

CIVIL REGISTRAR: TASK OF THE PAST? CAREER FOR THE FUTURE?

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Introduction

I am civil registrar in Kaiserslautern, which is located in the federal state of Rhineland-Palatinate in the south-west of Germany. Kaiserslautern has about 100.000 inhabitants; the proportion of foreign citizens in civil-status registration is about 25 to 30 %. I have been working as a civil-status registrar since 1989.

German Registrars: Status, Vocational Training, Associations

In Germany, the local communities are in charge of the civil registration service and the registrars are local civil servants or employees. German registrars are independent in carrying out their duties. They are only bound by law, but follow the instructions of the Ministry of Interior. These administrative directions are elaborated in cooperation with the Ministry of Justice.

If a registrar refuses to execute a certain official act because he or she is convinced that the legal prerequisites are not fulfilled, only the court, i.e. a judge, can instruct the registrar to carry out the act or not. For example, if the registrar is convinced that a foreign citizen wants to get married to a German for the only reason of obtaining a permanent residence in Germany (“sham marriage” or “marriage of convenience”) he or she will refuse to conduct the marriage. If in doubt a registrar can also induce a court decision. This will for example be the case if the registrar finds out there is a loophole in a legal regulation and needs advice on how to proceed, or when a person has been placed under legal guardianship and the registrar doubts if the person possesses legal capacity and cannot dispel his or her doubt.

In Germany, there is a long tradition for registrars to organize their own vocational education and further training. The German Association of Registrars¹ was founded in 1920 and has been in charge of education and training of registrars ever since. Due to the federal structure of Germany associations also exist in the federal states, of which most of the German registrars are members. The associations of the federal states organize further training, mainly on regional level and form together the German Association of Registrars. All associations are non-profit organizations. The German Association is one of the founding members of the European Association of Registrars², which is regularly invited to the working sessions and conferences of the International Commission on Civil Status (ICCS).

Registrars in Germany are well-trained, given that they regularly make use of the various offers concerning vocational training. Registrars do not need to be lawyers, but a general education in public administration is required. Although registrars are independent in performing their functions especially in major cities the register offices are embedded in bigger units within the municipality. As

¹ Bundesverband der Standesbeamtinnen und Standesbeamten e.V. (BDS)

² Europäischer Verband der Standesbeamtinnen und Standesbeamten (EVS)

far as organization and structure of the office and payment are concerned, registrars are bound to the directions of the Mayor or Council.

Law and Jurisdiction

People tend to think that registrars are merely busy with performing wedding ceremonies. But the function of a registrar consists of far more tasks: registration of births and deaths, giving notice of marriages and civil partnerships, certifying declarations of parentage or name changing, maintaining the records, up-dating them by adding marginal notes on the entries regarding changes of civil status or name, issuing different kinds of certificates and providing other authorities with information. In this context I would like to mention that in Germany it is compulsory to keep the records in two original copies, spatially separated from each other. So, up-dating the registers is a quite time-consuming job.

Due to free movement within the European Union and increasing migration from all over the world registrars are more than ever confronted with international situations. Registrars have to examine thoroughly which law will need to be applied.

The German International Private Law is regulated in the Introductory Act to the German Civil Code³. Its Article 3 has recently been changed in order to stress the fact that regulations in Acts of the European Communities have priority over the regulations of international agreements and International Private Law.

European Law

The Council Regulation (EC) No. 2201/2003 concerning jurisdiction and the recognition and enforcement of judgments in matrimonial matters and the matters of parental responsibility ("Brussels II a") becomes more and more important in practice, although it sometimes seems to be difficult for the parties to obtain the certificate referred to in Article 39 concerning judgments in matrimonial matters.

International Conventions

It is a basic principle that international agreements have priority over International Private Law. International Conventions play an important role in the everyday work of German registrars, especially those elaborated by the European Council, the Hague Conference on Private International Law and, of course, the ICCS.

In my opinion the most important ICCS Convention to mention is – because of its practical benefits – Convention No. 16 concerning the issuance of multilingual extracts from birth, marriage and death records. I noticed that even non-member states do not only accept but request these international certificates. One must not forget, however, that these certificates are only extracts of records. So e.g. in the case of a full adoption the multilingual birth certificate will only show the adoptive parents, which may not be sufficient to check if there are any impediments to marriage regarding relationship by blood (consanguinity). Then a full abstract of the birth entry is required in Germany.

Other important conventions of the ICCS in the everyday work of German registrars are Convention No. 20 regarding the issue of a multilingual certificate of legal capacity to marry and Convention No. 3, which obliges registrars to transmit information on a person to the civil registrar competent for the place of birth of each of the spouses or of the deceased.

³ Einführungsgesetz zum Bürgerlichen Gesetzbuch (EGBGB); text available on website „www.gesetze-im-internet.de“

International Private Law

German International Private Law mostly refers to the national law of a person and only in some cases to his or her domicile. When German registrars check which law is applicable, e.g. if marriage capacity is concerned, they often end up in the regulations of foreign law. So it is essential for registrars to have information on foreign law at their disposal. As the interpretation of foreign law is a difficult task, registrars often have to contact the respective Embassy or Consulate General in Germany to get further information. Depending on the case they have to examine, they frequently get in touch with the German Embassy or Consulate General in the respective foreign country. I do not know of any branch within public administration on local level which has to apply and interpret the law of numerous countries.

Law has become increasingly complex. In the international context the different principles of International Private Law may lead in the same case to different results in the countries concerned. So registrars are frequently confronted with differences in parentage, name or family status of the same person. An approach to solve these problems – at least in the member states of the European Union – is the harmonization of the member states' International Private Law.

Current examples of problems in regard to legal recognition are same-sex civil partnerships and marriages, because the legal systems of countries provide either one or the other, some both and some none of them. The ICCS has worked out Convention No. 32 in order to solve this problem.

Jurisdiction

During the past 15 years the jurisdiction of the highest German court, the Federal Constitutional Court, has often led to changes in family law. When the Constitutional Court states that a certain regulation, e.g. in the German Civil Code, is not compatible with a basic right guaranteed by the German Constitution, the respective passage has to be changed and made compatible within a certain period of time. However, the work of registrars is not only influenced by this national jurisdiction but also by the jurisdiction of the Court of Justice of the European Communities and the European Court of Human Rights. The latest example is the decision of the Court of Justice of the European Communities in the case "Grunkin Paul"⁴. It does not affect the basic principles of German International Private Law but obliges Germany to acknowledge the name of a German child acquired in its country of birth and residence, although that name differs very much from the regulations of German family law.

Documentary fraud

Practical experience in the register office shows that legal and illegal migration from countries all over the world make it necessary to face another problem, namely documentary fraud. "Suspect" documents are frequently presented, e.g. passports, civil status certificates, certifications concerning marital status and affidavits. Then it is the registrar's decision how to deal with these documents. Very rarely the registrar will detect the falsification right away. Usually he or she, especially if well-experienced, will only have a clue which indicates that a document has been falsified. In several countries the German Embassies have stopped to legalize civil-status certificates. But on request of a German register office or foreigners' office the Embassy will submit the documents to a local lawyer of confidence to check whether the certifications and their contents are genuine or have been falsified.

⁴ 14.10.2008, C-353/06

In the case of suspected falsifications of passports the foreigners' office will help and contact the Criminal Investigation Department of the police. There are experts who have a wide range of technical means at their disposal to find out if a passport has been manipulated. It is important to combat documentary fraud and to clarify the situation as other authorities will rely on a certificate issue by the civil registrars.

There are also persons who are not able to produce any documents or proof of identity at all, especially refugees. In the case of a birth registration the registrar is then in a conflict. The United Nations High Commissioner for Refugees claims that the birth should be registered within an adequate period of time. On the other hand the registrar is obliged by law to register only proven facts. In order to solve this conflict, Germany introduced the following procedure: the registrar will register the birth, but will add a restrictive remark on the birth entry that there has been no evidence of identity and name of the mother and/or father; and in such cases, only full copies of the birth entry can be issued.

Reform of Civil-Status Registration in Germany

On 1st January 2009 the Civil Status Registration Reform Act⁵ entered into force. It completely changed the procedure of registration and the contents of the registers. Moreover, the new legislation offers for the first time the possibility of electronic registration. At the moment there are only a few registrar offices which have already started a full electronic registration. The others still produce paper registers. After a transitional period, however, which will end on 31st December 2013 at the latest, all register offices, even the smallest ones, will be forced to do registration by electronic means only.

The new legislation applies to the whole Federal Republic of Germany, though there will be differences in the 16 federal states: as the federal states have a quite strong position, they are entitled to make their own regulations on some issues of civil-status registration. They have, for instance, the possibility to establish a central register within their federal state, they define what qualifications concerning education and training a registrar is supposed to have and they lay down the registration fees, i.e. the fees for certificates, giving notice of marriage, wedding ceremonies, certificates of marriage capacity, declarations concerning the name of a person, etc.

The new regulations introduced further changes in civil-status registration. Births and deaths of Germans abroad recorded in a foreign country will no longer be registered centralised. Depending on the residence of the parties involved the event will be registered at the local register office, but only in case the entitled person applies for the additional German registration. If none of the parties has his or her residence in Germany the Register Office I in Berlin will remain in charge of the registration.

Family registers – introduced in 1958 – have been abandoned. The contents of the records and certificates have been reduced to the essential. Every change of civil status, name or – if requested - religion of a person will in future be remarked on the birth entry. But it will take several years until this system shall be fully effective and all information concerning a given person be provided by one individual electronic record. Records will only be kept and up-dated in the register office for a given period of time – birth records 110 years, marriage records 80 years and death records 30 years. Then the records will be transferred to archives.

⁵ Gesetz zur Reform des Personenstandsrechts (Personenstandsrechtsreformgesetz – PStRG)

Conclusion

The development of civil-status registration over the past 15 to 20 years shows that registrars had to face great changes and that they have numerous tasks to fulfil every day.

They have to improve and up-date constantly their knowledge in matters of national and international law. They have to include constantly the changes in family and civil-status law as well as court decisions into their daily practice. They need to know what legislation concerning civil status was in force in the past, no matter if 5, 15 or 50 years ago.

They must be able to read old hand-written records and have to keep pace with computerization and developments of IT tools whilst observing the regulations concerning security of personal data.

They have to meet the growing expectations of customers in regard to daily service and variety of premises for wedding ceremonies.

They must have a sense of justice and always be friendly, patient, flexible and diplomatic.

Especially in bigger cities the head of the register office more and more has to fulfil the function of a manager, being in charge of all matters concerning staff, organization, hard- and software, dealing economically with the financial resources and giving guidelines for work.

Experience shows that registrars have been constantly adjusting themselves to the changing general conditions of their profession and the quick pace of changes in legal framework and IT. In my opinion, this fact clearly demonstrates that the profession of a registrar is a career for the future and that registrars are well-prepared for the challenges lying ahead.