

Interactive Approaches upon the Residence of a Natural Person and their Connections with Civil Procesual Law, Civil Law and Fiscal Law

Duret Nicu.¹, Mironov Duret Gabriela.²,

¹*Danubius University of Galati, Faculty of Law, duretnicu@univ-danubius.ro*

²*Danubius University of Galati, Faculty of Law, Gabriela.duret@univ-danubius.ro*

Abstract: In our law, the home has a great importance, the birth, modification, assigning or annulling certain legal relationships being related to it. It can be confirmed without fear of making a mistake that there is no branch of the Law, inside the laws system in our country, which in one way or another is not settling by juridical norms the social relations whose birth, modification, assigning or annulling are not related by the existence of the home of the natural person.

Keywords: home, residence, person.

1.1. The notion of home

The identification of the natural person in a certain designated place shows interest in the birth, modification, assigning or annulling the legal relationships, as well as in exerting the rights and obligations that form the content of these relationships.

The origin of the word „home”, from etymological point of view, lies in the Latin expression „domum colere” meaning the house in which someone lives.

Also in our law **the home represents the essential criteria** for determining the residence of a natural person. Not any house is considered to be the home of a natural person. Indeed, the house in which a person lives can be considered as his/her home, as well as such a house could serve only as a domicile for that person or it could not be considered even as a residence¹.

In a popular meaning, the home is a personal house, in which everyone is free to forbid the access to anyone he wants, no matter if he/she is living there as owner, lodger or under any other title that he/she has. The other way round, the home is the right of anyone to make his home an asylum and refuge place for the others; it is then the right of the owner to live – if he/she wants – alone and untroubled, protected against the indiscrete interventions, intrusions and interferences of others, it is the freedom to have peace to your place. The home is one of the means to make your private life be respected².

The Civil Law has another outlook of the home, it concerns mainly not to protect the person in this place, but especially to place him/her in a space and it concerns also the effects that follow from this determination³.

Based on these essential grounds, the science of the law had to create the institution of domicile.

By **domicile**, in general, one understands **that identification attribute of the natural person, which**

¹ D. Lupulescu, *Numele și domiciliul persoane fizice*, E.S.E., București, 1982, p. 64; D.Lupulescu, A.M. Lupulescu, *Drept civil-Persoana fizică*, Ed. Editas, București, 2003, p.112.

² O. Ungureanu, C.Jugastru, *Drept civil-Persoanele*, Ed. Rosetti, București, 2003, p. 162

³ O. Ungureanu, C. Jugastru, *op. cit.* p. 162

individualizes him/her into space, by indicating a place which has this juridical significance⁴.

In order to make the difference between stable and temporary home, two juridical notions are being used, respectively: **domicile and residence.**

We subscribe to the opinion of specialists⁵, according to which – against the **permanent and stable** character of the place which is the home of the natural person – the formula “stable domicile” can be criticized as it contains a big pleonasm, a formula which unfortunately is often used in different wordings, in mass media, but also in some legal⁶ dispositions or in jurisprudence⁷. If we look into the Dictionary of contemporary Romanian language, at page no 371, we will see that „permanent” has the meaning of „**which does not change the fix, stable place**”.

1.2. The importance of home

In our law, the home has a great importance, the birth, modification, assigning or annulling certain legal relationships being related to it. It can be confirmed without fear of making a mistake that there is no branch of the Law, inside the laws system in our country, which in one way or another is not settling by juridical norms the social relations whose birth, modification, assigning or annulling are not related by the existence of the home of the natural person⁸.

Home is an important element that together with citizenship, juridical personality, name, legal status, etc. contributes to the **individualization and identification of a person in the society and inside the family**, therefore it represents a component of child’s (person’s) right to have an identity and, on the other hand, taking into consideration the fact that home is closely related to a house, it becomes significant also for assuring other rights settled by the **O.N.U. Convention for Child rights (1989), art.27 point 3⁹**.

The law attaches more juridical effects that, in practice, have a special interest in “the place” of home. In a general formula, we may say that the home has the effect of **juridical synoptic** regarding the exertion of civil rights of natural persons¹⁰.

In art. 27, alin.1 in Romania’s Convention – from where it results also the special importance of domicile and of residence of a natural person – it is stipulated: „**the domicile and the residence are inviolable**”. No one can enter or remain in the home or residence of a natural person without his/ her permission”.

1.3. Type of homes

According to the existing legislation, **depending on the way of settling the home**, which is the main classification we will take into consideration in the present paper, we can distinguish:

- **The common law home** (also called voluntary home);
- **Legal home;**
- **Conventional home** (also called „the chosen home”) but which does not represent a real home.

The project of the Civil Law introduces a new notion: „The assumption of home”. So that when the

⁴ Gh. Beleiu, op. cit., 2005, p. 417

⁵ GH.Beleiu, op. cit., 2005, p. 417. A se vedea și G.Boroi, op. cit. p. 341.

⁶ A se vedea, Regulamentul privind operațiunile curente și transferurile de capital cu mijloace de plată străine, elaborat de B.N.R. și publicat în M.O. nr.107/1994 art.6, în prezent abrogat.

⁷ A se vedea Dec. nr.2106/19981 a S.Civ, a C.S.J., în Dreptul nr.6/1992, p. 84

⁸ D.Lupulescu, A.M.Lupulescu, op. cit., 2003 p.115

⁹ I. Imbrescu, op. cit., p. 380

¹⁰ O.Ungureanu, C.Jugastru. op. cit., p. 166

domicile is not known, the residence will be considered as home (art. 56 alin.1).

If the residence is missing, the natural person is considered to live in the place where he/she is, and if this is not known, to the place of the last home (art.56 alin.2).

At the same time, in art.61, the Project of Civil Law introduces the notion of **professional home**, sense in which it stipulates: “the person exerting permanently a professional activity or owing one or more agricultural, commercial or industrial enterprises, **will be considered to live also at the location of those enterprises or activities**, in all that concerns the patrimonial obligations that have occurred or are going to be exerted in that location”.

From other points of view, other type of homes can be distinguished. Thus, **depending on the territorial area of the state where the home is**, it can be distinguished the home in the country against the home abroad, and according to the criterion based on **homes succession**, we can talk about the old home and the present home of the natural person.

As regarding the **spouses during marriage**, we may distinguish the status of common matrimonial home, which is the rule, and that of separate homes which is the exception¹¹.

We mention that the **common home of spouses** is also a common right home as it is chosen by both spouses; it has to fulfill the cohabitation obligation. Matrimonial home is not an absolute obligation admitting that for reasons such as: exertion of profession, necessity of specialty training, health care, etc, spouses should have separate homes¹².

1.3.1. Common Law home (voluntary home). Notion and settlement

The common law home can be defined as that right of a natural person to individualize himself / herself, in space, by his/her permanent or main¹³ house, taking into consideration the fact that the provisions of art.12 in Order no 31/1954, in reality, have in view this kind of home.

Other definitions¹⁴ show that:” the common law or voluntary home is the permanent or main house chosen by the natural person who is of full age and who is not under a prohibition order, freely, in any locality in the country and abroad” or, „ a non-patrimonial civil law which allows individualization in space of its owner, where presumably the natural person can be found, in principle, at any moment”.

The essential elements that define the common law home are: 1). **Manifestation of will of the natural person** regarding the establishing of main or permanent house in a certain location (by the exception at art. 102 Family Law, completed by the agreement, will of protection authority, court); 2). **The real existence** of a permanent or main house, the natural person having in fact and in law a house in a certain locality (except for the nomads or the rambles who have no such house)¹⁵.

The house is determined, though, by the **conjunction of an intentional element with a material one**; taken separately, none of these elements would be sufficient. **The juridical title** by which an individual holds a house **is not comprised in the definition of home**; it does not matter that a person is the owner or lodger of a house, it may be possible for a person to be the lodger of an apartment that is his / her main/ permanent house and, at the same time, to be the owner of a residence¹⁶.

In order to achieve the finality of the home in what regards the security and settlement of legal

¹¹ Gh.Beleiu, op. cit., 2005, p. 419

¹² Până de data recentă în Franța, femeia măritată nu avea alt domiciliu decât cel al soțului ei; **soții aveau obligatoriu același domiciliu**. Noul art.108 C.Civ.(introdus prin Lg. din 11.07.1975) permite ca fiecare soț să aibă domiciliu distinct. O astfel de reglementare ar trebui introducă și în legislația noastră, pentru că ea ar răspunde noilor realități sociale și profesionale (O. Ungureanu, C.Jugastru, op. cit., p. 168

¹³ Gh.Beleiu, op. cit., p. 420

¹⁴ E.Lupan, D.A.Popescu, op. cit., 1993; E.Lupan, Drept civil-Persoana fizică- Ed.Lumina Lex, București, 1999, p. 168

¹⁵ Pentru modalitatea de soluționare a situației acestor persoane, din punct de vedere al domiciliului înscris în actele de identitate, a se vedea H.G. nr.1375/2006

¹⁶ O.Ungureanu, C.Jugastru, op. cit. pp. 167-168

relationships, **it is considered that the person can always be found at his/her home**¹⁷.

1.3.2. Establishing the common law home

As we mentioned in the previous point, the common law house is freely established by any natural person, in any locality.

Practically, in the absence of a legal text settling the common law house, we have to admit that the home the natural person had until the full age (this meaning the legal home) **is converted in common law home**, and then the natural person who is of full age, having a fully exercise capacity **can settle his/her common law home, without any restriction.**

As regarding the **status of nomads and rambler**s, their common law home is established **in the same place with their parents or according to the place where their birth has been registered.** A novelty element is being brought in this regard by the Government Decision no 1375/2006 for approval of Methodological Norms of unitary application of laws concerning the evidence, home, residence and identity documents of Romanian citizens (published in Gazette no 851/17.10.2006).

Thus, in art.72 alin.2 in these norms, it is mentioned that for the **persons in the category of the persons deprived from shelter**, who cannot declare the address of a building destined as housing where, in their identity documents, the home address should be written, the locality or the Sector of Bucharest, **where the person was identified**, should be written at the rubric “residence” on the date of release of the identity document, as a result of the **request of the person concerned, of institutions having attributions into social protection domain or of the police.**

1.3.3. Changing the common law home

Determined by the most varied needs, either objective or subjective, many natural persons proceed to a change of home and residence in the same locality or in other localities. Consequently, needs imposed by the need of being closer to the working place, to live together with the entire family or, on the contrary, to live separately from some family members, to provide a proper house, to change the working place, the need to take care of a person etc., are still many reasons to change the house or the residence¹⁸.

For the purpose of establishing the number and the population’s structure as per sexes, age, localities and administrative-territorial units, and to have an accurate evidence of the population in order to know at any moment the place where each natural person lives, general form and substance conditions of home change from one locality to another as well as inside the same locality have been established by Emergency Governmental Ordinance no 97/2005, approved with modifications and completions by Law no 290/2005.

Compared to the situation before the Revolution in December 1989 (when changing the home in the 14 towns, declared as “big towns”¹⁹, as per the law, was possible in the conditions of Order 68/1976, which is repealed now, only for persons who had their home in such towns up to then and for certain categories of persons stipulated by the law - spouses, children, under age persons, parents etc., and with special approvals), but nowadays the common law home is freely changed, without any restraint, in the same locality and from one locality to another, the preoccupation to assure the fact that the “human rights” are respected being as obvious as it can be.

¹⁷ D.Lupulescu, A.M.Lupulescu, op. cit., 2003, p.122

¹⁸ D.lupulescu, op. cit.p. 93

¹⁹ Conform H.C.M. nr.860/1973 erau declarate „orașe mari”: București, Arad, Pitești, Brașov, Brăila, Cluj, Constanța, Craiova, Galați, Iași, Tg. Mureș, Ploiești, Sibiu, și Timișoara.

In the above mentioned context, among the constitutional provisions that settle human civil rights it would be proper to refer only to the provisions in Title no II and which are relevant for the approached subject: **human civil rights**.

We join the opinion that they have the same meaning with the provisions of art.25 alin.2: „Each citizen has the right to settle his/ her house or residence, in any locality in the country, has the right to emigrate as well as the right to come back into the country”.

Coming back to the existing internal settlements into the matter of house change, is important to show that, according to the provisions of art.18 alin.2 of Emergency Governmental Ordinance, the first and the most important obligation of any citizen who changes the house from one building to another is that, **in 15 (fifteen) days from the event (the move to the new address)**, to ask the Local Communitarian Office of Persons Evidence, in whose area the new home is, to issue and to release a new identity document.

The presence compliance in view of getting a new identity document as a result of changing the home is important both for the solicitor as well as for the state that is interested in having an accurate evidence of population movement as we have already mentioned before.

The law does not give the circumstances of the reason why the home has been changed, this meaning that **the principle is that of freedom to change the common law home-** that is according to the interests of natural persons²⁰.

1.3.4. Annuling the change mention of common law home

At present, the Emergency Governmental Ordinance no 97/2005 is settling these situations in art.34, as it follows:

1. In case the mention regarding the change of home in the identity document was made based on a document that was annulled afterwards, it was noted that it was null, false or it became forged, this mention is null in law;
2. In the case foreseen in alin.(1), the authority noticing the nullity of the mention informs the communitarian public service of people’s evidence about the new situation;
3. The nullity of the mention can be contested by the court in officio or as a result of an intimation of National Inspectorate for Persons Evidence, the communitarian public services of people’s evidence or by the persons concerned²¹.

We consider that the measure that could be taken from the point of view of the mention of home decision was an administrative one, respectively to put it in the previous situation, till the settlement in this way, determining at the same time the person to start the necessary approaches to get a new identity document in which the home address to be that where the person is living effectively and for which he/she is making the proof of the home address, according to the settlements of art.27 in Emergency Governmental Ordinance no 97/2005.

At present, by settling the finding way of the mention’s nullity in the identity document regarding the establishment of the home, by the court, we estimate the possibility that the comunitarian public service of people’s evidence, which has to solve such a case, to be accused of arbitrary, has been eliminated, the judgement power of the decisions taken in this matter has an effect upon all the persons (opposable erga omnes), without any possibility that third persons oppugn the nullity of the mention as a result of admission of the action.

²⁰ A se vedea Gh.Beleiu, op. cit. 2005, pp.420-421

²¹ Alin.3 a fost introdus prin Legea nr.252/2007, publicat în M.Of. nr.506/27.07.2007

1.3.5. The proof of common law home

According to the provisions of art.11 alin.1 in the Emergency Governmental Ordinance no 97/2005, „The identity document is the document released to the Romanian citizen in the conditions of the present ordinance and which proves the identity, the home address and, in case, of its owner’s residence”.

In art.11 alin.2 of the same normative act it is foreseen that: „in the sense of the present emergency ordinance one can understand the identity card, provisional identity card as well as the identity card, which is still valid.

We specify that, as we have already mentioned, the mention in the identity document regarding the home of a person, has no constitutive effects concerning its determination, but only an evidence character related to that person. That is why in cases in which the home of a person is in another locality than that resulting from the identity document; its proof can be made, in principle, by any proving mean²².

In the project of the Civil Law (art.57), regarding the home and the residence it is stipulated that this is made with the mentions in the identity card, and if these mentions are missing, the settlement or change of the home (or of residence) cannot be opposed to other persons.

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²² A se vedea deciziile nr. 953/1965 și 1195/1965 ale S.civ. a fostului T.S. 8menționate de C. Stătescu în *op. cit.* p. 152; Gh. Beleiu, *op. cit.* p. 423; P. Andrei, *op. cit.* în R.R.D. nr.2/1977, p. 28; precum și decizia nr. 576/1972 în R.R.D. nr. 10/1972, menționată de D. Lupulescu, A. M. Lupulescu, în *op. cit.* 2002, p. 100.