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## Foreword

Maria Caterina Baruffi\* and Laura Calafà\*\*

This special issue of the journal *Papers di diritto europeo* collects the proceedings of the conference organized within the project «[Identities on the move. Documents cross borders - DxB](#)» (selected under the call for proposals «Action grants to support judicial cooperation in civil and criminal matters» – JUST-JCOO-AG-2020, co-funded by the European Union within the Justice Programme 2014-2020). The project is coordinated by the University of Verona and the Consortium is composed of the University of Graz, the Aristotle University of Thessaloniki, the European Association of Registrars (EVS) and the Italian Association of Civil Status Officers and Registrars (ANUSCA), at whose premises the final conference took place on 23 and 24 June 2022.

The final event has provided the opportunity to deepen the analysis of Regulation (EU) 2016/1191 on promoting the free movement of citizens by simplifying the requirements for presenting certain public documents in the European Union, which was at the core of the research and scientific activities of the DxB project. The idea of focusing on this Regulation comes from the limited knowledge that both practitioners and citizens still have of it, despite its being a valuable instrument to bring people closer and make the European Union more integrated thanks to the simplification of administrative formalities. The issues related to the mutual recognition of public documents and their circulation across Member States are among the most important and urgent challenges in a globalized society. The aim of the project, then, is to raise awareness among registrars and legal practitioners and gain a more extensive expertise on how and to what extent the Regulation is actually applied in national practices, ultimately ensuring a better understanding of this tool.

Against this background, the conference's speakers contributed to give an extensive overview of this EU act in the context of national civil status systems, the free movement of persons and the Charter of fundamental rights of the European Union. Presentations also provided specific information regarding how the Regulation addresses the problematic aspects and deficiencies of the current legal framework, under both interpretative and operational perspectives.

The conference has been a truly international event that effectively encouraged the development of a concrete cooperation among the participants, i.e. scholars, registrars,

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\* Full Professor of International Law, University of Bergamo (Italy); editor in chief of *Papers di diritto europeo* and staff member of the DxB Project.

\*\* Full Professor of Labour Law, University of Verona (Italy); coordinator of the DxB Project.

public administrators, and practitioners from all over Europe. To all of them goes our gratitude for accepting to taking part in the DxB project as well as to the authors of this special issue. We are also thankful to Alexander Schuster for his input in managing the project and organizing the conference. Thus, the proceedings collected in the following pages represent both a final output and a starting point to further debates and exchange of views on the application of the Public Documents Regulation.

Lastly, the contents of all the papers, which are published in alphabetical order, are the sole responsibility of the respective authors and do not reflect the views of the European Commission.

# The scope of Regulation (EU) 2016/1191 in the light of Bulgarian domestic law

Eva Kaseva\*

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## 1. Introduction.

Globalization, which took place in the second half of the XX century and the beginning of the XXI century, is characterized by migration and movement of people, and the reasons are different – education, work, family. The free movement of people is also one of the fundamental freedoms owned by the citizens of the European Union. Citizens of the Republic of Bulgaria, who settle in a country other than their country of origin, face a large number of administrative procedures connected with personal status, each of which leads to requests for official documents (such as: divorce decree, birth certificate, proof of kinship or marital status). The same applies to every citizen who returns to their country of origin after a stay in a foreign country. In order to be able to use official documents outside the country in which they were issued, the recognition in the host country is necessary<sup>1</sup>.

In Bulgarian legislation there is the following terminology – «civil status», «civil registration» and «civil status claims», as well. «Civil status» covers the whole complex of facts relating to citizens' lives: birth, marriage, death, divorce, citizenship<sup>2</sup>. «Civil

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\* Associate Professor, Department of International Studies, Institute for the State and the Law, Bulgarian Academy of Sciences, and Department of Private Studies, University of VelikoTarnovo «St.st. Cyril and Methodius» (Bulgaria).

<sup>1</sup> The question of recognition of personal status is placed on the table during past decade in European Union and there are decisions of European Court of Justice (ECJ) on the matter: judgment of 14 October 2008, [case C-353/06](#), *Grunkin-Paul*, EU:C:2008:559; judgment of 22 December 2010, [case C-208/09](#), *Sayn-Wittgenstein v Landeshauptmann von Wien*, EU:C:2010:806; judgment of 12 May 2011, [case C-391/09](#), *Runevič-Vardyn v Vilniaus miesto savivaldybės administracija*, EU:C:2011:291; judgment of 2 June 2016, [case C-438/14](#), *Bogendorff von Wolffersdorff v Standesamt der Stadt Karlsruhe u ZentralerJuristischerDienst der Stadt Karlsruhe*, EU:C:2016:401; judgment of 8 June 2017, [case C-541/15](#), *Freitag*, EU:C:2017:432.

<sup>2</sup> D. KONSTANTINOV, *Civil status*, Sofia, 1958, p. 198.

registration» is defined in Art. 3 of the Bulgarian Civil Registration Act (CRA)<sup>3</sup> and includes «data about one person, which distinguishes him from other persons in society and in his family as the holder of subjective rights, such as name, citizenship, marital status, kinship, permanent address, etc.». «Civil status claims» are settled in Art. 331(1) of the Bulgarian Code of Civil Procedure<sup>4</sup>. They include: claims for establishment or contestation of parenthood, claims for termination of adoption and matrimonial claims.

In Bulgarian Private International Law literature, the methods of recognition of personal status are differentiated as follows:

- traditional procedural recognition (of foreign courts decisions) settled in Arts. 117-124 of Bulgarian Code of Private International Law (BCPIL)<sup>5</sup>;
- civil registration acts recognition under Bulgarian Civil Registration Act;
- the conflict-of-laws method of recognition;
- the automatic recognition – recognition of civil consequences of foreign public acts;
- recognition under the Convention on the Issue of Multilingual Extracts from Civil Status Records, drafted by the International Commission on Civil Status which defines a uniform format for extracts on civil status (birth, marriage, death), signed in Vienna on 8 September 1976;
- recognition through the application of European secondary legislation: i.e. Regulation (EU) 2016/1191<sup>6</sup>.

The current study is focused on the last-mentioned method – i.e. the recognition of personal status through the norms of Regulation (EU) 2016/1191 – Public Documents Regulation. General characteristics of the Regulation will be made, the conditions, which have to be met in order to apply the Regulation will be analyzed, its scope will be examined and especially it will be presented in details which are the documents that can be issued in Republic of Bulgaria (under Bulgarian domestic law) to certify the facts included in its scope Art. 2(1)(a)-(m) of the Regulation (e.g. act of birth, act of death, act of marriage, etc.). It will be indicated which national act settles each document and clarified which are the requirements to be met.

## 2. General characteristics of Regulation (EU) 2016/1191.

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<sup>3</sup> Bulgarian Civil Registration Act, Promulgated in Official Journal of Bulgaria No 67 of 27 July 1999, last amendment of 11 December 2020.

<sup>4</sup> Promulgated in Official Journal of Bulgaria No 59 of 20 July 2007, in force from 1 March 2008, last amendment of 22 February 2022.

<sup>5</sup> Promulgated in Official Journal of Bulgaria No 42 of 17 May 2005, last amendment of 21 December 2010.

<sup>6</sup> [Regulation \(EU\) 2016/1191](#) of the European Parliament and of the Council of 6 July 2016 on promoting the free movement of citizens by simplifying the requirements for presenting certain public documents in the European Union and amending Regulation (EU) No 1024/2012 (in brief «Regulation 2016/1191», «Public Documents Regulation», or only «Regulation»).



Regulation (EU) 2016/1191 is adopted on the ground of Art. 21(2) of the Treaty on the Functioning of the European Union (TFEU) – the European Parliament and the Council, acting in accordance with the ordinary legislative procedure, may adopt provisions with a view to facilitating every citizen of the Union exercise the right to move and reside freely within the territory of the Member States. This ground distinguishes it from other EU acts adopted on the basis of Art. 81 TFEU on «Judicial cooperation in civil matters»<sup>7</sup>.

More concretely, the objectives of the Regulation are defined in its proposal<sup>8</sup>. They included reducing practical difficulties caused by the identified administrative formalities; reducing translation costs related to the free circulation of public documents within the EU; simplifying the fragmented legal framework regulating the circulation of public documents between the Member States; ensuring a more effective level of detection of fraud and forgery of public documents and eliminating risks of discrimination among Union citizens and businesses.

Moreover, in the preamble of the adopted Regulation – Recital 57 is settled that its objective is promotion of the free movement of Union citizens by facilitating the free circulation of certain public documents within the Union. The objective is formulated in accordance with the principle of subsidiarity and the principle of proportionality as set out in Art. 5 of the Treaty on European Union.

The Regulation consists of a preamble with 57 Recitals and 27 Articles divided into six Chapters. The Regulation also contains eleven Annexes.

Its *ratione temporis* is defined in its Art. 27. It is applied in Bulgaria since 16 February 2019. Art. 27(2)(a)-(c) explicitly defines provisions that apply from earlier dates, in view of the necessary preparation for Regulation implementation.

The territorial scope of the Regulation is defined also in Art. 27. It is specified that the Regulation shall be binding in its entirety and directly applicable in all Member States.

As far as the relationship of the Regulation with international instruments is concerned, it should be pointed out that in Recital 56 from the preamble is settled that the Regulation should be applied in accordance with the fundamental rights and principles settled in Charter of Fundamental rights of the European Union.

In Art. 19 is regulated the relationship of the Regulation with international conventions, agreements and arrangements. The provision of Art. 19(1) defines that Regulation is without prejudice to the application of international conventions to which

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<sup>7</sup> See for example: [Council Regulation \(EC\) No 2201/2003](#) of 27 November 2003 concerning jurisdiction and the recognition and enforcement of judgments in matrimonial matters and the matters of parental responsibility, repealing Regulation (EC) No 1347/2000; [Regulation \(EU\) No 1215/2012](#) of the European Parliament and of the Council of 12 December 2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters, etc.

<sup>8</sup> See: [COM\(2013\) 228 final](#) of 24 April 2013.

one or more Member States are party at the time of adoption of the Regulation and which concern matters covered by it.

In accordance with this is Recital 4 from its preamble which settled that the Regulation should be regarded as a separate and autonomous instrument from the Apostille Convention.

The Regulation does not affect the application of European Convention of 1968 on the Abolition of Legalisation of Documents Executed by Diplomatic Agents or Consular Officers and Convention on the Issue of Multilingual Extracts from Civil Status Records, drafted by the International Commission on Civil Status. Since the multilingual standard forms under this Regulation do not have legal value and do not overlap with the multilingual standard forms provided for in ICCS Conventions (No. 16), (No. 33) and (No. 34) or with the life certificates provided for in ICCS Convention (No. 27), the Regulation should not affect the application of those Conventions as between Member States or between a Member State and a third country.

Although the text of Art. 19(1), the following Para. 2 settled that the Regulation prevail over bilateral or multilateral agreements concluded between the Member States: Member States are able to maintain or conclude arrangements between two or more of them in matters which do not fall within the scope of the Regulation such as the evidentiary value of public documents, multilingual standard forms with legal value, exemption from legalisation of such forms, and exemption from legalisation of public documents in areas other than those covered by the Regulation.

The Regulation does not preclude Member States from negotiating, concluding, acceding to, amending or applying international agreements and arrangements with third countries concerning legalisation or similar formality in respect of public documents concerning matters covered by Regulation, and issued by the authorities of Member States or third countries in order to be used in relations between the Member States and the third countries concerned (Art. 19(4)). This provision is considered as an answer to opinion 1/13 of the Court of Justice, which settles EU external competence<sup>9</sup>.

Art. 17 states that the Regulation is without prejudice to the application of: other provisions of Union law on legislation, similar formality, Union law on electronic signatures and electronic identification, and other systems of administrative cooperation between Member State.

The Regulation shall be applied with priority over the internal acts of the Republic of Bulgaria, according to Art. 288 TFEU.

### **3. *Ratione materiae.***

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<sup>9</sup> Court of Justice (Grand Chamber), [opinion 1/13](#) of 14 October 2014, EU:C:2014:2303.

In Art. 2 the scope of the Regulation is defined. The provision settles that the Regulation applies to:

- public documents – defined in its Art. 3(1) of the Regulation;
- issued by the authorities of the Member State – defined in Art. 3(2) of the Regulation;
- primary purpose of which is to establish one or more of the facts settled in Art. 2(1)(a)-(m) of the Regulation;
- which have to be presented to the authorities of another Member State.

The Regulation applies to certified copies of public documents made by a competent authority of the Member State in which the original public document was issued. The Regulation covers electronic versions of public documents and multilingual standard forms suitable for electronic exchange.

Excluded from the scope are: copies of certified copies, documents issued by private persons, public documents issued by the authorities of a third country; public documents on a change of name; passports or identity cards issued in a Member State as such documents are not subject to legalisation or similar formality when presented in another Member State; civil status documents issued on the basis of the relevant International Commission on Civil Status (ICCS) Conventions. It is important to point out that the Regulation does not apply to the recognition in a Member State of legal effects relating to the content of public documents issued by the authorities of another Member State.

#### **4. Bulgarian domestic rules.**

For birth, death and marriage in Bulgaria are issued civil status acts. They are defined in the Bulgarian civil law theory as official written documents drawn up by competent authorities in accordance with the procedure established by law, which establish events determined by law or certify facts of civil status of individuals and which serve as evidence of these events or facts. They are a formal written document with probative force. Their preparation is a type of administrative service. They are designed by the Ministry of Justice. They are issued at the request of the interested persons by civil status officers in the municipality or the mayor's office on whose territory the events took place.

According to Art. 35 of the CRA, in the Republic of Bulgaria the mayor of the municipality is a civil status officer on the territory of the municipality – he issues civil status acts and certificates based on the population register. He may assign these functions by written order to the mayors of the mayoralties and the deputy mayors in the settlements where registers of civil status acts are maintained, and to other officials of the municipal administration. The law also regulates several special hypotheses in which, subject to certain prerequisites, civil status acts are drawn up by other bodies. For example, Arts. 63-65 of the CRA – the servicemen who are outside the territory of the Republic of

Bulgaria or are on the territory of the country, but due to military actions are deprived of the opportunity to inform the civilian authorities, are appointed by the command to perform such functions. In case of birth, civil marriage or death, which occurred on a ship located outside Bulgarian territorial waters, the captain is obliged to make an entry in the logbook and to draw up an act under Arts. 66-68 of the CRA. Also, the diplomatic mission of the Republic of Bulgaria has functions on the civil status of Bulgarian citizens residing in the host country. The Consular Representative of the Republic of Bulgaria performs functions related to the civil status of Bulgarian citizens residing in his consular district. Citizens of the Republic of Bulgaria who are abroad may request, in compliance with Bulgarian or local laws, the drawing up of civil status acts by the respective Bulgarian diplomatic or consular representative, or by foreign local civil status authorities in the place where they are the events subject to registration have occurred. The regulation is contained in Arts. 69-72 of the CRA.

It should be specified in the Republic of Bulgaria which public documents certify the facts listed in Art. 2(1(a)-(m) of the Regulation and what are the conditions for their issuance.

#### **4.1. Birth.**

A birth certificate is issued for birth, after civil status officer receive a written message from medical person according to Art. 42 of the Bulgarian Civil Registration Act. In the general hypothesis according to Art. 43(6) of the CRA, the civil status officer shall draw up the birth certificate after certifying in writing the event within seven days from the birth (excluding the day of birth). Birth certificate is issued to the parents. Immediately after the drawing up of the birth certificate, an electronic birth certificate is created on the basis of it. All requisites of the certificates, as well as their regulation, are contained in Arts. 42-50 of the CRA.

In case of birth of a child – Bulgarian citizen – born outside the territory of the country, a birth certificate is also drawn up by the respective Bulgarian diplomatic or consular representatives, or by the foreign local civil status authorities in the place where the events subject to registration took place. The birth can be certified also by: transcript-extract from the birth certificate, full transcript of the birth certificate, certified copy of the birth certificate. A birth certificate is also issued in case of incomplete adoption.

#### **4.2. A person being alive.**

A special act, except for the birth certificate, that a person is alive is not issued by the Bulgarian authorities. A document that includes all children born to the mother entered in the population register is a Certificate for children born from the mother. As it

records the date of birth and date of death of all children born from the mother, this official document can be said to certify all three facts set out in the scope of the Regulation – birth, person alive, death. Its regulation is in Art. 16 and Annex 7 of Ordinance No RD-02-20-6 for issuing certificates on the basis of the population register<sup>10</sup>.

#### **4.3. Death.**

The death shall be certified by a competent medical person, who shall report it to a civil status officer. The officer shall draw up a death certificate within 48 hours of the death. Its regulation is in Arts. 54-62 of the CRA. A variant of a civil status certificate certifying death is a death certificate drawn up on the basis of an effective court decision declaring a person dead. The act is drawn up by the civil status officer on the basis of a certified copy of the court decision (Art. 59 of the CRA). Also, the death can be certified with a transcript of the death certificate, a complete transcript of the death certificate, a certified copy of the death certificate.

In case of death of a Bulgarian citizen outside the territory of the country, a death certificate is also drawn up by the respective Bulgarian diplomatic or consular representatives, or by the foreign local civil status authorities in the place where the events subject to registration took place.

#### **4.4. Name.**

The name is the recognized and guaranteed by law possibility of a person to have the verbal designation, formed in a way determined by the law, with which the designation is individualized. It is an intangible, absolutely subjective, personal, non-property, non-transferable and non-inheritable right. It is entered in the birth certificate. This is done at the birth of a Bulgarian citizen on the territory of the Republic of Bulgaria, as well as if the child was born outside the country of the birth certificate, drawn up by the relevant Bulgarian diplomatic or consular representatives, or by foreign local civil status authorities in the place where the child is born.

The regulation of the names of Bulgarian citizens is contained in Arts. 12-21 of the CRA, as well as in Art. 53 of the Bulgarian Code of Private International Law (BCPIL), whose first provision settles that the name of the person and its change are regulated by the domestic law of the person. In the general case of substantive law for Bulgarian citizens - the personal name of each person is chosen by his parents and communicated in writing to the civil status officer when drawing up the birth certificate. Another official document that establishes the name of the person, in addition to the birth certificate, is the Certificate of identity of a person with different names. It proves that two or more first

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<sup>10</sup> Promulgated in Official Journal of Bulgaria No 37 of 15 May 2012.



and / or middle names and / or surnames are of the same person. The CRA also establishes hypotheses in which the name is determined by an act of the court – for example: in case of adoption, in case of termination of adoption, in case of established origin.

#### **4.5. Marriage, including capacity to marry and marital status.**

According to the CRA, only a civil marriage concluded between a man and a woman, which is concluded before a civil status officer, is legal. It is certified by a civil marriage certificate, a transcript of an extract from a civil marriage certificate, a full transcript of a civil marriage certificate, a certified copy of a civil marriage certificate. A marriage certificate from a Bulgarian citizen abroad is also a document certifying the existence of a marriage.

The requisites of the civil marriage act and its regulation are contained in Arts. 51-53a of the CRA. The regulation of marriage with an international element in Art. 76(1) of the BCPIL stipulates that the conditions for marriage are determined for each of the persons under the law of the state of which the person was a citizen at the time of marriage.

In particular, regarding the capacity to marry, the documents establishing the existence of the conditions for marriage are: a declaration by each of the marriages that there are no obstacles to marriage, a medical certificate that he/she does not suffer from the diseases referred to in Art. 7(1) items 2-3 of the Family Code of Republic of Bulgaria (FC)<sup>11</sup>; declaration that he/she is aware of the diseases of the other under Art. 7(1) items 2-3 FC. These documents are exhaustively listed in art. 9, par. 1 of the FC, and these are the documents establishing the existence of marital capacity. To these should be added a decision of the district court in the event that one of the persons who will marry has reached 16 years of age.

As to the marital status: Ordinance No. RD-02-20-6 provides for the issuance of three types of certificates that establish marital status. First, in accordance with article 13 of Ordinance No RD-02-20-6, when proof of a person's marital status is required, a Marital Certificate shall be issued in accordance with Annex 4. The marital status entered in the certificate may be «unmarried», «married», «divorced» or «widowed». Secondly, Art. 14 of the same Ordinance provides for the issuance of a Certificate of marital status, spouse and children in accordance with Annex 5. The certificate shall include the marital status of the person, data on spouse and all living and deceased children. Third, marital status is also entered in the certificate issued under Art. 15 of the Ordinance under consideration, namely – Certificate of spouse and family ties in a form according to Annex 6, which is issued to prove marital status and existing kinship by rights and silver line.

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<sup>11</sup> Promulgated in Official Journal of Bulgaria No 47 of 23 June 2009, last amendment of 4 December 2020.

Although the Certificate of Marital Status, Spouse and Children, as well as the Certificate of Spouse and family ties may establish facts other than marital status, these certificates fall within the scope of the Regulation, as meeting the condition of establishing the marital status of a person.

#### **4.6. Divorce, legal separation or marriage annulment.**

Regarding the divorce – it is certified by the court decision for divorce in matrimonial proceedings conducted on the basis of Arts. 318-330 of the Civil Procedure Code of the Republic of Bulgaria, in conjunction with Arts. 49-59 of the FC. If it has an international element – the provisions of Regulation (EC) No 2201/2003<sup>12</sup> (then Regulation (EU) 2019/1111)<sup>13</sup>, Regulation (EU) No 1259/2010<sup>14</sup>, BCPIL, legal aid contracts concluded by the Republic of Bulgaria shall apply accordingly.

Marriage annulment: in a similar way, the annulment of the marriage is certified by the court decision in matrimonial proceedings conducted on the basis of Arts. 318-330 of the Civil Procedure Code, in conjunction with Arts. 46-48 of the FC, as well as if the marriage has an international element, the above-cited acts apply.

In case of divorce and annulment of the marriage, they can be certified with a transcript-extract from the act of civil marriage, as in the field «Notes» of the sample it is indicated that the marriage is terminated and the date on which it was terminated.

#### **4.7. Registered partnership and legal separation.**

The institutes of legal separation and registered partnership are not regulated in Bulgarian substantive law. However, it should be noted that in Bulgaria are applied Council Regulation (EU) No 1259/2010 as well as Regulation (EU) 2016/1104<sup>15</sup>. It is possible that the Bulgarian court, applying the provisions of the said regulations to a case, should apply a foreign law in which the respective institutes are regulated. If, as a result of this, an act is issued certifying the facts listed in Art. 2(1)(f),(g) and (h) of Regulation (EU) 2016/1191, this document is regarded as included in the scope of the Regulation. Namely regarding: registered partnership, including legal capacity to enter into a

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<sup>12</sup> [Council Regulation \(EC\) No 2201/2003](#) of 27 November 2003 concerning jurisdiction and the recognition and enforcement of judgments in matrimonial matters and the matters of parental responsibility, repealing Regulation (EC) No 1347/2000.

<sup>13</sup> [Council Regulation \(EU\) 2019/1111](#) of 25 June 2019 on jurisdiction, the recognition and enforcement of decisions in matrimonial matters and the matters of parental responsibility, and on international child abduction (recast).

<sup>14</sup> [Council Regulation \(EU\) No 1259/2010](#) of 20 December 2010 implementing enhanced cooperation in the area of the law applicable to divorce and legal separation.

<sup>15</sup> [Council Regulation \(EU\) 2016/1104](#) of 24 June 2016 implementing enhanced cooperation in the area of jurisdiction, applicable law and the recognition and enforcement of decisions in matters of the property consequences of registered partnerships.

registered partnership, and registered partnership status; dissolution of a registered partnership, legal separation or annulment of a registered partnership.

#### 4.8. Parenthood.

Recital 14 of the preamble to the Regulation clarifies that the concept of «parenthood» should be seen as meaning the legal relationship between a child and the child's parents. The provisions of Arts. 331-335 of the Civil Procedure Code – apply for establishing or contesting parenthood. Relevant documents falling within the scope of the Regulation are a birth certificate, an act of a judicial authority issued on a claim to establish/challenge maternity/paternity, a written application for recognition, a declaration of recognition with a notarized signature, as well as the following documents for challenge of recognition – a written application for contestation, an act of a judicial authority, issued on a claim for contestation/destruction of recognition. In the scope of the Regulation as official documents establishing the parenthood under Bulgarian domestic Law should also be included the certificates already considered – the Marital Certificate, the Certificate of marital status, spouse and children, the Certificate of spouse and family ties, the Certificate for children born from the mother.

As far as it concerns «parenthood» I will pay special attention to case C-490/20 of ECJ which is on request for preliminary ruling from Administrative Court of the City of Sofia, Bulgaria, which in fact is the first case referencing the Public Documents Regulation to ECJ<sup>16</sup>. The dispute concerns a married couple consisting of two women, one of whom, V.M.A., is a Bulgarian national, while the other is a national of the United Kingdom. They got married in 2018 in Gibraltar, where same-sex marriage is possible since December 2016, and had a child in Spain. They reside in the same country. The birth was registered according to Spanish Law, and a birth certificate was issued by the Spanish authorities designating both women as 'mother' of the child. On the basis of the Spanish document V.M.A. applied to the competent Bulgarian authority to issue a birth certificate for her daughter. Such a certificate is, in turn, necessary for obtaining a Bulgarian identity document. Bulgarian law does not allow marriage or any other form of union with legal effects between persons of the same sex. Parentage is determined by birth; the mother of the child is the woman who gave birth to it (also in the case of assisted reproduction). When the filiation of a child with regard to one of his parents is unknown, any parent can recognize the child. In the event of registration of a birth occurring abroad the information relating to the name of the child, the date and place of birth, the sex and the established filiation are entered in the birth certificate as they appear in the copy or in the Bulgarian translation of the foreign document produced. The municipality of Sofia

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<sup>16</sup> Court of Justice (Grand Chamber), judgment of 14 December 2021, [case C-490/20](#), *V.M.A. v Stolichna obshtina, rayon „Pancharevo”*, EU:C:2021:1008.

(Bulgaria) requested V.M.A. to indicate which of the two spouses is the biological mother, stating that the model Bulgarian birth certificate provides only one box for the ‘mother’ and another for the ‘father’, and that each of those boxes may include only one name. Following V.M.A.’s refusal to supply the requested information, the authority rejected her application, arguing the absence of information concerning the biological mother and the fact that the registration of two female parents in a birth certificate is contrary to the public policy of Bulgaria. V.M.A. brought an action against that decision before the Administrative Court of the City of Sofia, which referred to the CJEU some questions, main of which:

«Must Article 20 TFEU and Article 21 TFEU and Articles 7, 24 and 45 of the Charter of Fundamental Rights of the European Union be interpreted as meaning that the Bulgarian administrative authorities to which an application for a document certifying the birth of a child of Bulgarian nationality in another Member State of the EU was submitted, which had been certified by way of a Spanish birth certificate in which two persons of the female sex are registered as mothers without specifying whether one of them, and if so, which of them, is the child’s biological mother, are not permitted to refuse to issue a Bulgarian birth certificate on the grounds that the applicant refuses to state which of them is the child’s biological mother?»

The ECJ states that a child, being a minor, whose status as a Union citizen is not established and whose birth certificate, issued by the competent authorities of a Member State, designates as her parents two persons of the same sex, one of whom is a Union citizen, must be considered, by all Member States, a direct descendant of that Union citizen within the meaning of Directive 2004/38 for the purposes of the exercise of the rights conferred in Art. 21(1) TFEU and the secondary legislation relating thereto.

With this decision the ECJ held that EU Member States are required to recognise – for the purposes of EU free movement law – the familial ties established in another EU Member State between a child and her parents who are a same-sex couple. In my opinion this case is an example for automatic recognition of personal status in EU (as *Coman* case<sup>17</sup>) on the basis of mutual trust that one State accepts and recognizes the civil consequences of a legal situation (settled in foreign public acts) which has arisen in another State without changing its substantive law and even if the applicable law and the relevant rules in the host State are different. The main advantage of this method of recognition is that through its application the legal relationships are settled in the same way in different countries. It should be noted one of its disadvantages – obliges Member States to recognize legal institutions that are unknown to their legal systems – as same sex marriages, registered partnerships, child marriages, parenthood by surrogacy mother etc... The automatic recognition is not settled in EU act, but can be carried out on the

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<sup>17</sup> Court of Justice (Grand Chamber), judgment of 5 June 2018, [case C-673/16](#), *Coman and others*, EU:C:2018:385.

following grounds: decision of ECJ under Art. 267 TFEU and as well on obligations established in an international agreement. These obligations may directly regulate recognition. An example is Art. 23 of the Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption, concluded on 29 May 1993, that although it was accepted that Public Documents Regulation does not apply to the recognition in a Member State of legal effects relating to the content of public documents issued by the authorities of another Member State, in fact this kind of recognition occurs on the ground of ECJ – Art. 267 TFEU, for the purposes of the exercise of the rights conferred in Art. 21(1) TFEU and the secondary legislation relating thereto.

#### **4.9. Adoption.**

Establishing the adoption of a child with habitual residence in the Republic of Bulgaria, as well as a foreigner with habitual residence in the Republic of Bulgaria is regulated by the provisions of Arts. 77-98, Chapter VIII, of the Family Code of the Republic of Bulgaria, Arts. 18, 50 and 78 of the CRA. If the adoption case has an international element, the provisions of Arts. 10 and 84 of the BCPIL should also be applied. In the general case, the decision on adoption is taken by a district court at the location of the Regional Directorate for Social Assistance, whose Adoption Council has appointed the adopter. The district court is also competent to judge on the termination of the adoption (Arts. 106-109 of the FC). Pursuant to Art. 50 of the FC, in case of full adoption, the civil status officer on the basis of a certified transcript of the court decision shall draw up a new birth certificate within three days of receiving the transcript. The birth certificate shall be drawn up in the municipality or the mayor's office, specified in the court decision, in the register of the current year with a date – the date of drawing up the act. The following shall be entered in the new birth certificate: 1. the actual date of birth and the new uniform civil number; 2. place of birth – the place of drawing up the act, and in the cases of international adoption – the actual place of birth; 3. parents – the adoptive parents and the data for them; when the child is adopted by only one parent, the column for the other parent is not filled in; when the child is adopted by the spouse of a parent, data on the birth parent with whom the relationship is maintained and data on the adoptive parent. The drawn-up act shall be noted in the alphabetical yearbook of the year, which corresponds to the year of birth of the adopted child, and in the alphabetical form of the year of drawing up the act. The court decision shall be kept under the conditions and by the order for storage of the birth certificate and external persons may not have access to it. Within two days, the civil status officer shall notify the municipality where the previous act of birth of the adopted person is located by letter, to note in the column «Notes» that a new one has been drawn up.



In case of incomplete adoption, the civil status official at the place of birth of the adopted person shall record in the column «Notes» of the existing birth certificate the court decision, the names of the person determined by the court and the names of the adopters. When issuing transcripts and certificates and transcripts of a birth certificate with marked incomplete adoption for parents, both the parents of origin and the adoptive parents shall be entered.

Documents establishing the adoption are: birth certificate, court decision, transcript of birth certificate, full transcript of birth certificate, certified copy of birth certificate.

#### **4.10. Domicile and/or residence.**

The regulation of domicile is in Arts. 89-99b of the CRA. Here it will only be specified that it's certified by certain documents for existence of a permanent or present address, issued with legal grounds Arts. 95 and 98 CRA, as well as Arts. 22-25 of Ordinance No RD-02-20-6 and are respectively: Certificate of permanent address; Certificate of present address; Certificate for changes of permanent address; Certificate of changes of present address. All of them are included in the scope of the Regulation according to Art. 2(1)(k).

The habitual residence is determined under Art. 48(7) of the BCPIL. This is the place «where a person has been established to reside predominantly, without this being related to the need for registration or a residence or establishment permit. In order to determine this place, special account must be taken of personal or professional circumstances arising from the person's lasting relationship with that place or from his intention to establish such a relationship (...)».

The habitual residence of persons within the meaning of Art. 48(7) of the BCPIL is a factual criterion, as no registration is required for its occurrence and therefore it is assumed that it reflects to the greatest extent the actual place where the person resides. The scope also includes persons who reside illegally on the territory of a country. It does not depend on the usual place of residence of other persons, it is independent. A precondition for its occurrence is «predominant» establishment of the natural person within a certain country. In this sense, in order to have this prerequisite, social integration through personal and professional relationships is necessary, from which to result lasting relationships of the person with the respective place. No requirement for the expiration of a certain period of time has been introduced for the occurrence of the habitual residence. What determines is not the time, but the will to create personal and professional relationships. For example, a person who intends to return from the very beginning of his or her residence, even if he or she establishes lasting relationships, retains his or her habitual residence. Another example is when a person has found a home and a job and as soon as he arrives, he has a subjective intention to settle in a certain place. That person

shall be deemed to have acquired his habitual residence in the territory of that State. In order to guarantee the interests of third parties, it is considered that a subsequent change in personal and professional relations, and hence in the usual place of residence, has an exnunc effect.

According to the Law on Foreigners in the Republic of Bulgaria (briefly, the LF)<sup>18</sup>, the residence of foreigners in the Republic of Bulgaria is carried out on the basis of visas, international agreements or agreements of the European Union with third countries for visa-free regime; acts of the law of the European Union, which are in force and applied by the Republic of Bulgaria; permission of the services for administrative control of foreigners. Foreigners reside in the Republic of Bulgaria: short-term – up to 90 days within each 180-day period from the date of entry into the country; long-term – with a permitted term of up to one year, except in the cases provided for in this law; long-term – with an allowed initial term of 5 years and possibility for renewal after submitted application; permanently – with an indefinite term allowed. Visas are issued for short-term and long-term residence, according to Art. 9a of the LF. Visa is issued by personalizing a «visa sticker» according to the model of the European Union. The visa sticker shall be affixed to a regular passport or to a replacement regular travel document recognized by the Republic of Bulgaria. The conditions and the order for printing, storage, laying, annulment, rejection and destruction of the visa stickers and the visa application forms shall be determined by an act of the Council of Ministers. The officials authorized by the head of the respective structure in the Ministry of Foreign Affairs, in the diplomatic and consular missions of the Republic of Bulgaria abroad and in the border control bodies may take decisions on issuance, refusal to issue, cancellation and cancellation of visas, and in the services for administrative control of foreigners – for cancellation and cancellation of visas. To obtain the right to long-term, permanent or long-term residence, if he meets the conditions provided by law, the foreigner submits personally to the Migration Directorate or in sectors/groups «Migration» at the regional directorates of the Ministry of Interior a sample and documents according to regulations for the application of the law (Art. 23 of the LF). Visas, as well as permits/certificates for long-term, permanent or long-term residence are included in the scope of the Regulation according to Art. 2(1)(k).

#### **4.11. Absence of a criminal record.**

The last type of documents that Art. 2(1)(m) indicates are those who establish a lack of criminal background. It is a condition that official documents relating to this fact be issued to a citizen of the Union by the authorities of the Member State of which he/she is

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<sup>18</sup> Promulgated in Official Journal of Bulgaria No 153 of 23 December 1998, last amendment of 18 March 2022.

a national. The Criminal Records Bureaus are the body that issues the Criminal record certificate in the Republic of Bulgaria according to Model 1 of Annex 2 to Art. 45(1) of Ordinance of 26 February 2008, No 8 on the functions and organization of the activity of the Criminal Records Bureaus<sup>19</sup>. The criminal record certificate is an official document issued by the Criminal Bureau at each district court, at the request of a specific individual, which contains information about the criminal record of individuals – whether they have been convicted of crimes, including convictions for which they are rehabilitated, when required by law. Detailed description of the procedure for issuance a criminal record certificate is contained in the Ordinance No 8/2008.

#### **4.12. Voting.**

The Regulation also applies to public documents the presentation of which may be required of citizens of the Union residing in a Member State of which they are not nationals when those citizens wish to vote or stand as candidates in elections to the European Parliament or in municipal elections in their Member State of residence, under the conditions laid down in Directive 93/109/EC and Council Directive 94/80/EC, respectively.

In Bulgarian voting code<sup>20</sup> are settled different kinds of declarations which have to be presented in the municipal administration at the address of residence by the persons who wish to vote in non-national country or to stand as candidate to the European Parliament Elections in non-national country.

All official documents required to be presented by citizens of the Union residing in a Member State of which they are not nationals when those citizens wish to vote or to stand as candidates in elections to the European Parliament are included in the scope of Regulation (EU) 2016/1191.

#### **5. Conclusions.**

From the analysis that had been made it can be summed up three conclusions.

The first one is that the scope of regulation is very broad and through it is achieved one of its purposes - facilitating the free circulation of certain public documents within the Union.

Secondly, Bulgarian law has detailed regulation of more of the institutes that are settled in Art. 2(1)(a)-(m) of the Regulation and there are no obstacles for the application of the texts of the Regulation.

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<sup>19</sup> Promulgated in Official Journal of Bulgaria No 24 of 6 March 2008.

<sup>20</sup> Promulgated in Official Journal of Bulgaria No 19 of 5 March 2014, last amendment of 22 February 2022.

On the third place during the preparation of the text of Regulation, after discussions, was decided that Regulation would not apply to the recognition in a Member State of legal effects relating to the content of public documents issued by the authorities of another Member State. This decision may be defined as controversial because the practice places on the table the question of recognition in one Member State a personal status which has been acquired in another Member State (based on institutes that are not legally settled in the Member State of recognition or even contrary to its public policy), and which is certified by public document, included in the scope of the Regulation.

**ABSTRACT:** This paper is focused on the Regulation (EU) 2016/1191 – Public Documents Regulation. In particular, it concerns the general characteristic of the Regulation, the conditions to be met in order to apply the Regulation, and its scope of application. The analysis addresses specifically the documents that can be issued in the Republic of Bulgaria under its domestic law to certify the facts included in the scope of Regulation under Art. 2(1)(a)-(m). It is indicated which national act settles each document and clarified which are the requirements to be issued.

**KEYWORDS:** Regulation (EU) 2016/1191; public documents; scope; Bulgarian Code of Private International Law; Bulgarian Civil Registration Act; case C-490/20 of ECJ.