

CHANGING THE LAST NAME DUE TO THE MARRIAGE

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ABSTRACT: The conclusion of a marriage, its dissolution, its nullity and its termination by the death of a spouse shall entail the change of the civil status of a person. But only the conclusion, the dissolution and the nullity of the marriage may have as effect the change of the physical person' last name [1].

KEY WORDS: last name, conclusion of marriage, dissolution of marriage, nullity of marriage

1. Introduction

Changing the last name means to replace it due to some changes occurred in the civil status of that physical person [2].

Changing the last name due to the marriage shall not be confounded with change in the last name through administrative channels, subject to other rules. We highlight that the change due to the marriage operates only with respect to the last name in contrast to the change through administrative channels [3].

Changes of the civil status leading or which may lead to the change of the last name are:

- changes of the filiation of the physical person;
- changes determined by the adoption;
- changes determined by the marriage [4].

Marriage is the freely consented union between a man and a woman concluded according to the law, in order to start a family, and governed by the provisions of the law [5].

The conclusion of marriage, its dissolution, the nullity of marriage and the termination of the marriage by the death of a spouse shall entail the change of the civil status. But only the conclusion, the dissolution and the nullity of the marriage may have as effect the change of the physical person' last name [6].

2. Changing the last name due to the conclusion of marriage

Art. 282 of the Civil code [7] provides that, upon the conclusion of the marriage the future spouses may agree to keep their maiden name, to take the name of any of them or their names reunited. Also, a spouse may keep the maiden name, and the other may bear their reunited names [8].

So, with respect to the marriage name, the future spouses shall choose one of the options limitatively provided by the art 282 of the Civil Code: either different last names keeping each of the spouses, the maiden name, either a joint last name such as the name of one of the spouses or their reunited names, or for an intermediary variant, namely that one of the spouses to keep the maiden name, and the other to bear their reunited names. The choice shall be made taking into account the current last name of each of the spouses, regardless how or when it has been acquired or established, modified or changed according to art. 84-85 of the Civil Code [9].

As shown, it is not possible to take another last name completely strange. The spouses may not adopt another solution than those presented above, the options provided by the law being limited [10].

We shall notice that, although the conclusion of marriage always represents a change in the civil status, it shall not always operates a change in the spouses names, just as it does not always operate the change of the both spouses' name. Thus, when upon the conclusion of the marriage the each of the spouses keeps the maiden name, any change in name shall not occur, and when only one of the spouses take the name of the other spouse or reunites them, any change shall not occur in the name of the latter. Consequently, changing the name of both spouses upon the conclusion of the marriage shall occur only when the spouses choose a joint name, during the marriage, their reunited names [11].

We shall also notice that the change of the spouses' name upon the conclusion of the marriage shall not be produced as a right, but always as the result of their understanding [12], recorded in the declaration of marriage [13].

The understanding of the future spouses concerning the last name, as it was recorded upon submitting the declaration of marriage, may be reconsidered by them, supposing to renew the declaration of marriage [14].

According to the art. 311 paragraph 1 of the Civil Code, the spouses are obliged to bear the name declared upon the conclusion of marriage. The paragraph 2 of the same article provides that, if the spouses agreed to bear during the marriage a joint name and declared it according to the provisions of the art. 281, one of the spouses may not request the change of this name through administrative channels only with the other spouse' consent.

Consequently, this obligation supposes that, if the spouses acquired a joint name by marriage, none of them shall not – without the express consent of the other spouse – to change this joint name by administrative procedure provided by the Government Ordinance no. 41/2003 on the acquisition and the change through administrative channels of the physical persons' names [15]. For this purpose, the Government Ordinance no. 41/2003, art. 9 provides that, if the spouses agreed to bear during the marriage a joint last name, for changing it, the consent of the other spouse is necessary (paragraph 1). Changing the last name of one of the spouses has no effect on the last name of the other spouse (paragraph 2).

According to art. 473 paragraph 4 of the Civil Code, in case of the adoption of the married person bearing a joint name with the other spouse, the adopted spouse may take the name of the adopter, with the consent of the other spouse, but before the court approving the adoption.

Thus, if the spouses have different last names, changing the name of one of them through administrative channels or changing the name by the effect of the adoption takes place without being necessary the consent of the other spouse [16].

With respect to the registration of spouses' name, according to the art. 290 of the Civil Code, after the conclusion of marriage, the civil status officer is obliged to immediately prepare, in the register of civil state, the marriage certificate, where the spouses shall be registered with the name they agreed to bear during the marriage and with which, they shall sign the marriage certificate [17].

3. Changing the last name due to the dissolution of marriage

We mention that the dissolution of the marriage has no consequence on the name of the children born or conceived during it. They shall always keep the name acquired at birth according to the law and this even if the parental authority shall be exercised after the divorce by the parent whose name is bore by child or by the other parent. With respect to the spouses, the divorce, regardless it is pronounced by the court or founded based on the spouses' agreement by the civil status officer or by the public notary, but it has the meaning of a change in the civil status also leading to the change of their name [18].

The dissolution of marriage by divorce may have effect on the last name of spouses only when its dissolution led to changing the last name of one or both spouses [19].

According to art. 383 paragraph 1 of the Civil Code, upon the dissolution of marriage the spouses may agree to keep the name they bore during the marriage. To court takes note of this agreement by the divorce judgment. Paragraph 2 of the same article provides that, for solid reasons, justified by the interest of one of the spouses or by the higher interest of the child, the court may agree that the spouses to keep the name they bore during the marriage, even without an agreement between them. According to paragraph 3 of the art. 383, if an agreement did not occur or if the court did not agree it, each spouse shall bear the maiden name.

Thus, with respect to the names, the ex-spouses, divorced, have the following options [20]:

a) they may agree that the spouse who bore during the marriage the last name of the other spouse, to bear this name after the divorce.

The court shall take note of this agreement by the divorce judgment.

b) without an agreement between the spouses, the court may agree, for solid reasons, the request of the spouse who bore during the marriage the last name of the other spouse, to bear this name after the divorce too;

The merits of the invoked reasons shall be appreciated by the Court invested with solving the divorce. Generally, a “solid reason” for admitting this request shall be considered the existence of a legitimate interest, which should be damaged by changing the name [21].

c) in the absence of spouses words of the covenant, as appropriate, of the approval of the court, both spouses shall bear the maiden name.

In the divorce judgment, the court shall mention – by the above distinctions – the names to be bore by the former spouses.

Names may be changed through administrative channels, for serious reasons. It is deemed as grounded a request for changing the name – among others – when the person in question used for exercising the profession, the name they want to obtain, proving it, as well as the fact that they are known in the society with this name [22].

If the spouses have a joint last name, or if one of the spouses took the name of the other and the divorce is made by the spouses' agreement and the civil status officer or the public notary finds it, then, according to the art. 376 paragraph 5 of the Civil Code, the spouses are obliged to

agree upon the name they shall bear after the divorce. In case of disagreement, the request shall be rejected and the spouses shall be directed to address to the court [23].

The registration of the name the spouses shall bear after the divorce shall be made similarly to the registration of the judgment or certificate of divorce, namely by mention on the marriage certificate and by the birth certificate of the former spouses [24].

4. Changing the last name due to the nullity of marriage

In case of finding the nullity or cancelation of the marriage, the former spouses shall retake, without any exception, the maiden name. but we shall mention that, even if the effects of the nullity have a retroactive feature, this change in the last name practically operates only for the future, as bearing the name, during the period between the conclusion of the marriage and the declaration of its nullity by definitive court order, in an irreversible reality [25].

Obviously, changing the spouses' last name, as an effect of the marriage dissolution, shall be produced only under these situations when both spouses or only one of them changed this name upon the conclusion of the marriage [26].

The declaration of nullity or the cancelation of marriage shall not lead to changing the names of the children resulted from it, as, according to the art. 305 paragraph 1 of the Civil code, they keep the situation of children from marriage, meaning that they shall be treated as the children from a marriage dissolved by divorce [27].

Returning to the name before concluding the null or canceled marriage shall be registered with the order for dissolving the marriage on the marriage certificate and on the birth certificates of the former spouses [28].

5. Keeping the name acquired by marriage in case of its termination by the death of one of the spouses

The death of one of the spouses, physically found or legally declared, leads to the termination of the effects specific to the marriage. The regulations in this field did not contain and do not contain any express provision concerning the name of the survivor spouse, if they bore during the marriage the name of their predeceased consort or they reunited the name with the name of the latter [29].

The spouse who changed the name as an effect of the marriage is entitled to keep this name after the death of their spouse. In other words, the marriage termination by death has no effect on the last name of the survivor spouse [30].

The survivor spouse has not only the right, but also the obligation to further bear the name acquired by marriage [31].

If the survivor spouse shall remarry, they may continue to bear the name acquired from the previous marriage, they may renounce to it and to adopt the name of their consort, as well as they may adopt the name from the previous marriage as join name of their new spouse [32].

References:

- [1]. Eugen Chelaru, *Drept civil. Persoanele*, 3rd Edition, C.H. Beck Publishing House, Bucharest, 2012, p. 95.
- [2]. See Carmen Tamara Ungureanu, *Drept civil. Partea generală. Persoanele*, Hamangiu Publishing House, Bucharest 2012, p. 324; Ovidiu Ungureanu, Cornelia Munteanu, *Drept civil. Persoanele*, Hamangiu Publishing House, Bucharest, 2011, p. 173.
- [3]. Ovidiu Ungureanu, Cornelia Munteanu, *op. cit.*, p. 173.
- [4]. See Carmen Tamara Ungureanu, *op. cit.*, p. 324; Ovidiu Ungureanu, Cornelia Munteanu, *op. cit.*, p. 174.
- [5]. Ion P. Filipescu, Andrei I. Filipescu, *Tratat de dreptul familiei*, 8th Edition reviewed and completed, Universul Juridic Publishing House, Bucharest, 2006, p. 25. According to art. 259 para. 1 of the Civil Code, „Marriage is the freely consented union between a man and a woman, concluded under the law”. The paragraph 2 of the same article provides that, „The man and the woman are entitled to marry for establish a family”.
- [6]. Eugen Chelaru, *op. cit.*, p. 95.
- [7]. Law no. 287/2009 on the Civil Code was published in the Official Gazette no. 511 of 24 July 2009, amended by the Law no. 71/2011 for applying the Law no. 287/2009 on the Civil Code (Official Gazette no. 409 of 10 June 2011), rectified in the Official Gazette no. 427 of 17 June 2011 and in the Official Gazette no. 489 of 8 July 2011 and republished in the Official Gazette no. 505 of 15 July 2011. After the republication, the Law no. 287/2009 on the Civil Code was amended by the Law no. 60/2012 on the approval of the Emergency Government Ordinance no. 79/2011 for regulating some measures needed for entering into force the Law no. 287/2009 on the Civil (Official Gazette no. 255 of 17.04.2012), rectified in the Official Gazette no. 246 of 29 April 2013 and amended by the Law no. 138/2014 for amending and completing the Law no. 134/2010 on the Civil Procedure Code, as well as for amending and completing some related normative documents (Official Gazette no. 753 of 16 October 2014).
- [8]. In the previous regulation, art. 27 of the Family Code allowed to the future spouses either to keep the maiden name, either to take a joint name which may be the name of one of them or their reunited names.
- [9]. Emese Florian, *Dreptul familiei*, 4th Edition, C.H. Beck Publishing House, Bucharest, 2011, p. 37.
- [10]. Ovidiu Ungureanu, Cornelia Munteanu, *op. cit.*, p. 179.
- [11]. Ionel Reghini, Șerban Diaconescu, Paul Vasilescu, *Introducere în dreptul civil*, Hamangiu Publishing House, Bucharest, 2013, p. 263.
- [12]. See Ionel Reghini, Șerban Diaconescu, Paul Vasilescu, *op. cit.*, p. 263.
- [13]. Art. 281 of the Civil code – Content of the marriage declaration: „(1) In the marriage declaration, the future spouses shall show that there are no legal impediment for the marriage and they shall mention last names they shall bear during the marriage, as well as the matrimonial regime the chosen. (2) Together with the marriage declaration, they shall present the proofs requested by the law for concluding the marriage”. We notice that, in contrast to the Family Code, which, by the art. 27 para. 1, reported the choice of the last name until, at latest, the conclusion of marriage, the Civil Code imposes to the future spouses to meet another moment, namely until the submission of the marriage declaration, where they shall mention the chosen name. See Ioana Pădurariu, Note to art. 282 (Choosing the last name) of the Civil Code, in Ana-Gabriela Atanasiu, Alexandru-Paul Dimitriu, Adriana-Florentina Dobre, Dragoș-Nicolae Dumitru, Adrian Georgescu-Banc, Radu-Alexandru Ionescu, Mihaela Paraschiv, Ioana Pădurariu, Mirela Piperea, Petre Piperea, Alexandru-Șerban Rățoi, Alex-Ionel Slujitoru, Irina Sorescu, Mihaela Șerban, Gabriel-Aurelian Uluitu, Cosmin-Marian Văduva, *Noul Cod civil: note, corelații, explicații*, C.H. Beck Publishing House, Bucharest, 2011, p. 95-96.
- [14]. Emese Florian, *op. cit.*, p. 37. According to art. 284 of the Civil Code, „If marriage was not concluded within 30 days after displaying the marriage declaration or if the future spouses want to change the initial declaration, they shall make a new declaration of marriage and to order its publication”.
- [15]. Published in the Official Gazette no. 68 of 2 February 2003, approved with amendments by the Law no. 323/2003 published in the Official Gazette no. 510 of 15 July 2003; was also amended and completed by: the Government Emergency Ordinance no. 50/2004 for amending and completing some normative documents in order to establish the organizational and functional framework appropriate for conducting the activities of issuance and record of the identity cards, documents of civil status, simple passports, driving licenses and vehicles registration certificates (Official Gazette no. 595 of 1 July 2004); Law no. 520/2004 on approving the Government Emergency Ordinance no. 50/2004 for amending and completing some normative documents in order to establish the organizational and functional framework appropriate to the activities of issuance and record of the identity cards, documents of civil status, simple passports, driving licenses and vehicles registration certificates (Official Gazette

no. 1153 of 7 December 2004); Law no. 243/2009 for amending and completing the Government Emergency Ordinance no. 97/2005 on the record, domicile, residence and identity documents of the Romanian citizens, for amending the Government Ordinance no. 84/2001 on establishing, organizing and operating the community public services of persons records, as well as for amending and completing the Government Ordinance no. 41/2003 on acquiring and changing through administrative channels the names of physical persons (Official Gazette no. 445 of 29 June 2009). Marieta Avram, *Drept civil. Familia*, Hamangiu Publishing House, Bucharest, 2013, p. 76.

[16]. Emese Florian, *op. cit.*, p. 79.

[17]. Ionel Reghini, Șerban Diaconescu, Paul Vasilescu, *op. cit.*, p. 264.

[18]. Ibidem.

[19]. Eugen Chelaru, *op. cit.*, p. 95.

[20]. Dan Lupașcu, Cristiana Mihaela Crăciunescu, *Dreptul familiei*, Universul Juridic Publishing House, Bucharest, 2011, p. 239-240.

[21]. Under the old regulation, which is similar, in the legal practice, they consider that: „There are enough arguments for allowing the applicant to further keep the name acquired by marriage in 1962, under which they became known in the society, name also bore by the children of the parties, very attached to the mother but not the least, the professional name of the applicant, who exercises the profession of lawyer for about 30 years, justifying such an approval, being identified serious reasons, I the meaning of the article 40 paragraph (2) 2nd thesis of the Family Code”. CSJ, s. civ., dec. no. 443 of 7 February 2003, www.scj.ro, apud Dan Lupașcu, Cristiana Mihaela Crăciunescu, *op. cit.*, p. 240.

[22]. Art. 4 lit. b) of the Government Ordinance no. 41/2003: „when the person in question used, for exercising the profession, the name they want to obtain, providing an evidence in this respect, as well as the fact that they are known in the society with this name”. See Dan Lupașcu, Cristiana Mihaela Crăciunescu, *op. cit.*, p. 240.

[23]. Ionel Reghini, Șerban Diaconescu, Paul Vasilescu, *op. cit.*, p. 265.

[24]. Idem, p. 268.

[25]. Ibidem.

[26]. Eugen Chelaru, *op. cit.*, p. 97.

[27]. Ionel Reghini, Șerban Diaconescu, Paul Vasilescu, *op. cit.*, p. 268.

[28]. Ibidem.

[29]. Ibidem.

[30]. Eugen Chelaru, *op. cit.*, p. 97.

[31]. C. Stătescu, *Drept civil. Persoana fizică. Persoana juridică. Drepturile reale*, Didactică și Pedagogică Publishing House, Bucharest, 1970, p. 124-125; D. Lupulescu, *Numele și domiciliul persoanei fizice*, Științifică și Enciclopedică Publishing House, Bucharest, 1982, p. 31-32; M.N. Costin, *Marile instituții ale dreptului civil român*, 2, *Persoana fizică și persoana juridică*, Dacia Publishing House, Cluj-Napoca, 1984, p. 280, apud Eugen Chelaru, *op. cit.*, p. 97.

[32]. Ionel Reghini, Șerban Diaconescu, Paul Vasilescu, *op. cit.*, p. 269.