DE GRUYTER OPEN
International Conference KNOWLEDGE-BASED ORGANIZATION
Vol. XXIII No 2 2017

BIRTH CERTIFICATE OF STILLBIRTH AND SUCCESSION

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Abstract: *This article explores the subject of one question "de lege ferenda" which is related to the birth of stillbirths and the matters of succession that result from the amendment of the Civil Registration Act of 2015 and the establishment of a separate civil status certificate.*

Keywords: succession, birth certificate, stillbirth, potential viability, legislation

1. Succession relations in Bulgaria are regulated by The Succession Act.
The common understanding according to Bulgarian law of succession is that a child born alive has succession rights by intestate succession and by testamentary according to section 2 of the Succession Act. The child that is conceived by the date of the probation of the succession has succession rights only on condition to be born alive and viable. There is a rebuttable presumption that the child that is born alive is considered viable [1].
The civil status of natural persons is a set out of legal facts and indications which defer the legal status of a natural person. It is a complex legal status. Its components are designated by a legislative act and they are equal to all natural persons. The Civil Registration Act establishes three main types of certificates – a birth certificate, a certificate of legal marriage and a death certificate. Those certificates are executed in the occurrence of the relevant legal fact. They are official written documents with attesting function "erga omnes". They attest the civil status of natural persons. Their execution and content, as well as their amendments are compulsory persuant to a legislative act. For every child born alive it shall be executed a birth certificate and for every person who dies – a death certificate [2].

2. The Act amending and supplemending the Civil Registration Act established a new subsection 2 of section 42 [3] which introduced the principle of execution of a birth certificate of a stillbirth and the supplementing of section 43, subsection 1, second sentence of the Civil Registration Act provisions that the birth notification shall be made at least 24 hours after the birth if a stillbirth. This is new undertaking of the legislature of the civil status of natural persons.
The stillbirth isn't a legal person because it isn't alive so that the requirement of the fiction provisioned in section 2 of the Succession Act to take effect cannot be fulfilled.

3. The development of the social relations and legislation in respect of the civil status and the medical practice gives rise to the question of the term "potential viability" deliberated in Decision № 3008 of 17.03.2016 of the Supreme Administrative Court on administrative case № 6275/2015 which was premised with the Ordenance № 19 of 22nd December 2014 for the medical standard of Professional Organization of

DOI: 10.1515/kbo-2017-0113

Medical Nurses, Midwives and Associated Medical Specialists Guild Act [4]. This term is neither used in the Succession Act, nor in the Civil Registration Act. The plaintiff had a complaint against the provisions of the Ordenance and claimed that the viability criteria were too high and that they concerned "the rights of the parents of the new-borns who don't have the right to take their children, or to receive an executed birth certificate for the new-borns, or in case of death of the new-borns to bury them. This distinguishes a "newborn" which means viable according to the presumption provisioned in section 2, subsection 2 of the Succession Act and a viable child.

In the statement of reasons of the Decision of the Supreme Administrative Court mentioned above is noted that the provision of paragraph 1, point 17 of the Additional Provisions of the Ordenance № 19 of 2014 give the definition of the term "potential viability" grounded on the quantitative indicators of the weight of the conceived child and the pregnancy gestational week. The Decision proclaims that this medical standard is of significant matter in regard with the substantive rules which regulate the legal personality of natural persons and the difference between giving a birth and the case of abortion where isn't a legal person and a birth certificate is not issued. If the conceived child is under the weight of 800 grams and the age of 26 gestational weeks and he is born alive he shall be alive at least 72 hours in order to be considered "potentially viable". It is clear that the criteria are subject of matter to the intrauterine life of the embryo and the work of the medical staff according to the good clinical practices but the potential non-viability is discovered at a point after the time of the childbirth, i. e. the child is born dead.

There is no doubt in the importance of the term with regard to the medical point of view. As from the legal standpoint what matters is whether the term "potentially viable" and its interpretation is in accordance with section 1 of the Persons and Family Act which is the basis on which the Civil Registration Act defines the type of the birth certificate that shall be issued: a birth certificate according to section 42, subsection 1 or a birth certificate of a stillbirth according to section 42, subsection 2 of the Civil Registration Act. It also should be considered in regard with the application of section 43, subsection 2 and also section 61 and section 88 of the Civil Registration Act. According to the latter provisions of the Act there isn't a regulation of the execution of a separate death certificate in case of a stillbirth, but only a birth certificate of a stillbirth. Actually, the amendments of the Civil Registration Act of 2015 resulted in combining both birth and death certificate and establishing a separate type of certificate. It is apparent from an examination of its content and legal effect that it is established a new category of a civil status certificate – a certificate of a stillbirth which combines the basic characteristics of both of the certificates mentioned above. Where a child is born dead a birth certificate of a stillbirth shall be issued and in the box "name of the newborn" it shall be written "stillbirth" according to section 45, subsection 2 of the Civil Registration Act and in this case a death certificate shall not be executed.

4. Although the amendment of the Civil Registration Act is induced by humane and pragmatic reasons and the strong demands of the non-organizational sector the consequences of the new regulation could be revealed on a wider range in regard to civil law because it is coherent with the legal personality and the relevance to the mortal remains as property. This new interpretation of the matter is provisioned apart from the regulation of the cases of birth of a viable child followed by subsequent death given in section 46 of the Civil Registration Act. It confirms the statement that legal personality incurs at the

time of birth and a stillbirth could never be a legal person. The distinction from the abortion can be clearly defined. Though at the same time the new criteria, introduced in compliance with the amendment of the Civil Registration Act and its medical point of view give rise to the question whether the conceived child shall be given legal personality since according to the medical standards it is considered "potentially viable". This would also mean that the rules of civil law shall also be applicable including succession rights. The first question is whether the potentially viable can be considered to be subject to succession rights because according to the criteria mentioned above the child is conceived and there is intrauterine life. In other words whether a conceived child shall be given intrauterine legal personality. Moreover, this type of legal personality is coherent to the conditions of survival after the childbirth.

5. The acceptance of the theory of the "potentially viable" can be bounded with the personal right of intestate succession. According to the Succession Act there are four levels of successors (provisioned in sections 5 to 8 of the Succession Act). The deceased's children are successors of first level and they have preferences above all others. All children have the succession right of an equal part of the deceased's estate. On the ground of the legal fiction (section 2, subsection 1 of the Succession Act) the conceived child has equal rights with the new-born at the time of the probation of the succession in case he is eligible to live which means to be "potentially viable". The conceived child could also inherit on the ground of the right of substitution. Of course, at any case where the intestate succession is concerned it shall be proved that there are family relations based on the origin. The origin from the mother is determined by the childbirth according to section 60, subsection 1 of the Family Code including the cases where the mother gives birth to a child by assisted reproduction (section 60, subsection 5 of the Family Code). The origin from the father is established in compliance with the presumption of paternity which proclaims that the mother's husband is considered the child's father in case the child is born during the marriage or before the effluxion of 300 days of its termination (section 61, subsection 1 of the Family Code). The non-marital paternity could be established by recognition of the child or bringing an action. According to the Family Code a stillbirth could also be affiliated. The provision describing the case of a child who has left descendants is inapplicable and it cannot be an obstacle for affiliation because the Family Code regulates the cases in which a death certificate is issued (section 64 of the Family Code) but a question of matter in this case is the execution of a birth certificate of a stillbirth with its specific features which combine both a birth certificate and a death certificate [5].

Another question of discussion is succession by testamentary. In order for the will in the favour of a conceived child to take effect it is necessary not only the child to be conceived before the moment of the probation of the succession but also the testator shall explicitly dispose the succession rights of the conceived child who is "potentially viable". It doesn't matter whether there private or general testamentary dispositions are drawn up. In the latter case the child would be a full legal successor – heir (section 16 of the Succession Act).

In case of giving rights to a stillbirth, in respect the fact of his death it relevant to discuss the possibility of intestate succession on the ground of the right of substitution of his parents in case their death has happened before the probation of the succession in favour of one them according to section 10, subsection 1 of the Succession Act. This would be a specific case of granting succession rights which as

well as any other shall be provisioned by a legislative act. It is different if a stillbirth that is given the right to inherit dies before the testator, so that a specific case of succession transmission shall take place which is provisioned in section 57 of the Succession Act).

These considerations about the possibility of granting succession rights to the "potentially viable" are still relevant even after Decision № 11894 of 17th March 2016 of the Supreme Administrative Court [6] was held which repeals the Ordenance № 19 of 22nd December 2014. This situation occurs because neither the Civil Registration Act, nor the Persons and Family Act are repealed or amended. In a case of amendment the rational reasons provided by the judicial practice has to be updated and developed. The regulation shall not be provided only by subordinary legislation, but by a legislation act [7].

References

[1] Tadzher, *Civil Law of National Republic of Bulgaria*, General part, Chapter II, 1973, page 23, which provisions that only the one who is born capable of being alive shall have succession rights. According to Pavlova, *Civil Law*, General part, 2002, p. 236, the time of birth is when the embryo is separated from the mother's body and it is necessary to be cut the cord blood and all of the actions required by the medical science to be done for a new legal person to occur. In order to have legal personality the child shall have breathed through his lungs and it doesn't matter how long the new-born is alive. The Persons and Family Act doesn't set out a requirement for the child born alive to be viable. Section 2 of the Succession Act provides this requirement in order for the child to have succession rights. See and Ilieva, R. Course in Civil Law, Generality, Volume 1, Ciela, Sofia, 2015, pp. 181-188.

[2] The legislation before the promulgation of the Civil Registration Act and the civil status certificates, Tsanka Tsankova. *Civil legislation issues with the civil status certificates*, Lectures for post-graduate education, University of Sofia, Vol. XXVI, 1985, pp. 157-180. Detailed content of the probative value of documentary evidence, see Ivanov, A. Current issues of proof in civil proceedings. Sofia, New Star /Nova Zvezda/, 2015, pp.73-80.

[3] The Act amending and supplemending the Civil Registration Act was promulgated by *Official Journal*, issue 55 of 2015.

[4] The Ordenance № 19 of 22nd December 2014 for the medical standard of Professional Organization of Medical Nurses, Midwives and Associated Medical Specialists Guild Act was promulgated by *Official Journal*, issue 106 of 2014 and repealed by *Official Journal*, issue 22 of 2017.

[5] In order to establish the origin from the mother and the father see T. Tsankova, M. Markov, A. Staneva, V. Todorova, V. Petrov, E. Balevska, B. Decheva, V. Micheva. *Family Code*, 2015, pp. 227-290.

[6] Decision № 11894 of 17th March 2016 of the Supreme Administrative Court was promulgated by *Official Journal*, issue 22 and enacted on 14th March 2017.

[7] The questions of the legal persons, legal personality and legal capacity according to Bulgarian Civil Law are not discussed in the article.