipalities, as well as at the level of the county councils, respectively of the municipality of Bucharest, being established under their subordination.

According to the provisions of art. 4 para. (1) from Government Ordinance no. 84/2001 regarding the establishment and operation of community public services for records of persons, approved with amendments and additions by Law no. 372/2002, with subsequent amendments and additions, as amended by art. I point 2 of the Government Emergency Ordinance no. 50/2004 for the amendment and completion of some normative acts in order to establish the organisational and functional framework corresponding to the activities of issuing and recording identity cards, civil status documents, simple passports, driving licenses and vehicle registration certificates, approved with amendments and additions by Law no. 520/2004, with the subsequent amendments and additions, were established under the subordination of the local councils of the communes, cities and municipalities, local community public services for records of persons, through the reorganisation of the civil status compartments of the local councils' own apparatus and of the local records formations of the population from the structure of the Ministry of Administration and Interior.<sup>37</sup>

In accordance with Article 10 of Ordinance 84/2001 regarding the establishment, organisation and operation of public community services for records of persons The general directorate administers and manages the national information system for records of persons, coordinates and methodologically controls the community public services for records of persons and cooperates with the Consular Department within the Ministry of Foreign Affairs in in view of the methodological guidance of the record-keeping activity of the persons carried out at the level of diplomatic missions and career consular offices of Romania abroad.

Community public services for the registration of persons ensure both the drawing up, keeping, recording and issuing of civil status documents, identity cards, electronic identity cards and voter cards, as well as carrying out the activities of receiving applications and issuing passports simple, driving licenses, vehicle registration certificates and plates with registration numbers, in a single counter system.

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<sup>37</sup>In Timișoara, Romania, the community public service for people's records can be found on the official website of the Timișoara City Hall under the aegis of "People's Records". <https://www.primariatm.ro/evpers/>

According to art. 5 of the aforementioned normative act, local community public services have the following main attributions:

- a) draw up, keep records and issue civil status certificates;
- b) register the acts and facts of civil status, as well as the mentions and changes made in the civil status, in the domicile and residence of the person, under the conditions of the law;
- c) draw up and keep civil status registers, under the law;
- d) draw up, complete, rectify, cancel or reconstitute the civil status documents and any entries made on the civil status documents, under the law;
- e) updates the National Registry of Persons with the identification data and addresses of citizens who have their domicile within the territorial jurisdiction of the respective community public service;
- f) e1) provides, within the national information system of population records, necessary data for updating the permanent Register of population records;
- g) e2) uses and makes use of the National Registry of Persons;
- h) provide, in accordance with the law, the identification and address data of the person to central, county and local public authorities and institutions, economic agents and citizens;
- i) finds contraventions and applies sanctions, according to the law;
- j) receive, in a one-stop shop system, the applications and documents necessary for the issuance of identity cards, voter cards, simple passports, driving licenses, registration certificates and plates with vehicle registration numbers and forward them to the community public services counties for records of persons, community public services for the issuance and registration of passports, respectively community public services driving permit regime and vehicle registration;
- k) receive from the competent community public services identity cards, voter cards, simple passports, driving licenses, registration certificates and plates with vehicle registration numbers, which they issue to applicants;
- l) keep records for each category of issued documents.

Regarding the financial and material insurance, article 20 of the aforementioned normative act states that the financing of the current and capital expenses of the community public services for records of persons, which operate as public institutions with legal personality, is ensured from own revenues and subsidies of to the local budgets, and the financing of current and capital expenses of the community public services for the registration of persons, without legal personality, is ensured from the local budgets.

Thus, the own revenues of the community public services provided above come from the amounts collected from the activities of issuing documents, by capitalizing on the forms used in the process of issuing them and by providing, in accordance with the law, the data relating to the person, as well as from donations and sponsorships.<sup>38</sup>

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<sup>38</sup>See Decision no. 386/2012.

Regarding the staff working in these public institutions, we mention that according to art. 24 the police officers who carry out their activity within the territorial structures of computerised records of the person within the General Directorate of Computerised Records of the Person are seconded to the community public services of records of persons, under the law.

Furthermore, the contractual staff assigned to the community public services for personal records, originating from the territorial structures of computerised personal records within the General Directorate of computerised personal records, are taken over by the Ministry of Administration and Interior and with the same date they are detached, under the conditions of the law, at the community public services for the registration of persons, keeping all their previously acquired rights, following that the rights specific to the contractual personnel in the national defence sector, public order and national security from which they benefit shall be granted by the Ministry of Administration and Interior from the chapter 55.01 "Public order and national security".

The staff of the community public services for the registration of persons is made up of police officers and contract staff, seconded from the Ministry of Administration and Interior for a period of 6 years, with the possibility of extending the period of secondment, with their consent, as well as civil servants and contract staff.

### **Proposal for a Regulation of the Council of the European Union on Jurisdiction, Applicable Law, Recognition of Court Decisions and Acceptance of Authentic Documents in Parentage Matters and on the Creation of a European Parentage Certificate**

The European Commission, on December 7, 2022, published a Proposal for a Regulation of the Council of the European Union on jurisdiction, applicable law, recognition of court decisions and acceptance of authentic documents in parentage matters and on the creation of a European parentage certificate.<sup>39</sup>

Art. 71 paragraph (1) of the Proposal for the Regulation stipulates that Member States shall communicate the following information to the Commission:

- a. The authorities empowered to draw up or register authentic documents in matters of filiation, as mentioned in article 4 point 6;
- b. The courts and authorities competent to issue certificates, as mentioned in articles 29, 37 and 45, and the courts and authorities competent to correct certificates, as mentioned in article 38;
- c. Courts competent to deal with applications for a judgment finding that there are no grounds for refusal of recognition in accordance with Article 25 and courts competent to deal with applications for refusal of recognition in accordance with Article 32 and appeals against decisions court rulings on such refusal requests in accordance with Articles 33 and 34 respectively;

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<sup>39</sup><https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A52022PC0695>.

- d. The courts and authorities competent to issue the European Certificate of Parentage under Article 51, as well as the courts competent to resolve the appeals referred to in Article 56.

In the event that this Regulation of the Council of the European Union regarding competence, applicable law, recognition of court decisions and acceptance of authentic documents in matters of filiation and regarding the creation of a European filiation certificate will be adopted, Romania has the obligation to notify the following competent authorities:

1. The authorities empowered to draw up or register authentic documents<sup>40</sup> in matters of filiation;
2. The competent authority of the Member State of origin which issues, at the request of a party, a certificate regarding an authentic act establishing parentage with binding legal effects, using the form appearing in Annex II. (art. 37 paragraph 1);
3. The competent authority from the Member State of origin, which corrects or withdraws the attestation, upon request, or ex officio if, due to a material error or omission, there is a discrepancy between the authentic and attested document and if he was unreasonably released, taking into account the requirements set out in article 37. (art. 38 paragraph (1) and paragraph (2);
4. The court in a member state of origin, which issues, at the request of a party, a certificate regarding a court decision in matters of filiation, using the form appearing in Annex I. (art. 29 para. 1);
5. The territorial competence of the court communicated to the Commission by each member state (art. 25 par. 2);
6. The court that the member state communicated to the Commission for filing the appeal or for the use of the right of appeal (art. 33 paragraph 2);
7. The courts before which the said appeal or subsequent appeal could be brought against a court decision pronounced regarding the appeal or appeal previously used (art. 34);
8. The issuing authority that "issues the certificate without delay, in accordance with the procedure provided for in this chapter, when the elements to be certified have been established in accordance with the law applicable to the establishment of parentage. It uses the form in Annex V." (art. 51).

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<sup>40</sup>According to art. 4 pct (6).

## Conclusions

We propose, *de lege ferenda*:

1. The establishment in Romania of a competent authority specialised in the matter of family relations with an element of foreignness and which would include the authorities required in art. 71 of this Regulation Proposal;
2. The establishment in Romania of specialised courts for minors and family according to art. 41 of Law no. 304/2022 regarding judicial organisation. In the event of the establishment of these specialised tribunals, family relationships with an element of implicit foreignness would also be taken into account, thus their competence stipulated in the Proposal for a Regulation of the Council of the European Union regarding competence, the applicable law, the recognition of court decisions and accepting authentic parentage documents and creating a European parentage certificate.

Currently, in Romania we have only one Court for Minors and Family in the city of Brasov, which was established by Order of the Minister of Justice no. 3142/C/November 22, 2004 and started operating in the municipality of Braşov, on the same date.<sup>41</sup> However, this court according to art. 71 paragraph (1) of the Proposal of the Regulation could not have powers in the matter of issuing a certificate regarding an authentic act that establishes parentage with binding legal effects because the jurisdiction of the specialised court includes civil cases - in the first instance (litigations regarding placements and adoptions), and in appeal in the matter of minors and family pronounced by the courts of its territorial jurisdiction.

Regardless of the arguments for and against the Proposed Regulation regarding filiation, in relation to the fact that in order to promote the Union's object of creating, maintaining and developing an area of freedom and justice in which to ensure the free movement of people, access to justice and full respect for fundamental rights, Commission President Mrs von der Leyen stated in her 2020 State of the Union address that "who is a parent in one country is a parent in all countries"<sup>42</sup>, we appreciate that the appropriate perspective would have been "who is a CHILD in one country is a CHILD in all countries" taking into account the supremacy of the child's best interest.<sup>43</sup>

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<sup>41</sup><https://portal.just.ro/1372/SitePages/prezentare.aspx>

<sup>42</sup>For details regarding maternity leave, paternity and raising and child care, see Dornean Păunescu (2019). Regarding the child's right to the state allowance, see Dornean Păunescu (2021).

<sup>43</sup>Anitei & Dornean Păunescu (2023), article presented at El IX Congreso Internacional de Derecho Internacional Privado de la Universidad Carlos III de Madrid, días 4 y 5 de mayo de 2023, and Dornean Păunescu (2024).

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