THE CHANGE OF THE NAME, ATTRIBUTE OF IDENTIFICATION OF THE NATURAL PERSON. ELEMENTS OF COMPARATIVE LAW

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ABSTRACT*: Unlike other legal systems, such as the English one, where you don`t need a specific reason to change your name or surname, as long as the desired change does not have a fraudulent purpose, such as avoiding debt settlement or performing of an obligation, otherwise the name change can take place at any time, the Romanian legal system allows the name change only for* ***certain legal considerations****, based on an* ***administrative decision****.*

KEYWORDS*: name, surname, change, legal reasons, administrative decision.*
JEL CODE*: K15*

The provisions of the New Civil Code[1] do not include a definition of the name, indicating only its structure through the provisions of Article 83, showing that *"the name includes the surname and first name"*.

Therefore, this article merely confirms the use of the notion of "name" in the doctrine and jurisprudence, namely *"lato sensu"* meaning both surname and first name, and *"stricto sensu"* indicating only the surname of the natural person.

There is no progress compared to the provisions contained in the old Civil Code as its content neither included a definition of the name. Over time, it became to the legal doctrine, the obligation to give a definition of this attribute of identification of the natural person.

Professor Gheorghe Beleiu defined the name as: *"that attribute of identification of the natural person that consists in the human right to be individualized, in the family and in the society, by the words established, according to the law, with this meaning."* (Beleiu, 1992)

However, according to the same author, this definition has a great downside, due to the circumstance that it does not reveal the essential quality of the name, specifically the fact that it is a *non-patrimonial personal right* ((Beleiu, 1992), pp 312), an aspect that

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[1] Law no.287/2009, which came into force on October 1st, 2011, republished and consolidated by Law no.60/2012 regarding the approval of O.G. no.79/2011 for the regulation of measures necessary for the came into force of Law no.287/2009 regarding the Civil Code and by the Law no.138/2014 for the modification and completion of the Law no.134/2010 regarding the Civil procedure code, as well as for the modification and completion of some related legal acts.

determines a series of its legal characteristics, implicitly the legal character, which implies the circumstance that the acquisition, modification or change of the name are regulated by imperative legal rules.

Nor does the European Convention on Human Rights expressly regulate the right to have a name, considering the name as a relevant element of private life and family life, thus placing the protection of this non-patrimonial personal right under the umbrella of Article 8 of the Convention. The European Court of Human Rights, for example, included under Article 8, in the case of Znamenskaya v. Russia[2], the assessment that the rejection by the local courts of the of the mother`s request to change the name of the dead child by which the connection with the biological father was sought, is not neither convincing nor justified for any legitimate reason, representing a violation of the applicant's right to privacy.

Moreover, the fact that the name is a non-patrimonial personal right, even if it does not expressly derive from a legal or doctrinal definition, is enshrined in the provisions of art. 82 of the New Civil Code, which shows that *"every person has the right to the name established or acquired, according to the law"*, provisions taken from the old regulation contained in art.12 align.1 of Decree no.31/1954[3].

Once the name is acquired, it can suffer over time, various changes or changes, aspects that can occur, as well as a reflection of the legal character of the name.

If the "modification" of the name is caused by changes in the personal status, in the civil status of the natural person, such as changes occurring in the filiation of the natural person, changes imposed by the institution of adoption or changes imposed by the institution of marriage, the notion of "change" of the name it is clearly delimited by it, having other causes and following a different legal regime.

The provisions of art.85 of the New Civil Code stipulate that *"The romanian citizens may obtain, under the conditions of the law, the administrative change of the surname and given name or only one of them."* This procedure is regulated *in extenso* by means of the provisions contained in the O.G. no.41/2003[4] regarding the acquisition and administrative change of the names of natural persons, as it was approved and modified by Law no.323/2003[5].

Nor does this normative act define the notion of *"change"* of the name, limiting itself to affirming in the content of article 3 of O.G. no.41/2003 that *"The name can be changed by administrative decision"*.

We mention that by changing the last name or first name, we understand the replacement of the last name or the surname, with another name or surname, based on an administrative decision, issued on the basis of an application ((Stătescu, 1970), pp126).

The right to ask the change of the name by administrative decision is granted to the natural person holding this attribute, this aspect resulting as we showed from the

[2]Znamenskaya v. Russian Federation judgment, June 2, 2005, 77785/01 available on https://jurisprudentacedo.com.

[3]Decree no.31 from the 30th of January , 1954 regarding individuals and legal persons, published in the Romanian Official Journal no.8 from the 30th of January, 1954, repealed by Law no.71/2011 for the implementation of Law no.287/2009 regarding Civil Code.

[4] Published in the The Romanian Official Journal no.68 from February 2, 2003.

[5] Published in the The Romanian Official Journal no.510 from July 15, 2003.

corroboration of the provisions of art.85 of the Civil Code with the provisions of art.3 of the O.G. no.41/2003.

The current regulation does not provide the possibility of changing the name by judicial decision, but this possibility is not excluded, as long as before the judgment has been completed the administrative procedure regulated by the provisions of O.G. no.41/2003, and the decision given by the competent administrative bodies, may be the subject of an action in administrative litigation, under the conditions of art.7 and the following of Law no.554/2004.

However, the court will only assess on the legality of the administrative decision, issued after the administrative procedure of changing the name was completed, canceling it as illegal or on the contrary maintaining it, but not being able to subrogate itself to the legal powers of the administrative body and to pronounce the decision instead of it.

The procedure for changing the name, both in terms of surname and first name, is triggered on the basis of a request, expressly formulated.

Romanian citizens can make such a request (art. 4 of OG 41/2003), at the same time being able to formulate such a request also the stateless persons without citizenship domiciled in Romania, in their case, the procedure for changing the name by administrative decision taking place, under the same conditions, as in the case of the Romanian citizens (art.6)[6].

The adult, with full exercise capacity, makes personally and alone the request, while for the minor, the provisions of art.7 paragraph.1 of the O.G. 41/2003 provide that the request for name change is made by parents or guardians, with the approval of the child welfare authority. If the minor has reached the age of 14, the request will be signed by him (art.7 al.3) and for the legally incapacited persons the request is made by the guardian, with the approval of the child welfare authority (art.7 al.4).

The change of the child's last name can be requested at the same time with the change of the parents' last name, but the request can be made also separately, at any time, for valid reasons (art.8 of O.G. 41/2003).

In a very little and non-essentialy modified form, in relation to the content of the old regulation, article 9 stipulates that if the spouses were get along to carry a common family name during their marriage, the consent of the other spouse is required to change it, and the change the family name of one spouse has no effect on the family name of the other spouse.

These provisions only resume the old regulations concerning the change of name by administrative decision, contained in Decree no.975 of October 23, 1968 reguarding the name, repealed precisely by O.G. no.41/2003[7].

O.G. 41/2003, however, comes to complete the old regulations, providing that in the case in which the parents do not agree on the change of the child's name, the child welfare authority will decide (art.7 al.1 of the second thesis), and in the situation in which the request of change of the minor`s name is made only by one of the parents, it is necessary the agreement in authentic form of the other parent, except when the latter is legally incapacited, it is declared missing or he has lost his parental rights.

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[6] Article 6 paragraph 1 of O.G. 41/2003 was amended by Law No. 243 of June 23, 2009, published in the Romania Official Journal no. 455 of June 29, 2009.

[7] Published in the The Romanian Official Journal no.136 from October 2, 2003.

Also, in addition to the old regulation contained in Decree 975/1968, O.G. 41/2003 provides that if the child's parents are deceased, unknown, or legally incapacited, declared to be dead or missing or he has lost his parental rights and no guardianship has been instituted, if the child has been declared abandoned by a final court decision, as well as if the court did not decide to entrust the child to a family or a person, according to the law, the request to change the name of the minor is made by the specialized public service for the protection of the child subordinated to the county council or, as the case may be, of the local council, of the Bucharest municipality sector (art. 7 al. 5).

Relevant addendums bring the current regulations, in comparison with the old provisions in this area, regarding the exhaustive enumeration of situations that are considered to be thorough, well founded or justified in order to request the change of name by administrative decision.

Thus, if the old regulation was providing, in the content of art.4 of the Decree 975/1968 that the Romanian citizens can obtain, for *valid reasons*, the change of the family name and first name, the current regulation maintains in the content of art.4 al.1 this formulation quite generic, adding as being *substantiated* and *justified* the requests to change the name listed limitatively in the contents of art.4 para.2 and 3 of the OG 41/2003.

In the opinion of the Romanian legislator, are considered *substantiated* reasons for changing the name (art.4 al.2):

The situation in which the name consists of indecent expressions, ridiculous or transformed by translation or otherwise (letter a); when the person in question has used, in the exercise of the profession, the name he wishes to obtain, giving evidence of this, as well as the fact that he is known in the society under this name (letter b); when, due to the lack of attention of the civil status officers or as a result of not knowing the legal regulations in this area, wrong mentions were made in the civil status registers or civil status certificates were issued with incorrect names, based on which other documents were issued (letter c); when the person in question has a family name or surname consisting of several words, usually reunited and wants to change it (letter d); the situation in which the person in question bears a family name of foreign origin and asks to bear a Romanian name (lit.e); when the person has changed his name of foreign origin into a Romanian name, by administrative decision, and wants to return to the name acquired at birth (letter f); when the parents changed their name by administrative decision, and the children ask to have a common last name with their parents (letter g); when the person in question requests to share a common family name with the other members of the family, a name that has been acquired as a result of the adoption, the maintenance of the name at the marriage, the establishment of the filiation or some changes of names previously approved by administrative decision (letter h); the situation in which the spouses agreed on the occasion of the conclusion of the marriage to bear the reunited family name and both request its change by administrative decision, choosing the last name acquired at birth by one of them or returning everyone of them to the previous name that has had before the marriage (lit. i); when the person in question proves that he/she was recognized by the parent after the birth registration, but, since he/she did not go to court to approve his/her family name bearing during his/her life, there is no other possibility of acquiring the parent's name than by administrative decision (letter j); when the first name is specific to the opposite sex (letter k); when the

person has been authorized to change the sex by a court decision that remains final and asks to wear an appropriate first name, presenting a legal document to prove his/her gender (letter.l) other such well-justified cases.

Also, there are considered *justified* the requests for the name change in the following cases, according to the Romanian legislator (art.4 paragraph 3):

The situation in which the person in question has adopted minors and wants them to bear another first name (letter a); when the marriage ceased by the death or by the court declaration of the death of one of the spouses, and the surviving spouse requests to return to the family name carried before the marriage or to the last name acquired at birth (letter b); when, after the divorce, a former spouse returns to the previous surname, which comes from another marriage, also divorced, and wishes to bear the name acquired at birth (letter c); the situation in which, following the cessation of the marriage by the death or by the judicial declaration of the death of one of the spouses, the other spouse remarries and, as a result of the dissolution of this marriage, he wishes to bear the surname acquired at birth (letter d); when the former spouse wishes to bear the last name he had in the marriage, in order to have a common name with the children entrusted to growth and education, with the consent of the former spouse, given in the authentic form (lit.e); when the parents have divorced, and the children entrusted to the upbringing and education to of one of the parents, who returned to the last name before the marriage, asks to bear his last name (letter f); when the adoption of a married person who has a minor child was annuled or revocated and after the the disolution of the adoption, the person in question returns to the family name before the adoption (lit.g); when one of the spouses, at the end of the marriage, took the surname of the other spouse, a name which he acquired by adoption, and after the conclusion of the marriage, the adoption is canceled (letter h).

Therefore, unlike the old regulation, the Romanian legislator has included in the current regulation three types of reasons which may represent considerations based on an application for administrative change of the name, namely: *valid, substantiated* and *justified* reasons.

If, in the situation of the last two categories, the legislator has understood to list a range of situations derived from the judicial jurisprudence, in the case of *valid reasons*, the legislator positions them in the same generic way, which can include any situation that escaped the reasons listed in art.4 al. 2 and 3 of the O.G. 41/2003, being a real outlet.

Regarding the procedure that is required to be followed in case the name change is desired, the person entitled to make such a request, given the administrative character of the procedure, will registrate it to the Public Community Service of Personal Records, which is subordinated to the Local Council of territorial administrative unit of domicile. This request will be submitted either personally or through a representative empowered on the basis of a special power of attorney or a delegation of lawyers (art.6 of O.G. 41/2003). From this perspective, the provisions of the current regulations do not differ radically from the old provisions in this matter, since the application was also submitted to the City Hall in the old legislation.

Equally, as in the old regulations, the name change request will be published in the Romanian Official Journal, part III, unless the request for name change consists of indecent, ridiculous expressions, or transformed by translation or otherwise, so that any interested person can oppose to the change request, in writing and motivated, opposal

submitted to the same institution to which the request is made, within 30 days from the publication of the extract from the request for the change of name, in the Romanian Official Journal (articles 10 and 11 of OG 41/2003).

In addition to the circumstance that the request for name change is required to be motivated, so as to circumscribe the reasons provided by art.4, it will have to be accompanied by a series of documents, namely: certified copies of the civil status documents of the person requesting the name change, a copy of the Romanian Official Journal in which the extract from the name change request was published, from the publication of which no more than 1 year had passed, the applicant's criminal record, the consent drafted and acknowledged by a Civil Law Notary of the other spouse, in cases where the change of the common name is requested, and in cases concerning the persons lacking the legal capacity are concerned, the decision of approval by the Child Welfare Authority is also requested.

The administrative decision on the request for the change of the name is not taken by the entity to which the documents are submitted, but it will send the entire file to the Public Community Service of Personal Records of the local County, respectively that of the Municipality of Bucharest (articles 12 and 13). These entities, checking the cumulative fulfillment of all the conditions imposed by the legislation, will make a decision within 60 days from the receipt of the request, the administrative decision of rejection, communicated up to 10 days from the issuance, being able to be attacked in the administrative court, in the codifications of art.7 and 8 of Law no.554/2004.

In the old regulation, the competence to solve the change of name request belong to the General Inspectorate of the Romanian Police, and the appeal against a negative decision was solved by the Department of Home Affairs.

In the case of the affirmative resolution of the request, the administrative decision is transmitted in copy to the public service where it was registered, which will immediately inform the applicant. The copy will be issued to him after the administrative decision within a maximum request period of 90 days, only if he will make a request to which he will attach the proof of the extrajudicial stamp payment, the only situation excepted from such payment, being the one in which the request for a change of name was due to the fact that the initial name contained indecent, ridiculous expressions, or was transformed by translation or otherwise (art. 14). If the request for the copy after the administrative decision is not made within the mentioned period, the copy after the administrative decision will be returned to the issuing authority.

Following the release of the copy, taking in consideration the administrative decision, there will be made mentiones on the birth certificate of the applicant or, if applicable, on the marriage certificate. The effects of these changes will occur from the date the mention was made. At the same time, the public service will communicate the administrative decision to all public entities that have records and information that require the use of the changed name (art. 20).

In any other situations that require the proof of the change of the initial name, this is done with the administrative decision which admits the change of the name or with the certificate issued by the public service, based on the administrative decision (art.17).

Obviously, in the situation of rejection of the request for the change of name, a new request can be made only if the same initial factual situation subsists, which led to the

rejection of the request, or if the effects of the opposition that led to the rejection, as provided in the provisions, have ceased (article 19 of the O.G. 41/2003).

A regulation that comes to facilitate the complex procedure described above, and to fulfill a legislative vacuum, is contained in art.20 of O.G. 41/2003 which regulates the situation of the persons whose name was registered in the civil status registries translated into a language other than the mother tongue or with the spelling of another language, in which case they may require the inscription or mention of the name retranslated or by the spelling of the mother tongue, in which case the request of the interested one, submitted to the service that keeps the civil status documents, will be solved by the Mayor.

Another element which is coming to complete the current regulations with respect to the old one, are the provisions of art. 21, where the legislator considers the situation of the third party who is harmed by an administrative decision, admitting the request to change of the name, in which case the person who has been harmed in a right or in a legitimate interest may request, under the conditions of Law 554/2002, the annulment of the respective decision, within a maximum limitation period of 6 months from the date date of the acknowledgment, subject to the proof that he could not make the opposition allowed by the law in this regard, for reasons not attributable.

Concerning the procedure to solve the requests for the name change in other legal systems, in the *Italian law system*, first of all, it should be emphasized the fact that the procedure for changing the name and surname is the one provided by the so-called Regulation for the revision and simplification of the civil status system (Presidential Decree no. 396/2000), by art. 89-94, as was amended by Decree 54/2012.

Italian law allows for the change of name, but, as has often been stated in the judicial jurisprudence of the Italian courts, this procedure has an exceptional character and is only allowed in the event of situations that deserve protection that can only be granted by changing the name or the first name.

The Italian legal provisions in force provide that: *"Anyone can change his name or add another name or change his first name, also, if he is ridiculous or ashamed or because he reveals his natural origin.*". In the judgments given over time, the judges have constantly emphasized that the request for a change of name, apart from the specific hypotheses identified and specified expressly by the legislator, can also be submitted on the basis of subjective and particular intentions: what matters is the requirement of protection and does not contradict the public interest regarding the stability and certainty of the identification elements of the person and his legal and social status.

In other words, the citizen cannot change his name and surname whenever he wants, but can do so only on the basis of specific factors and, in any case, without creating difficulties in his own identification. From a strictly legal point of view, in fact, the citizen does not have a subjective right to change his name and surname, but rather a legitimate interest, subject to the control of the public administration (the territorially competent Prefecture, where the applicant's domicile is located) .

Therefore, from a procedural point of view, the request to change the name is submitted to the competent Prefecture, indicating in its content, expressly, the reasons that led to this wish.

Without the legal provisions in this area making the express and limited clarification of these considerations, the Italian jurisprudence in this matter, has shown that it is

preferable that an interest to be a concrete, clear, known and worthy one, which does not conflict with the public interest.

Thus, the clearer and more acceptable the indication of the reasons is, the greater is the possibility of the acceptance of the request. If the Prefect considers that the application is worth considering, he will authorize the interested party to post an announcement containing the summary of the application to the noticeboard of the territorial administrative unit of his place of birth and residence.

This announcement will last 30 consecutive days. The person or persons who may be interested in this, may object to the name change request, within thirty days from the date of the last day of the announcement or from the date of the last notification to the persons concerned. After these 30 days, the interested party must send to the Prefect a copy of the aforementioned announcement and the documentation containing any notifications to the persons concerned.

Subsequently, the Prefect, after examining the validity of the announcement procedure and the possible oppositions, will decide by decree, on the request for the name change. Therefore, if the Prefect accepts the request to change the name, he will issue a decree authorizing this. This document must be noted, at the request of the interested party, in the applicant's birth certificate and in the birth certificates of those interested. (Garau, 2019)

It can be observed from the summary analysis of this procedure that, the legal reasons that may be the basis for such a request are not exposed as exhaustively as in the Romanian legislation, but in principle the procedure is the same, and it is also within the competence of solving the request to the administrative public entities.

In the *English legal system*, British citizens can change their name or the child's name, whenever they want.

Changing the name in the English legal system does not imply an "official" place, a public institution where applicants go to register the request for the name change. They can simply adopt a new name and start using it. However, they will need what is called a “deed poll”, or another type of formal document, in order to be able to update their passport, driver's license, bank accounts and other official records, to be able to bear the new name.

“Deed poll” is actually a legal document of a private nature, which proves the name change and can be used, as I said, as proof of the new name for the purpose of changing the passport, the driving license and other official documents. It is the responsibility of the one who has chosen to change his name to transmit to all the public institutions and organizations about the name change.

The minimum age for running your own “deed poll” is 16 years. Children under the age of 16 may change their name through the person with parental responsibility for the child, provided that all institutions with responsibilities in the field, to agree.

If the applicant is 16 or 17 years old, he does not need the consent of the parents to change his name, since from the legal point of view he fulfills the conditions to choose his own name. However, if there is a court decision ruling in force that prohibits the minor from changing his name, he will have to wait until he is 18 years old.

It is imperative that the applicant has complete legal exercise capacity, respectively judgement, when signing a "Deed poll", otherwise, it can be considered null. This means

that you must be able to make a decision for yourself, without being affected by any impairment or disturbance of the mind, whether it is permanent or temporary.

The "Deed poll" basically confirms that you have given up your old name and that you will use the new name for all purposes, and this document, in order to have the necessary legal force, must be signed personally and at the same time by a witness. "Deed poll" is actually a private document, which does not require its registration before the courts. However, there is the option to "register" such a "deed poll" in the courts, namely in the Royal Courts of Justice. In case the applicant has turned 18 years old or older, this is done by sending the documents, including a copy of the "deed poll", proof of British citizenship (in the form of a passport or naturalization certificate) and documents for marriage or divorce (if applicable). An official notification of the change of name must also be made in the London Gazette.

This is the official newspaper of the United Kingdom and it is used as an official recording journal. "Deed polls" that are registered with the courts will be kept in the court records for a period of 5-10 years. After this period, they are kept at the National Archives.

Although there is no legal requirement for the registration of a "deed poll" in the courts, the main advantage in this regard is that a copy will be kept officially and in this way, it will be easier to provide evidence of the new name. So if the "deed poll" is lost, a certified copy will be obtained from the National Archives.

The procedure for changing the name by "deed poll" can be completed in a few weeks.

In conclusion, contrary to the preconceived conclusion regarding British conservatism and this nation's opposition to the new, it can be easily observed that the procedure for changing the name in British law is faster, and less formalistic, in other words, more accessible to the citizen, aspect which may constitute a point of reference in a possible proposal *de lege ferenda*.

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