

„Reasonable” Grounds for Name Change through Administrative Procedure

PhD. Candidate Oana Nicoleta RETEA

University of Craiova (ROMÂNIA)

retea.oana.nicoleta@gmail.com

”This work was supported by the strategic grant POSDRU/159/1.5/S/141699, Project ID 141699, co-financed by the European Social Fund within the Sectorial Operational Program Human Resources Development 2007-2013”.

Abstract

Changing family name or forename is that operation of replacing them or only one of them at the request of the interested person with another one through an administrative decision. Regulation of name change is in Government Ordinance no. 41/2003 on acquiring and changing the names of individuals administratively. Just because the name is an attribute for identifying individuals in social relations and in the family, it is clear that the social interest requires that the name should be constant and not necessarily unchangeable.

Keywords: *name, administrative change, reasonable grounds, regulation.*

Preliminary Issues

According to art. 85 of the new Civil Code, "Romanian citizens may obtain, under the law, the administrative change of surname and forenames or only one of them." Changing family name or forename is that operation of replacing them or only one of them at the request of the interested person with another one through an administrative decision[1]. So, unlike the name modification, which leads only to last name change, the administrative change of the name can see both the last name and the first name[2].

The administrative change of the name, unlike the family name modification, is not supposed to replace it as a result of changes in the status of the person [3], but its replacement is based on solid grounds expressly regulated. The administrative replacement of the name occurs only on request, once again limiting the change of surname of the modification of the surname. In the case of name modification, its replacement is not conditioned by any expression of will of that person in such a direction [4].

In Roman law, the name change was possible unless the change would have been fraudulent. This possibility was preserved in the Middle Ages, with some

restrictions: craftsmen they could not change the name when it served as trademarks; notaries could not change neither their name nor their normal signature without an authorization. Gradually monarchy has increased control in this matter, tending to turn a social institution into a police one. Thus, in the old France there were settled laws like this: no citizen will carry a different forename or surname than that the one established by his act of birth, and those who forsake them will be held to retake them [5].

The first national law governing the whole name[6] issue is the "special" Law from March, 1895, which offers concrete solutions for different situations, not containing " scattered provisions " [7] like the Code. Due to legislative provisions that were void until then it dragged in serious problems. There were some foreigners who carried on a trade in a corner of the country, they went bankrupt, therefore they went to another corner of the country and Romanized theirs names, changing it completely, because there was no relative formality to change the name. So Rosenfeld changed into Rosetti, Rosenzweig into Roznoveanu and Braustein in Brateanu. Although this law was fought with great talent by Delavrancea Barbu it was, however, adopted to meet the needs of those times[8].

According to art. 1 para 4 of the earlier said law, anyone could take any name, the only condition being that you had no right to take a historical name. But what is a historical name? Nicolae Titulescu stated that historical names are not boyar's names, but it must have done something in history, not being enough to have exercised only the title of a boyar. Following the researches undertaken, Barbu Delavrancea said once with the name law debate, that there were only 130 historical names for Moldavia and Muntenia, the other names being boyar's names. While nobility was considered just a function, aristocracy sprang from an ancestral right, based on historical facts[9].

It is the principle that an individual should not be able to change family name (or Christian name) arbitrarily but only by its will. Just because the name is an attribute for identifying individuals in social relations and in the family, it is clear that the social interest requires that the name should be constant and not necessarily unchangeable [10]. In addition, the legality of the name requires that any change in the family name (or first name) can be carried out only when and as provided by law [11].

Regulation of name change is in Government Ordinance no. 41/2003 on acquiring and changing the names of individuals administratively, which expressly repealed Decree no. 975/1968 concerning the name. The right to request the change of name of the individual is recognized by art. 4 of O.G. No.41 / 2003, which provides that: the name can be changed administratively. The statement used in the art. 3 is similar to that used in art. 85 of the new Civil Code. Art. 4 to 21 of O.G. No.41 / 2003 regulates uniformly both the change of last name and of first name. Moreover, through the application, the person concerned may request either a change of surname and forename, or only the change of one of the two. In the following we are going to relate to the change of the name generally, taking into consideration, especially, the reasons that make possible the change of the last name.

The administrative procedure of the name change is regulated by art. 5 to 19 of O.G. no. 41/2003 and art. 106 to 114 of the Methodology on the implementation of the provisions on civil status, approved by H.G. no. 64/2011. Could obtain the administrative name change Romanian citizens, whether they have or not their residence in Romania [art. 4 para. (1) O.G. no. 41/2003 and art. 87 para. (3) of the Methodology for implementation of the provisions on civil status] but also stateless persons which have their residence in Romania (art. 5 of the O.G. no. 41/2003). Per a contrario, stateless persons not having their residence in Romania and foreign nationals would not have this right even if the latter have their residence in Romania [12].

„Reasonable” Grounds for the Administrative Name Change

Cases for the administrative change of the name are expressly provided in O.G. No.41/2003 [13]. While article 4 of Decree no. 975/1968, was only content to provide that the name change could be obtained for solid reasons, without providing further explanation in this regard, the Government Ordinance no. 41/2003 considers solid the grounds that are provided by article 4 which contains an illustrative list in para. (2) letter a) to j) and para. 3. That we are in the presence of an illustrative list it results from the elaboration of art. 4 para. (2) letter m), which refers to □other similar justified reasons□[14].

Although the paragraph (2) states that "are considered reasonable" requests for the change of the name where it contains the text of the law, and by para. (3) it provides that "are also considered justified" name change requests in the cases listed in its content, there is no difference of legal regime as the application is based on reasons provided by one or other of the two paragraphs. Separate listing of cases contained by the two paragraphs of article 4 can be justified by the fact that the situations provided in para. 3 regard specific cases related to various situations of civil status change and aimed, mostly, removing names change which occurs in such situations. Next we analyze the cases provided for in paragraph(2) of article 4.

According to art. 4 para. (2) of O.G. no. 41/2003, based applications are considered for the administrative change of name in the following situations:

a) when the name consists of indecent expressions, ridiculous or transformed by translation or otherwise; It should be noted that art. 15, para. (2) of Law no.119 / 1996 on civil status, republished in the Official Gazette no. 339 of 18 May 2012, imposes civil status officer the legal obligation to refuse any entry of name "composed of indecent, ridicule words". This was the only reason expressly stated in Decree no. 975/1968, art. 9, para. (2) and provided that the request for change of name was exempt from disclosure in this situation, aspect provided and by the current regulation. In addition, the ground above presented discusses the correlation with art. 20 of the O.G. no. 41/2003 on name retranscription. Transforming name by translation is the result of a mistranslation [15] of it in another language or from another language in Romanian, which may be corrected only by the name change, whereas in the case of faithful translations it is applied, on request, the name retranscription procedure provided for by art. 20. Also, to be in the presence of a transformation name otherwise, that is a reasonable ground for a change of name is necessary that this "other way" to be different from those provided by art. 20 para. (1) [16].

b) the person concerned has used in the profession, the name wants to obtain proving its use, and the fact that the he is known under this name in the society; This legal provision brings into question the imprescriptible name character. So we can say that prolonged possession of the name in certain circumstances (to be in the profession use and under this name the person is known in society) may give the holder the right to

acquire it. However, using the name of the profession exercise must be for a longer period, specifically to coincide with the profession exercise over time; and this use must be continuous and that the application be successful, the person must have been known by that name in society [17]. Ovidiu Ungureanu and Carmen Munteanu considers as provided above mentioned unfulfilled if the time is short and so the person could not make themselves known under this name in society. In other words, even if the condition of permanence is fulfilled, the name change request would be rejected. They concluded by saying that if the name cannot be lost through long disuse, it can be acquired under certain restrictive conditions (through acquisition); individual and social interests lead to this solution [18].

On the other hand, the regulation stated above provides the possibility of professional pseudonym transformation into a name. This could create confusion in this matter. In addition, professional use of the name is specific to individuals exercising a liberal profession (lawyer, notary, doctor, architect, bailiff, etc.), but the law prevents the exercise of these professions under cover of a pseudonym and oblige those concerned to use the name (real) [19]. By the pseudonym we understand the name chosen by the individual volunteer, under which it wishes to pursue a legal activity. Only Law no.51/1995 (republished in the Official Gazette, Part I no. 98 of February 7, 2011) on the legal exercise of the profession of lawyer also includes rules on the professional use of the name and result of its content is that is excluded the exercise of this profession under cover of a pseudonym. The normative acts regulating the exercise of other liberal professions excluded indirectly the previous possibility presented. As a result, an individual authorization for the exercise of such occupations involves first identifying him on the basis of civil status documents and other official documents such as studies, as they appear under their real name, thus being excluded exercising profession under another name [20].

Therefore, the regulation contained in art.4 para. (2) letter b) is applicable for those individuals who are active in the literary, artistic, religious areas, or others like this, where the use of pseudonym is really widespread. This situation should be limitative interpreted, since is only about the name used to perform a professional basis,

otherwise it would have reached the imprescriptible legal character of the name expressing its acquisitive aspect [21].

In addition, Eugen Chelaru believes that the name referred to the legal provision cited is a false name, the person never acquired it legally and that is different from his real name. Under this name the individual has conducted work and is known not only in the field of activity concerned, but also in society in general. [22] The law regulates such pseudonym transformation in name, operation possible if the conditions set out above, are fulfilled. Since the establishment of these conditions it results that not every person can ask the pseudonym change into name, but only one who's true identity was not known to the public. It retains the existence of negative conditions, namely that the use of that name in the course of that person has not usurped the name of another person, so it could be possible to create confusion. Given its restricted scope and existence of legal regulations pseudonym (the right to express nickname is regulated alongside other non-property rights in Law No.8 / 1996 on copyright and related rights) express doubts regarding the need and usefulness of setting this name change case [23].

c) when the officers of civil status carelessness or by ignorance of the legal regulations made wrong entries in civil records or were issued civil status certificates with false names, which were issued under other acts ; This provision should be correlated with the provisions of the Law no.119 / 1996. So from art. 9 and art. 43, it results that the registration form that records marginal mentions on civil status (in civil records) is performed in the event of change of civil status of the person and in other cases provided by law. As a result, they will enter mentions on acts of birth / marriage or death in situations such as: a) establishing parentage by acknowledgment or final and irrevocable court consent on wearing the name; b) contesting recognition or denial of paternity; c) marriage, dissolution, termination or annulment of marriage; d) adoption, dissolution, termination or annulment of adoption; e) loss of or acquire of Romanian citizenship; f) change of name; g) death; h) rectification, completion or cancellation of civil status or the information placed on them; i) change of sex after a final and irrevocable judgment [art. 43 of Law no.119 / 1996].

Some of these changes in civil status, such as death or termination of marriage by death, have no effect on the name, so they are not part of the case governed by art.

4 letter c) Government Ordinance no. 41/2003. Because the order specifically refers only to "mentions" there are not a part of this area any form of drawing up records of civil status [24]. It should be noted that any mistake committed by officers of civil status in situations in which art. 4 para. (2) letter c) disposes, whether due to carelessness or ignorance of legal regulations, will be directed compulsorily by one of the methods covered by Law no. 119/1996, republished: cancellation, modification or amendment of civil status and mentions on them, which is performed only on the basis of a final judgment [art. 60 para. (1)] or by rectification of civil status and mentions on them, which may be ordered by the mayor of the territorial administrative unit that has kept the act of civil status [art. 61 para. (1)].

In addition, the provision under consideration should be seen in close connection with the institution of cancellation, rectification and completion of civil status and mentions on them, which are regulated by Law no. 119/1996 and Methodology for the uniform application of the provision of Law no. 119/1996, published in Official Gazette no. 151 of 2 March 2011.

d) when the person concerned has his family name or surname consisting of several words, usually combined, and wants to change it; In this case the name change is justified when a person has a name consisting of several words and wants a family name or a simple name, thereby giving away one or more words.

e) when the person has a surname of foreign origin and required to wear a Romanian name; In order to achieve rapid integration of foreigners in Romanian society, the law supports those who have acquired Romanian citizenship.

f) the person has changed the name of foreign origin in a Romanian name, administratively, and wants to return to the name acquired at birth; Eugen Chelaru states that the return should be made necessarily at the name acquired at birth and not the one worn from the first changes, which may be that acquired by marriage or otherwise [25].

g) when the parents changed their name by administrative means and children required to wear a common family name with their fathers; It takes into account the situation where parents have a common name, different from that of their children. The common name must be the result of the parents name change administratively. Changing the

surname of the parents doesn't impose automatic change of surname of children. The same results from art. 8 par. (1) of O.G. no. 41/2003, which states that the change of surname of the minor may be done concurrently with the name change of his parents or, for good reasons, separately. Reasonable grounds covered by the provisions quoted above as to whether the separate formulation of the two requests and not reasonable grounds that justify the name change request that are provided for in art. 4.

h) when the person required to wear a common family name of other family members, a name that has been acquired as a result of the adoption, maintaining the name at marriage, the establishment of parenthood or of previously approved name changes about administrative; This supports the idea of a traditional family unit, so as to offer those who are in family relationships that flow from marriage, kinship or adoption to be able to adopt a common family name [26]. O.G. no 41/2003 does not provide its own definition of the concept of "family", so you will need to refer to the concept of common law legal family, as it is configured by the provisions of the new Civil Code. As the Family Code repealed with the entry into force of the new Civil Code, the current regulation does not contain a definition of family and uses this notion in a limitative or large way. So of art. 258 of the new Civil Code, whose marginal denomination is "family" [27] it results that the family in the limitative sense, is made up of husband, wife and their children. At the other extreme is art. 516 of the new Civil Code, which establishes the maintenance obligation between former spouses, which leads to the conclusion that relations between them are treated as family relationships [28].

i) when the spouses during the marriage agreed to wear both surnames combined and they ask to change it administratively, opting for surname acquired at birth or by one of them choosing to return to their names before marriage; The couple have a common family names if at the marriage declared, whenever possible option provided for in art. 282 new Civil Code, that they will wear during the marriage a common name, which may be the name of one of them or their names combined [29].

j) whether the person concerned provides evidence that it was recognized by the parent after the registration of birth, however, failing to go to court for approval of his family name in life, there is no option to acquire the parent than by administrative means; Government Ordinance no. 41/2003 it covers only children born of unknown parents,

who either established their lineage to one of the parents, after registration of birth, or that after the establishment of parentage from the first parent and have established and compared to the second parent, and children born out of wedlock, with filiation determined on birth registration to one of the parents, who subsequently establish their parentage and to the second parent. Establishing parentage should be by recognition, not by court order because otherwise the court would have had the opportunity to rule on an application for a declaration of wearing name, according to art. 438 of the new Civil Code.

From art. 450, in conjunction with art. 449 new Civil Code it results that, as a rule, establishing the name of the child born out of wedlock is made with the recognition of his parentage by one or both parents. If filiation has been established first to one of the parents the child took his name and whether filiation is established and subsequently to the second parent, parents [30] may agree to modify this name. In such situation, the child would bear the surname of the parent to whom filiation has established later or combined name of his parents. In case of disagreement between parents guardianship court decides. The action for the declaration of wearing a certain name is imprescriptible since it hasn't a patrimonial character. Because the action requiring the wearing of the parent's name is imprescriptible and can be formulated including against his heirs it is believed that the name change through administrative means is only possible if that parent died heirless[31].

k) when the surname worn is specific to the opposite sex;

l) when the person was allowed sex change by final and irrevocable court decision and required to wear an appropriate name, with a forensic document showing his/her sex;

m) such other justified, well-grounded cases. From drawing art. 4 para. (2) letter m) that we are in the presence of an illustrative list.

CONCLUSIONS

The importance of this legislation is that it offers greater flexibility to change the name administratively. In addition, the legislature explained where the application name change is justified compared with the old regulation (Decree no. 975/1968) which contained only a general formula (reasonable grounds).

References:

- [1] Beileu, Gh. (2005). Drept civil român. Introducere în dreptul civil. Subiectele dreptului civil. Universul Juridic Publishing. Bucharest. p.410.
- [2] Ungureanu, O., Munteanu, C. (2011). Drept civil. Persoanele în reglementarea noului Cod civil. Hamangiu Publishing House, Bucharest, p. 185.
- [3] Irinescu, L., in Afrasinie, M. (coord). (2012). Noul Cod civil-comentarii, doctrină, jurisprudență. Vol I Art.1-952. Despre legea civilă. Persoanele. Familia. Bunurile. Hamangiu Publishing House, Bucharest, p.129.
- [4] Boroi, G. (2010). Drept civil. Partea generala. Persoanele. Hamangiu Publishing House, Bucharest, p.375.
- [5] Capitant, H., Terre, Fr., Lequette, Y. (2007). Les Grands arrêts de la jurisprudence civile. 12-th Tome 1. Bibliographie en droit des personnes Edition, Dalloz Publishing House, Paris, p.106.
- [6] Retea, O.N. (2015). Right to A Name. Insight into the Evolution of Legal Provisions, in Journal of Law and Administrative Sciences, www.jolas.ro, no. 3, pp.168-179 .
- [7] Hamangiu, C., Rossetti-Bălănescu, I., Băicoianu, Al. (2002). Tratat de drept civil român. All Beck Publishing House, Bucharest, p.139.
- [8] Titulescu, N. (2004). Drept civil, All Beck Publishing House, Bucharest, p.133.
- [9] Titulescu, N. (2004). Drept civil, All Beck Publishing House, Bucharest, p.135.
- [10] Dogaru, I., Cercel, S. (2007). Drept civil. Persoanele. C.H. Beck Publishing House, Bucharest, p.133.
- [11] Dogaru, I., Cercel, S., Dănișor, D. C., Popa, N., (2008). Bazele dreptului civil, Vol. I. Teoria generală. C. H. Beck Publishing, Bucharest, p.625.
- [12] Chelaru, E. (2003) Drept civil. Persoanele. All Beck Publishing House, Bucharest, p.30.
- [13] See Chelaru, E. (2003). Privire critică asupra noii reglementări a numelui. Law Magazine, 7, pp. 5-17.
- [14] Chelaru, E. (2012). Drept civil. Persoanele-în reglementarea NCC. C.H. Beck Publishing House, On-line Library, www.legalis.ro.
- [15] See C-168/91, Christos Konstantinidis against Altensteig- Standesamt and Landratsamt Calw.- Ordnungsamt., CEJ, 30 March 1993.
- [16] Chelaru, E. (2012). Drept civil. Persoanele-în reglementarea NCC .C.H. Beck Publishing House, On-line Library, www.legalis.ro.
- [17] Ungureanu, O., Munteanu, C. (2015). Drept civil. Persoanele în reglementarea noului Cod Civil. 3-rd Edition. Hamangiu Publishing House. Bucharest, p.262-263
- [18] Ungureanu, O., Munteanu, C. (2011). Drept civil. Persoanele în reglementarea noului Cod Civil. Hamangiu Publishing House. Bucharest, p.186
- [19] Dogaru, I., Cercel, S. (2007). Drept civil. Persoanele. C. H. Beck Publishing. Bucharest, p.133.
- [20] Chelaru, E. (2012). Drept civil. Persoanele-în reglementarea NCC .C.H. Beck Publishing House, On-line Library, www.legalis.ro.
- [21] Dogaru, I., Cercel, S. (2007). Drept civil. Persoanele. C. H. Beck Publishing. Bucharest, pp.133-134
- [22] For professional use of the name see Chelaru, E. (2003). Drept civil. Persoanele. C.H. Beck Publishing, Bucharest, pp. 41-42.
- [23] Chelaru, E. (2003). Privire critică asupra noii reglementări a numelui. Law Magazine, (7).p.12
- [24] Chelaru, E. (2003). Privire critică asupra noii reglementări a numelui. Law Magazine, (7).p.13.
- [25] Chelaru, E. (2012). Drept civil. Persoanele-în reglementarea NCC .C.H. Beck Publishing House, On-line Library, www.legalis.ro.
- [26] Cercel, S. (2007). Drept civil. Persoana fizică. Universitaria Publishing, Craiova, p.185.
- [27] Florian, E. in Baïas, F.A. (coord.), (2012). Noul Cod civil. Comentariu pe articole. C.H. Beck Publishing, Bucharest, pp.253-254.
- [28] Chelaru, E. (2012). Drept civil. Persoanele-în reglementarea NCC. C.H. Beck Publishing House, On-line Library, www.legalis.ro.
- [29] See case Burghartz against Switzerland, in Bîrsan, C. (2006). Convenția europeană a drepturilor omului. Comentariu pe articole. C.H. Beck Publishing, Bucharest, pp.600-601.
- [30] Retea, O.N. (2014). Aspecte privind armonizarea legislației cu privire la dreptul la nume în context național și european, in RSJ-Supliment, Universul Juridic Publishing, pp.73-80.
- [31] Chelaru, E. (2012). Drept civil. Persoanele-în reglementarea NCC .C.H. Beck Publishing House, On-line Library, www.legalis.ro.