THE LAW APPLICABLE TO THE CIVIL STATUS OF THE NATURAL PERSON

Lecturer Ramona DUMINICĂ, PhD.
Faculty of Economic Sciences and Law, University of Piteşti, Romania
duminica.ramona@gmail.com

Lecturer Lavinia OLAH, PhD.
Faculty of Economic Sciences and Law, University of Piteşti, Romania
lavinia_olah@yahoo.com

Abstract:
The participation of the individual in the legal relations of private law cannot be imagined without an identification of him.
The identification of the natural person in the legal relations in which he enters refers to his specific individualization with the help of certain attributes or identification elements stated by the law. Together with the name, domicile and residence, the civil status may be among these characteristics.
In the international private law, the civil status is considered as part of the personal status.
Starting from the provisions of Art 2572-2579 of the Civil Code, the current article aims an analysis of the conflictual norms in the area of the civil status of the natural person.
Keywords: *identification of the natural person, conflictual norms, civil status, personal status.*

Introduction

The identity of each person, viewed in relation to others, requires special protection embodied in the concept of “identification”, which thus determines the relationship between the individual and society.

The issue of control and verification of the identity of individuals has led to various legislative interventions, designed to reconcile the imperatives of individual freedom with the interests of public order, especially the security of persons and property [1].

The identification of the natural person is not the exclusive prerogative of civil law, because it is also necessary in other branches of law. Therefore, it is a complex legal institution, governed by legal norms belonging to several branches of law.

From the perspective of the civil law and of the private international law, three key elements allow the identification of a natural person: name, domicile and civil status. To these are sometimes added the pseudonym and the residence.

1. Civil status – element of the personal statute

In relations with an element of foreignness, the natural person benefits from what in private international law is called “personal status” and includes marital status and civil capacity.

In the literature in the field of civil law, the notion of civil status or civil status is defined as *the legal means of individualizing the individual by bringing together the personal qualities to which the law gives such significance* [2]. The concept is used with the same meaning in private international law.

The legal definition of the marital statute is stated by Art 98 of the Civil Code in force as “*the right of the person to individualize, in the family and society, through the strictly personal qualities that derive from the acts and deeds of marital status*”.

The content of the marital status may be analyzed from two perspectives: the subjective right to individualization of every natural person and a sum of certain relevant qualities belonging to a specific natural person.

The subjective right of individualization through marital status confers the following prerogatives to the holder: the possibility of man to individualize through his marital status; the possibility of claiming to be individualized, by others, through his marital status; the possibility to resort, in case of need, to the coercive force of the state.

Marital status, as a sum of personal qualities, is related to major events that occur in human life: legal facts (especially birth and death) and legal acts (recognition of filiation, adoption, marriage, court decisions by which it is resolved civil status actions). The acts and facts of marital status form the sources of civil status. The law is what determines the personal qualities that are part of the marital status: born in wedlock, out of wedlock or unknown parents, age, sex, unmarried, married, divorced, widowed, remarried, relative or related to someone, etc. [3].

These are qualities specific only to the natural person, reason for which it has been stated by the legal literature that the marital status is what really separates the natural person from the legal person [4].

Regarding the legal features, as it results from the legal definition, the marital status is a non-patrimonial personal right, so it has the legal characteristics common to the category of rights to which it belongs: it is opposable *erga omnes*, inalienable,

imprescriptible, personal and universal, but also has a specific character. Thus, the marital status is indivisible, in the meaning that the natural person has one and the same civil status, at a certain moment, in relation to any other subjects of law.

The civil status shall not be mistaken with the use of the civil status (state possession) because the first notion considers the statics, while the second one considers the dynamic of the debated attribute of identification.

The use of the civil status (state possession) represents that legal status resulting from the cumulative meet of three elements: nomen, tractatus and fama.

Nomen refers to the individualization of the natural person by carrying the name correspondent to the claimed civil status. *Tractatus* is the consideration of a person, by those close to him, as the person to whom the marital status of which he relies belongs. *Fama* has the significance of recognizing in the family and in society that the marital status of a certain individual belongs to him/her.

The main effect of using a certain civil status consists in the presumption that it is real, namely in accordance with the marital status to which the individual in entitled to. It is a relative presumption, which may be amended by any means of evidence, as it can be combated with any means of evidence[5].

2. The law applicable to civil status

2.1. The rule

According to the international Romanian private law, the conflictual norm in the area of civil status is identified in Art 2572 Para 1 of the Civil Code which states that “The marital status and capacity of the natural person are governed by its national law, unless otherwise provided by special provisions”.

The legal provisions result in the rule of application of national law in the matter of personal status. National law is the law of the state of which the natural person, *lex patriae*, has citizenship. According to Art 2568 of the Civil Code “(1) *The national law is the law of the state of which the natural person has citizenship, or, where appropriate, the law of the state of which the legal person has citizenship*. (2) *If the person has more than one nationality, the law of the state of which he or she is a national and to which he or*

she is most closely connected shall apply, in particular through his or her habitual residence. (3) *In the case of a person who has no nationality, the reference to national law is understood to be made to the law of the state where he has his habitual residence.* (4) *Para 3 shall apply also for refugees, according to special provisions and international convention to which Romania is part*".

"National law" is thus the criterion for determining the *lex causae*, both in the case of conflicts of laws, but also, in some situations, in international civil proceedings. The doctrine also has stated that "*National law is a broad notion, usually related to three points of connection: citizenship, domicile and residence. International private life adds another point of connection, used in the field of private international law – the habitual residence*" [6].

Therefore, the following elements are subject to the national law, as the sum of some personal qualities, which fall within the content of the civil status of a natural person: those related to filiation, related to marriage, adoption, kinship, affinity [7]. Also, are subject to the national law the use of the civil status, as well as the actions of civil status.

2.2. The registration of the acts and facts of civil status

The elements comprising the civil status of a natural person may have as source either a legal or jurisdictional act or a legal fact *stricto sensu*. The main acts and facts forming the civil status of a person are mentioned in writings known as acts of civil status. These are drawn up in the interest of the state and of the person and have as objective the knowledge of the number and structure of the population, of the demographic situation, as well as the defense of the fundamental rights and freedoms of the citizens. These documents are recorded in the civil status registers [8].

As such, the civil status registrations have been defined as being "those legal operations for recording, in the civil status registers, the facts and legal acts regarding the civil status, as well as other elements provided by law, operations performed, under the law, by the bodies with civil status attributions" [9].

Civil status registrations can be made in two ways: registrations in the form of preparation of civil status documents and registrations in the form of marginal mentions on civil status documents.

The preparation of civil status documents takes place in the case of birth, marriage and death. In these situations, the birth certificate, the marriage certificate or the death certificate are drawn up, as the case may be.

By exception from the rule stated in Art 2572 Para 1 of the Civil Code, the registration of civil status acts and deeds that present elements of extraneousness is not governed by national law, but by the law at the place of conclusion of the act or by the law of the authority performing the registration, as provided by Law No 119/1996 on civil status documents [10].

For foreigners and stateless persons on the Romanian territory, a series of special rules are established regarding the registration of civil status documents and facts.

Thus, from the provisions of Art 4 of the Law No 119/1996 it results that foreign citizens who have their domicile or are temporary on the Romanian territory may request the registration of civil status documents under the same conditions as the Romanian citizens. Also, foreign citizens may request the registration of mentions on the civil status documents drawn up in the Romanian civil status registers. In the event that a foreign citizen married or died in Romania, the civil status officer who drafted the document will send, within 5 days from registration, an extract from the document to the competent body of the Ministry of Internal Affairs, which shall transmit it to the diplomatic mission or consular post of the respective country accredited in Romania, according to the obligations arising from treaties, agreements or conventions to which Romania is a party or on the basis of reciprocity.

With regard to stateless persons, they are obliged to request the registration of civil status documents and facts at the local community public service for the registration of persons or, as the case may be, at the competent mayor's office.

Not least, we specify that regarding the elaboration of the civil status documents of the Romanian citizens abroad, Law 119/1996 by Art 40 stipulates that this is done at the diplomatic missions, at the career consular offices of Romania or at the competent local authorities. Romanian citizens abroad have the possibility to request the registration in the Romanian civil status registers, from the diplomatic missions or career consular offices of Romania, of the civil status certificates issued by the foreign authorities, which concerns them, in case the registration of the act or the fact of civil status has been made

in advance to the authority of the state in which they are located. The registration shall be done with the consent of the heads of the diplomatic missions or consular offices, and their refusal is justified.

Conclusions

Marital status is considered a part of the legal status of the person, which is made up of all the qualities of the person to whom the law links certain legal effects, not to be confused with these effects and consisting of rights and obligations that fall within the content of legal relations in the area of civil status. By establishing the legal identity of the person, the marital status is what gives expression to his quality of subject of law.

Of *lege lata*, Art 2572 Para 1 of the Civil Code enshrines the rule according to which the marital status and capacity of the natural person are governed by its national law, unless otherwise provided by special provisions, thus preserving the tradition in the field, outlined since the eighteenth century, respectively that of to subject to a single law the marital status and capacity of the natural person.

References:

[1] Ion Dogaru and Dan-Claudiu Dănişor. *Drepturile omului şi libertăţile publice*. Lugoj: Dacia Europa Nova, 1997, p. 181.
[2] Eugen Chelaru. *Drept Civil. Persoanele*. Bucharest: C.H. Beck, 2020, p. 147.
[3] Eugen Chelaru. *Drept Civil. Persoanele*. Bucharest: C.H. Beck, 2020, p.148.
[4] Ovidiu Ungureanu and Calina Jugastru. *Drept civil. Persoanele*. 2nd Edition revised, Bucharest: Hamangiu, 2007, p. 194.
[5] Eugen Chelaru and Ramona Duminică. *Subiectele dreptului Civil. Manual universitar pentru Învăţământul Frecvenţă Redusă*. Pitești: University of Pitești Press, 2017, p. 48.
[6] Călina Jugastru, „Identificarea persoanei fizice – aspecte de drept internaţional privat", Revista *Universul Juridic* no. 8(2016): 60-61.
[7] Dragoș Alexandru Sitaru. *Drept internaţional privat*. Bucharest: C.H. Beck, 2013, p. 149.
[8] Andreea Drăghici and Ramona Duminică. *Stare civilă*. Craiova: Sitech, 2013, p. 79.
[9] Gabriel Boroi. Drept civil. *Partea generală. Persoanele*. Bucharest: Hamangiu, 2008, p. 461.
[10] Republished based on Art 5 of the Government Emergency Ordinance No 80/2011, for the modification and amendment of the Law No 119/1996 on civil status documents, published in the Official Gazette of Romania, Part 1, No 649/30 September 2011, approved with modifications and amendments by the Law No 61/2012, published in the Official Gazette of Romania, Part 1, No 257/18 April 2012.