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DOMICILE – AN ATTRIBUTE OF IDENTIFICATION OF THE NATURAL PERSON

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Abstract: *The Civil Code provides, in Article 87, that the domicile of a natural person, for the purpose of exercising his or her civil rights and freedoms, is at the place where that person declares that he or she has his or her principal dwelling.*
Domicile is that attribute of identification of a natural person which individualizes that person in space. Domicile has the legal nature of a non-patrimonial subjective civil right[1].

Keywords: *Civil Code, natural person, domicile, residence*

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1. Concept

In legal doctrine, domicile is defined as that attribute of identification of a natural person which individualizes that person in space, by indicating a place having such legal significance[2].

According to Article 25 para. (2) of the Constitution of Romania, every citizen is guaranteed the right to establish his or her domicile or residence in any locality in the country, to emigrate, as well as to return to the country.

The Civil Code, in Article 86, provides that Romanian citizens have the right to freely establish or change their domicile or residence, in the country or abroad, except in the cases expressly provided for by law [para. (1)]. Unless otherwise provided by law, a natural person may have only one domicile and one residence at the same time, even when he or she owns several dwellings [para. (2)].

[1] I. Genoiu, *Civil Law. General Part. Persons*, 3rd Edition, revised and supplemented, C.H. Beck Publishing House, Bucharest, 2019, p. 317.
[2] Gh. Beleiu, *Romanian Civil Law. Introduction to Civil Law. Subjects of Civil Law*, 11th Edition, revised and supplemented by M. Nicolae, P. Trușcă, Universul Juridic Publishing House, Bucharest, 2007, p. 406.

Article 87 of the Civil Code establishes that the domicile of a natural person, for the purpose of exercising his or her civil rights and freedoms, is at the place where that person declares that he or she has his or her principal dwelling. To the same effect, Article 27 para. (1) of Government Emergency Ordinance No. 97/2005 regarding the records, domicile, residence and identity documents of Romanian citizens[3] provides that the domicile of a natural person is at the place where that person declares that he or she has his or her principal dwelling.

2. Legal Characteristics

The right to domicile is a personal non-patrimonial right and, therefore, it has all the legal characteristics specific to the category to which it belongs, characteristics which are found in the case of all attributes of identification of the natural person: enforceability *erga omnes*, inalienability, imprescriptibility, personality and universality.[4] At the same time, the right to domicile also has the following specific characteristics:[5]

- *uniqueness* – a natural person may have only one domicile at any given time; where a natural person has several dwellings, the domicile is represented by the principal one;

The uniqueness of domicile is established both by the Civil Code [Article 86 para. (2)] and by Government Emergency Ordinance No. 97/2005. Article 26 para. (2) of Government Emergency Ordinance No. 97/2005 provides that Romanian citizens may have only one domicile at the same time, and if they own several dwellings, they may establish their domicile in any one of them.

- *mandatory nature* – The domicile of a natural person represents not only a right of that person, but also an obligation;

The Civil Code, through the provisions of Article 90, establishes the rebuttable presumption of domicile. Thus, residence shall be deemed to be the domicile when this is not known. In the absence of a residence, the natural person is deemed to be domiciled at the place of his or her last domicile and, if this is not known, at the place where that person is located.

- *inviolability* – a person's domicile is inviolable because – except in the cases expressly provided for by law – no one may enter or remain in a person's domicile without that person's consent. This is expressly provided both by Article 27 para. (1) of the Constitution of Romania and by the provisions of the Criminal Code (Article 224 of the Criminal Code)[6], which criminalize violation of domicile. At the same time, according to Article 71 para. (2) of the Civil Code, domicile is mentioned among those aspects which characterize a person's private life, and according to Article 74 letter a) of the Civil Code, entering or remaining without right in a person's dwelling/domicile, as well as the dissemination or use of data concerning a person's domicile [letter i)], constitute an infringement of private life.[7]

Article 27 para. (2) of the Constitution of Romania lists the situations which allow derogation by law from the inviolability of domicile and residence, namely: execution of an arrest warrant or of a court judgment; removal of a danger concerning the life, physical integrity or property of a person; defense of national security or public order; prevention of the spread of an epidemic.

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[3] Republished in the Official Gazette No. 719 of 12 October 2011, as subsequently amended and supplemented.

[4] E. Chelaru, *Civil Law. Persons under the Regulation of the New Civil Code,* 3rd Edition, C.H. Beck Publishing House, Bucharest, 2012, pp. 119–120.

[5] See C.T. Ungureanu, I-Al. Toader, *Civil Law. General Part. Persons*, 6th Edition, revised and supplemented, Hamangiu Publishing House, Bucharest, 2024, p. 406.

[6] Article 224 para. (1) of the Criminal Code – Unlawfully entering, in any manner, a dwelling, room, outbuilding or enclosed place pertaining thereto, without the consent of the person using them, or refusing to leave them at that person's request, shall be punishable by imprisonment from 3 months to 2 years or by a fine.

[7] I. Reghini, Ș. Diaconescu, P. Vasilescu, *Introduction to Civil Law*, Hamangiu Publishing House, Bucharest, 2013, p. 286.

- *freedom of choice* – Romanian citizens have the right to freely establish or change their domicile [Article 26 para. (1) of Government Emergency Ordinance No. 97/2005 and Article 86 para. (1) of the Civil Code];

According to Article 89 para. (2) of the Civil Code, establishing or changing domicile takes effect only when the person occupying or moving to a certain place has done so with the intention of having his or her principal dwelling there. Paragraph (3) of the same article provides that proof of intention results from the declarations made by the person to the competent administrative authorities responsible for establishing or changing domicile and, in the absence of such declarations, from any other factual circumstances.

3. Types of domicile

Depending on the manner in which it is established, in accordance with the provisions of the Civil Code and the relevant legislation, a distinction is made between the following four types of domicile:[8]

- common-law (or voluntary) domicile;
- legal domicile;
- professional domicile;
- chosen (conventional) domicile.

According to other criteria, a distinction may also be made between domicile in the country and domicile abroad, a distinction based on the criterion of the territory of the state where the domicile is located. Likewise, in the case of married persons, a distinction may be made between the spouses' common marital domicile and their separate domiciles. Depending on the chronological succession of a natural person's domicile, a distinction is made between the former domicile and the current domicile.[9]

3.1. Ordinary domicile

As a rule, the holder of an ordinary domicile is a person having full capacity to exercise rights.[10] Proof of domicile is made, according to the provisions of Article 91 para. (1) of the Civil Code, by means of the identity card.[11] Government Emergency Ordinance No. 97/2005 provides, in Article 13 para. (1), first sentence, that the identity document proves identity, Romanian citizenship and, as applicable, domicile or residence in Romania. Article 12 para. (3) of the same ordinance provides that an identity document means the identity card, simple identity card, electronic identity card, provisional identity card and identity bulletin, provided that they are valid.

Starting from the age of 14, Romanian citizens are issued identity documents [Article 12 para. (1) of Government Emergency Ordinance No. 97/2005].[12]

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[8] D. Lupulescu, A.-M. Lupulescu, *Attributes of Identification of the Natural Person*, Universul Juridic Publishing House, Bucharest, 2015, p. 158.

[9] Ibidem.

[10] G. Boroi, *Civil Law. General Part. Persons*, 3rd Edition, revised and supplemented, Hamangiu Publishing House, Bucharest, 2008, p. 455.

[11] Article 91 of the Civil Code – (1) Proof of domicile and residence shall be made by means of the entries contained in the identity card.
(2) In the absence of such entries or where they do not correspond to reality, the establishment or change of domicile or residence may not be invoked against other persons.
(3) The provisions of para. (2) shall not apply where the domicile or residence was known by other means to the person against whom it is invoked.

[12] Article 12^1 para. (1) of Government Emergency Ordinance No. 97/2005 provides for the possibility of optionally issuing an electronic identity card before the age of 14, at the request of the persons provided for by law.

However, the entry in the identity card concerning domicile does not have constitutive effect, but only serves for keeping records of the natural person; if the domicile is located elsewhere, proof may be made by any means of evidence.[13]

3.2. Legal domicile

Legal domicile means that domicile which is established by law for certain categories of natural persons.[14]

Legal domicile has the following characteristics:

- it is established by law;
- it has the significance of a protective measure for certain categories of natural persons;
- it coincides with the ordinary domicile of the person exercising the protection.[15]

The following have a legal domicile:

a) the minor;

The domicile of a minor who has not acquired full capacity to exercise rights under the conditions provided by law is, according to Article 92 para. (1) of the Civil Code, at his or her parents' domicile or at the domicile of the parent with whom he or she habitually lives.

Where the parents have separate domiciles and do not agree with which of them the child shall have his or her domicile, the guardianship court, after hearing the parents and the child, if the child has reached the age of 10, shall decide taking into account the interests of the child. Until the court judgment becomes final, the minor is presumed to have his or her domicile with the parent with whom he or she habitually lives [Article 92 para. (2) of the Civil Code].

By way of exception, in the situations provided for by law, the minor's domicile may be with the grandparents, other relatives or trusted persons, with their consent. The minor's domicile may also be at a protection institution [Article 92 para. (3) of the Civil Code].

Where only one of the parents represents the minor or where the minor is under guardianship, the minor's domicile is at that of the legal representative, according to Article 92 para. (4) of the Civil Code.

According to Article 93 of the Civil Code, the domicile of a child temporarily or permanently deprived of parental protection and subject to special protection measures, in the cases provided for by law, is at the institution, family or persons with whom the child has been placed.

b) the natural person benefiting from special guardianship;

The domicile of the person benefiting from special guardianship is at that of the legal representative, unless the guardianship court orders otherwise [Article 92 para. (4) of the Civil Code].

c) the natural person protected by curatorship;

A missing person for whose property a curatorship has been established has his or her domicile at that of the curator, if the latter is entitled to represent him or her (Article 94 of the Civil Code). Likewise, if a special curator has been appointed for the administration of estate assets, the persons called to inherit have their domicile at that of the curator, insofar as the curator is entitled to represent them (Article 95 of the Civil Code). The legal domicile changes together with the change of the ordinary domicile of the natural person or of the registered office of the legal person providing the protection, through the replacement of the natural person or legal person providing the protection or through the reassignment of the minor.[16]

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[13] C.T. Ungureanu, I-Al. Toader, *op. cit*., p. 407.
[14] G. Boroi, *op. cit*., p. 457; E. Chelaru, *op. cit*., p. 123.
[15] Ibidem.
[16] C.T. Ungureanu, I-Al. Toader, *op. cit*., pp. 408-409.

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Proof of legal domicile is made, in principle, by proving the ordinary domicile of the person providing the protection.

In the case of a minor who has reached the age of 14, to whom the first identity document has not been issued and who requests its issuance, proof of the domicile address in Romania may be made, according to Article 28 para. (1) letter e) of Government Emergency Ordinance No. 97/2005, by means of the identity document of one of the parents or of his or her legal representative or by means of the document entrusting the minor, accompanied, as applicable, by one of the documents provided for under letters a), b) and d) of the same paragraph.[17]

After the identity document has been issued, the minor who has reached the age of 14 proves his or her domicile by means of that document, under the conditions of the law. In the case of a minor to whom the first identity document has not been issued, proof of identity is made by means of the birth certificate, according to Article 13 para. (7) of Government Emergency Ordinance No. 97/2005. Proof of his or her domicile is made by means of the birth certificate accompanied by the identity document or passport of one of the parents, where the parents have a common domicile, or, as applicable, of the parent with whom the minor lives or to whom the minor has been entrusted, of the legal representative or, as applicable, by means of a copy of the decision of the child protection commission or of the court judgment, for minors in respect of whom a special protection measure has been ordered under Law No. 272/2004 on the protection and promotion of children's rights, republished, as subsequently amended and supplemented.

3.3. Conventional domicile

The elected domicile, also known as conventional domicile, is regulated by Article 97 of the Civil Code, which, in para. (1), provides that the parties to a legal act may elect a domicile for the purpose of exercising the rights or performing the obligations arising from that act. According to para. (2) of the same article, the election of domicile is not presumed, but must be made in writing.

In legal doctrine, conventional domicile means the place established by agreement of the parties' wills for the purpose of performing the legal act at that place or for settling the dispute and communicating procedural documents.[18]

The elected domicile is not a true domicile, but an ancillary agreement subject to the conditions and effects of civil legal acts.[19]

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[17] Article 28 para. (1) of Government Emergency Ordinance No. 97/2005 – Proof of the domicile address in Romania may be made by means of: a) documents concluded in accordance with the validity requirements laid down by the Romanian legislation in force concerning the right of occupancy; b) the written declaration of the host, a natural person or legal person, regarding acceptance into the premises, accompanied by one of the documents provided for under letter a) or, as applicable, letter d); c) the applicant's declaration on his or her own responsibility, accompanied by the verification report of the public order police officer certifying the existence of a property intended for residential use and the fact that the applicant actually lives at the declared address, for a natural person who cannot submit the documents provided for under letter a) or, as applicable, letter d), where documents concerning the right of occupancy have not been issued to the person concerned in accordance with the validity requirements laid down by the Romanian legislation in force; d) the document issued by the local public administration authority showing that the applicant or, as applicable, his or her host is registered in the Agricultural Register with a property intended for residential use; e) the identity document of one of the parents or of his or her legal representative or the entrustment document, accompanied, as applicable, by one of the documents provided for under letters a), b) and d), in the case of minors requesting the issuance of an identity document; f) the documents established by Government decision, at the proposal of the Ministry of Internal Affairs, in the case of victims of human trafficking.

[18] G. Boroi, *op. cit*., p. 457.

[19] C.T. Ungureanu, I-Al. Toader, *op. cit*., p. 410.

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The conventional domicile may not be changed by the manifestation of will of only one party. An exception is the situation where the election of domicile was made exclusively for the benefit of one of the parties, which has the possibility of waiving that benefit.[20]

There are also situations in which the elected domicile does not take the form of an ancillary agreement.[21] For example, Article 194 letter a), final sentence, of the Code of Civil Procedure provides for such a situation, requiring a claimant residing abroad to indicate in the statement of claim an elected domicile in Romania, to which all communications concerning the proceedings are to be sent.

3.4. Professional Domicile

Professional domicile is regulated by Article 96 of the Civil Code, according to which a person who operates an enterprise also has his or her domicile at the place of that enterprise in all matters concerning patrimonial obligations which arose or are to be performed at that place.

It follows that a person who operates an enterprise has, with regard to his or her patrimonial obligations, two domiciles – the ordinary domicile and the professional domicile – whereas, with regard to his or her non-patrimonial obligations, he or she has only one domicile – the ordinary domicile.[22]

Professional domicile concerns only professionals who are natural persons (and not legal persons).[23]

According to Article 3 para. (2) of the Civil Code, all those who operate an enterprise are considered professionals, and Article 8 para. (1) of Law No. 71/2011 for the implementation of Law No. 287/2009 on the Civil Code[24] provides that the concept of professional includes traders, entrepreneurs, economic operators, as well as any other persons authorized to carry out economic or professional activities.

4. Residence

In the specialized literature, residence is defined as that attribute of identification in space of a natural person, by indicating the temporary or provisional dwelling.[25]

According to Article 88 of the Civil Code, the residence of a natural person is at the place where he or she has his or her secondary dwelling.

A natural person may have only one residence at the same time, even when he or she owns several dwellings [Article 86 para. (2) of the Civil Code].

Proof of residence is made by means of the identity card, and if the entries in the identity card are absent or do not correspond to reality, the establishment or change of residence may not be invoked against other persons (Article 91 of the Civil Code).

In turn, Government Emergency Ordinance No. 97/2005 provides, in Article 30, that residence is at the place where the natural person declares that he or she has his or her secondary dwelling, other than the domicile. According to Article 26 para. (2) of the same normative act, Romanian citizens may have only one residence at the same time, and if they own several dwellings, they may establish their residence in any one of them. Thus, like domicile, residence is characterized by uniqueness.

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[20] E. Ghelaru, *op. cit*., pp. 126-127.
[21] G. Boroi, *op. cit*., p. 458.
[22] I. Genoiu, *op. cit*., p. 320.
[23] See C.T. Ungureanu, I-Al. Toader, *op. cit*., p. 411.
[24] Published in the Official Gazette No. 409 of 10 June 2011.
[25] G. Boroi, *op. cit*., p. 458.

Residence has the legal characteristics of any non-patrimonial right, to which two specific characteristics are added: the fact that it is temporary and optional.[26]

According to Article 31 of Government Emergency Ordinance No. 97/2005, the entry concerning the establishment of residence is made at the request of the natural person who lives for more than 15 days at the address where he or she has his or her secondary dwelling [para. (1)]. The entry concerning the establishment of residence is granted for the requested period, which may not exceed one year, and is valid for as long as the person actually lives at the address declared as residence. Upon expiry of this period, the person may request the registration of a new entry concerning the establishment of residence. The entry concerning residence may not be entered in the identity document if more than 10 persons are registered at that address in the National Register of Persons (RNEP) [paras. (2) and (3)].

The entry concerning residence is made on a document called proof of residence, which shall accompany the simple identity card, electronic identity card and provisional identity card [Article 33 para. (1) of Government Emergency Ordinance No. 97/2005]. Where the application for registration of residence is submitted electronically, the document provided for in Article 33 para. (1) may be sent to the applicant by post or may be collected from the community public services for persons records having jurisdiction over the residence address, according to the applicant's choice [Article 33 para. (1^1) of Government Emergency Ordinance No. 97/2005].[27]

A minor placed under guardianship, whose domicile is at that of the guardian, may also have a residence only with the authorization of the guardianship court. By way of exception, the guardian may consent to the minor having a residence determined by his or her education and professional training, in which case the guardianship court shall be immediately notified by the guardian, according to Article 137 para. (2) of the Civil Code.

5. Importance of domicile

The domicile of a natural person is legally important from several points of view. Thus, in civil law, domicile is important, for example:

- *in matters of succession* – Article 954 para. (2) of the Civil Code provides that the inheritance opens at the deceased's last domicile. Proof of the last domicile is made by means of the death certificate or, as applicable, by means of the final court judgment declaring the person's death.

- *in matters of civil obligations* – Article 1494 para. (1) of the Civil Code, which regulates the place of payment, provides that, in the absence of a stipulation to the contrary or if the place of payment cannot be determined according to the nature of the performance or on the basis of the contract, the practices established between the parties or usages, monetary obligations must be performed at the domicile or, as applicable, registered office of the creditor on the date of payment, while the other obligations are performed at the domicile or, as applicable, registered office of the debtor on the date the contract was concluded.

Domicile is also important in other branches of law; for example,[28] in civil procedural law, the domicile of the parties is one of the elements according to which the jurisdiction of the courts is determined, and procedural documents must also, as a rule, be communicated at the domicile of the natural person who is a party to proceedings, etc.

[26] C.T. Ungureanu, I-Al. Toader, *op. cit*., p. 412.
[27] See also Articles 32-41^1 of Government Emergency Ordinance No. 97/2005.
[28] E. Ghelaru, *op. cit*., p. 119.

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