

Transcript of foreign civil status documents and registration of events that took place outside the Republic of Poland.

Institutions transcribing foreign civil status documents to the Polish legal system as well as registration of events, which took place outside the Republic of Poland, were almost known from the beginning, for uniformly secular (already over 70 years old) registers of civil status in Poland. Initially, transcription was the exception to the principle that only domestic events should be included in the Polish civil register and that the consent of the supervisory authority was required to do so. The transfer of a foreign document itself to the Polish Civil Registration Act was preceded by an administrative decision. The law on civil status records of 1986 eliminated the supervisory authority's participation and the entire transcription procedure was transferred to the head of the registry office. However, it still required an administrative decision, which lengthened and complicated the procedure regulated by the Code of Administrative Procedure.

Changes in the functioning of society, the prevalence of migration, and the growing internationalization of personal and family relationships, results in the ever-increasing number of events that, although occurring in another country – remain relevant to the national legal system. This results in a growing number of transcripts submitted for transcription.¹ Recent transcription solutions do not allow thinking of transcriptions in terms of exception and its character indicates that it is part of the daily work of registry offices. Law of 28 November 2014 - Civil Status Act (hereinafter referred to as: prasc), it can confidently be said that it fundamentally that changed the way of registration of civil status in Poland, introduced extensive transcription regulations, precisely pointed out the procedures for carrying out the transfer of foreign civil status documents to the Polish registry of civil status (hereinafter referred to as: RSC). And although there are still doubts in practice, the most important of them have been significantly dissipated.

The new law on civil status records in Art. 104 regulates the way of transcribing and, in accordance with the above, a foreign civil status document, Evidence of the event and its registration may be transferred to RSC by transcription. It should be noted that a civil status document will not always be referred to as a civil status record (or whether a copy - condensed or complete), it is important that this document be of a civil status record. This document is transcribed only if it is recognized in the issuing State as a document of civil status, has the power of an official document, is issued by a competent authority and has no doubts about authenticity. Transcripts are subject to civil status documents issued by the competent authorities of the countries where separate civil status records are maintained. In the case of documents issued by the authorities of countries in which no separate civil status registration - such as Sweden - is under way, these documents will not be transcribed. This mode is defined in art. 99 prasc and will be described later in this occurrence.

The transcription consists in the faithful and literal transfer of the content of the foreign civil status document both linguistically and formally without any interference in spelling the names of persons indicated in the foreign civil status document. At this point it should be pointed out that according to the doctrine, the faithful and literal transfer of the foreign civil status record to the Polish RSC must be made taking into account the

¹See Dr. hab. Michał Wojewoda, Transcript of foreign civil status document - some comments on the evolution of construction in Polish law; Metrics. Studies in the field of law and civil status registration Year VI 2016 No. 2, p.52-53.

importance of the individual elements of its content. They should be conveyed not only according to their wording, but also to the function they perform. The entries in the foreign marital status should therefore be transferred in such a way, so that the Polish civil act retains its identity not only in terms of their wording but also functions.²The fact that the transcript consists in a faithful transfer of a foreign civil status does not mean that no change can be made to it. Changes are possible, and the procedure for making them is contained in the *prasc* regulations, which will be discussed later in this occurrence.

New legal arrangements for transcripts have introduced the obligatory transcription in certain situations, namely, it is obligatory when a Polish citizen applies for a national identity card or provides a PESEL number while holding a Polish civil status certificate confirming earlier events.

A transcript request can be submitted to the chosen head of the registry office. *Prasc* specifies the directory of persons who are authorized to make such a request and are the person to whom the event relates, which a transcript or another person is subject to and who shows a legal interest in transcription or a factual interest in the transcription of a document confirming death. The application can also be submitted to the consul. In such a situation, the consul sends the request to the USC (Registry Office) manager chosen by the applicant. Obviously, the application for transcripts can be filed by both a Polish citizen and a foreigner. The application may take any form, but preferably it is best to use templates or ready-made forms located on the website of registry offices, it must be accompanied by the original document, which is the basis for making transcription accompanied by an official translation into Polish made by:

1. a sworn translator entered in the list by the Minister of Justice;
2. a sworn translator authorized to make such translations in the Member States of the European Union or the European Economic Area;
3. a consul.

Translators are not subject to multilingual documents issued in accordance with Vienna Convention No. 16 of 8 September 1976 concerning the issue of multilingual copies of shortened civil status records.

It should also be noted here that the civil status documents on the basis of which the transcription is made are collective documents and are generally not recoverable. Of course, in special situations where the applicant does not have the possibility of obtaining this document again, the USC manager may, upon request, issue such a document in the file by stating a certified copy thereof.

The law does not require mandatory authentication of documents of foreign civil status under pain of denying them the probative value. In accordance with Art. 1138 of the Code of Civil Procedure, foreign official documents have a probative value equal to the Polish official documents. However, a foreign document whose authenticity has been denied should be authenticated by the Polish diplomatic mission or consular office. It is a general principle which also applies to proceedings in matters of foreign transcription of civil status.³

Confirmation of the authenticity of the document is also possible through the application of the Apostille institution, regulated by the 1961 Hague Convention.

In fact, the USC manager evaluates the document and, depending on the doubts as to the credibility of the document, requires full verification or authentication by Apostille.

²Cf. decision of the Supreme Court of 8 May 2015 – ref. III CSK 296/14 (Lex no. 1712817)

³ See Alicja Czajkowska; Civil Status Act with commentary; Lex a Wolters luwers Business, Warsaw 2015 pg. 230

After submitting the application together with the complete set of documents constituting the basis for the transcription and the receipt of the stamp duty of PLN 50, the USC manager shall transfer the contents of the foreign civil status document to the RSC in the form of material and technical activities. It is extremely important that the provisions of the 2014 Act abolished the USC's decision to issue a transcript administrative order, which simplified and accelerated the handling of cases. The USC Manager, when posting data in the Polish Civil Registration Act, is obliged to faithfully transfer the data of the foreign document; however, some data are subject to adaptation to the provisions in Polish acts so that the RSC is legible and uniform. Changes such as customization of spelling into Polish rules can only be made at the request of the person concerned and only in certain situations. The adjustment procedure is governed by art. 104 sec. prasc 7, which reads: Transcribing a foreign civil status document, which applies to Polish citizens who also use civil status records drawn up in the Republic of Poland, USC manager makes adjustments at the request of the person to whom the act applies to, in the form of technical activities the spelling of data contained in a foreign document into Polish spelling rules, if such a request has been made to request transcription. In addition to the spelling adaptation in Polish acts to the Polish language rules, as previously indicated, this may be made only upon request. The USC manager is obliged to name the locality located abroad in Polish spelling in the Polish spelling act established by the Commission for the Standardization of Geographical Names beyond the Borders of the Republic of Poland. For example, the name "New York" in the Polish act is written as "Nowy Jork", the name of "London" as „Londyn”, and the name „Paris” – is written as „Paryż”. It is also important to post the Polish civil act of names and surnames. The USC manager should write the name in the civil status register on the basis of a translation made by a sworn translator. Under the law on the profession of sworn translator, translators who translate names and surnames from languages that do not use the Latin alphabet or use another script system translates or transcribes these names on the basis of travel documents or copies thereof, and in the absence of these documents translates according to the rules of the spelling in force in the country where the translated document was prepared. This solution aims at unifying the names and surnames in civil status records with passports or identity cards or residence cards.

Sometimes, foreign documents confirming marriage do not contain a statement about the names of the spouses taken after the marriage or the names of children born of this marriage. The law currently in force offers a solution to this situation. According to Art. 106 (1) if a foreign marriage certificate confirming the marriage does not contain a statement of the spouse's name after the marriage, the spouses may file such a statement in the transcript request (that information should be included in the transcript request – Many forms available on the USC website include such statements) or at any time they can be submitted to the records of the manager who made the transcription. A statement about the names of children born of this marriage can be made in the same manner. When applying for transcripts proof of marriage to the consul, the parties may also submit in the statement of names in the filed application or to the report before the consul.

Disclosures also require the person to be informed about events related to the transcription. If the transcript is made at the request of one of the spouses, the USC manager shall notify the transcript of the other spouse and inform him/her of the right to make a statement of surname and if the transcription was made at the request of the person whose act is not applicable, the USC manager informs about the transcription of the person to whom the document relates. However, there is no need to inform the parent about the transcription of the birth certificate of the child made on the basis of the other parent's request.

Bearing in mind the evolving wave of migration, and the growing number of children who are born outside Poland, it seems that special attention should be paid to the origin of the child reflected in the foreign civil status document. According to the Polish Family and Guardianship Code, if the child was born during the marriage, or before the expiration of three hundred days of its cessation or cancellation, it shall be presumed that it comes from the mother's husband. This presumption does not apply if the child was born after three hundred days of the separation decision. The above presumption may be overturned only as a result of court action for denial of paternity. In the meantime, it is very common for a foreign civil status document to show that a child does not come from a mother only from a man who either has fathered before a foreign body or has been entered into it under other conditions in force in a given country. In such a situation, the USC manager transcribes a foreign document, in the Polish birth certificate, which contains data directly from a foreign civil status document, and then has the obligation to inform the husband of the mother of the marriage, instructing him at the same time about the right to bring a court action for denial of paternity. The USC manager may waive the notification of the maternal of the husband of the mother only in the case when it is not possible to determine his whereabouts.

It seems that this solution is not the best because the transcription of such an act leads to the disclosure of data that does not conform to the actual legal status. It is true that most often in a foreign document the data of a biological father is included, but in the Polish legal system, the presumption of paternity can only be denied in court proceedings, so in spite of the biological data of the father contained in the civil register, it is necessary to conduct paternity denial of the husband's mother.⁴

After transcription, the USC manager issues a complete copy of the civil status record to the applicant. This write-off confirms transcription and should not be used for other official acts before other authorities.

The transcript of a civil registration file does not often contain all the information provided for in Polish law, which may result in the impossibility of dealing with other official matters in Poland, such as making a passport or applying for family and social benefits. In that case, the USC manager at the request of the person which the act concerns may supplement or correct the act, if the applicant points to the documents constituting the basis of rectification, i.e. previously drawn up Polish civil status records, siblings or precursors or will provide a foreign document.

However, there are situations in which a USC manager must refuse transcription. The grounds for refusal to transcribe are contained in Art. 107 prasc and is a closed catalogue.

The manager refuses to transcribe for the following reasons:

1. The document to be transcribed in the issuing State is not recognized as a status document or does not have the power of an official document, or has not been issued by a competent authority, or raises doubts as to its authenticity, or confirms an event other than a given marriage or death, e.g. there is no possibility of transferring a document confirming the conclusion of a partnership to the RSC whether or not it is made by same-sex couples.
2. The foreign document was created as a result of transcription in a state other than the state of the event. SRPs may be transcribed documents that have been issued by the authority of the state in which the event occurred.

⁴ See Dr hab. Michał Wojewoda, Transcript of foreign civil status document - some comments on the evolution of construction in Polish law; Metrics. Studies in the field of human rights and civil status registration Year VI 2016 No. 2, p.57.

3. Transcription would be contrary to the basic principles of the legal order in the Republic of Poland. Transcripts are not valid evidence of marriage by homosexual couples or birth certificates that show that they are from same-sex parents, e.g. two mothers, two fathers. The refusal to make a transcription takes place in the form of an administrative decision from which the party can of course appeal to the higher authority and then to the court.

Another issue which cannot be omitted when discussing events that took place abroad - is the so-called special registration of an event that took place abroad and was not registered there. There is no separate registry of civil status (commonly referred to in Poland as "Article 99"), that is, which cannot be documented with a typical civil status document.

Art. 99 prasc include natural events such as births and deaths that have taken place abroad and have not been registered there despite the fact that in certain countries there is civil status registration. The legislator allows the possibility of making a birth or death registration in the Polish RSC in the form of material and technical activities on application or ex officio. There is no possibility, however, to register a marriage because it is unlikely that the marriage certificate contained in the country where registration of marital status is unlikely. There is, however, a possibility to register a marriage in this manner if it is in a state where no separate civil status registration is made, e.g. Norway or Sweden.⁵

An application for registration of an event, as in the case of transcription, may be made to a chosen USC manager and also to a consul, in the case of registration of a birth or death, concerning a Polish citizen. The application for registration of the event is accompanied by a document issued by the relevant foreign entity confirming this event, which is the basis for the filing of the civil status record by the USC manager together with the official translation and confirmation of the stamp duty of PLN 39. Procedures for adjusting the spelling to Polish spelling rules, rectifying, supplementing the civil status record, or the proper recording of names of places and names are actually the same as when transcribing.

Upon registration of the incident under Article 99, the USC manager shall provide the applicant with a complete description of the civil status record which confirms the registration. As in the case of transcription, it should not be used for other official acts before other authorities.

Regarding refusal to register foreign events in the Polish RSC pursuant to Art. 99, the USC manager has only two premises that allow him to refuse to make such a registration. This is regulated by Article 103, which states that a manager or consul refuses to register an event if the applicant does not provide a document confirming the event or the recording of the event would be contrary to the basic principles of the legal order in the Republic of Poland.

Bearing in mind the above, it should be pointed out that both the typical transcription of foreign civil status documents to the Polish RSC as well as the recording of events that took place outside the borders of Poland, are precisely and extensively regulated in the current legal system in Poland. It is precisely the transcription and registration in ar 99 prasc mode that is one of the mechanisms to ensure that civil status changes covered by a national registry are recorded in Poland even if a specific event occurs abroad.⁶ On the other hand, obligatory transcription in certain situations is to ensure the completeness and timeliness of the Polish civil registration system.

⁵ See Alicja Czajkowska; Civil Status Act with commentary; Lex a Wolters Business, Warsaw 2015 p. 218

⁶ ⁶ See dr hab. Michał Wojewoda, Transcription of foreign civil status document - some comments on the evolution of construction in Polish law; Metrics. Studies in the field of human rights and registration of civil status Year VI 2016 No. 2, p.59.

Number of transcriptions made and recording of events abroad at USC in Szczecin:

USC (Registry Office) Szczecin – Transcription and foreign registration			
Year	births	marriages	deaths
1990	130	154	41
1991	155	210	43
1992	209	210	41
1993	165	216	66
1994	150	193	42
1995	153	212	34
1996	155	217	46
1997	183	285	57
1998	250	286	51
1999	246	309	68
2000	248	331	70
2001	280	336	68
2002	290	364	68
2003	326	398	70
2004	288	440	84
2005	328	450	86
2006	500	437	98
2007	618	519	82
2008	585	450	80
2009	648	379	88
2010	562	317	75
2011	526	329	58
2012	678	348	76
2013	605	317	73
2014	688	343	45
2015	716	307	58
2016	1032	415	99