

Changing the Family Name by Administrative Means

Duret Nicu

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

Abstract: In the Roman law, changing the name was possible except for the case in which this change would have been fraudulent. This possibility was kept also in the Middle Age but with some restrictions: the handicraftsmen were not allowed to change their name when it served as a factory brand, the notary could not change his name without having an authorization, and neither could he change his normal signature. Gradually, the monarchy increased its control in this matter, tending to transform a social institution into a police one.

Keywords: person, petition, modification.

Changing the family name or the first name is that operation of replacing both or only one of the names, at the request of the person who is interested in, with another name or first name by an administrative disposition or after the administrative procedure¹ has been run through.

In the Roman law, changing the name was possible except for the case in which this change would have been fraudulent. This possibility was kept also in the Middle Age but with some restrictions: the handicraftsmen were not allowed to change their name when it served as a factory brand, the notary could not change his name without having an authorization, and neither could he change his normal signature. Gradually, the monarchy increased its control in this matter, tending to transform a social institution into a police one. Thus, in the ancient France, laws like “no citizen will have another name or first name than the one written in his birth paper”, and “those who will abandon them will be forced to take them again”² have been issued.

The Romanian Government Ordinance no 41/2003 regarding obtaining and changing the names of natural persons by administrative means, approved with modifications and completions by Law no 323/2003, with its later modifications and completions, is the centre of name changing by administrative means. Thus, in art. 4 of this ordinance it is decided that:” the Romanian citizens, for solid reasons, can get the changing of their family name and of their first name or only of only one of them by administrative means”.

We consider that spiritually these new settlements consist mainly in three ideas:

- A higher flexibility in changing the name – the principle of non-changing name has suffered a restriction;
- Protection of interests under age children;
- Protection of the new name compared with the old one.

We assess that the enlargement of the possibility of changing the name comes out from the fact that the legislator specifies the rules in which such a request is grounded, unlike the old settlement which included only a juridical formula – solid reasons (art.4 in the Decree no 957/1968).

¹ P.Pețu, E.Velicu, V.Mardare, op. cit. p. 129-143.

² H. Capitant, F. Terre, Y. Lequette, op. cit. p. 106.

Taking into consideration the fact that running through the procedure in front of the administrative bodies foreseen by the law is mandatory, as well as the circumstance that usually the change of name is decided by the administrative body, we can use the expression “changing the name by administrative means” also in the existing settlement.

We also have to keep in mind the mention according to which the name is replaced at request, as it is about an element meant to contribute in many situations to a delimitation of changing the family name from modification of the family name, having in view that, for the latter, usually the replacement of the family name is not conditioned by the expression of will of that person in such a sense³.

Unlike the family name which is subjected to modification, as a result of changes in the legal status, the first name is not subjected to such modifications.

There is an essential difference between modifying and changing the family name:

- The family name cannot be modified except as an effect of the modifications of the family relations of natural persons;
- Also, unlike the modification, not only the name but also the first name can be modified by administrative means.

The competence to solve the requests for changing the names by administrative means belongs to the president of the town council and to the general mayor of Bucharest city respectively, who pronounces himself by issuing the admission or rejection disposition for changing the name, within 60 days from receiving the request.

In the cases of changing the name and the first name, solid grounds are needed in order to give the solicitor the right to ask for the change of the name or of the first name by administrative means.

Thus, in the direction of provisions of art.4 alin.(2) in R.G.O. no 41/2003 the requests for changing the name are considered as grounded in the following cases:

- a) when the name consists of indecent or ridicule expressions, or by translation or by another way;
- b) when that person has used, when exerting his profession, the name he desires to obtain, making the proof about it, as well as about the fact that he is known by the society as per this name. In our opinion, this legal provision brings into discussion the imprescriptible character of the name. So, it seems that an extended possession, in certain conditions, may give the owner the right to obtain it. These conditions are: a permanent use of the name and the person to be known in the society as having this name;
- c). when due to the inattention of legal status officers or as a result of not knowing the legal settlements in this matter, wrong mentions have been made in the registers of legal status or in legal status certificates with incorrect names have been issued and based on these certificate other documents were issued;
- d) when that person has the family name made up of more words, usually reunited, and wishes to change it;
- e) when the person has a family name of foreign origin and requests to have a Romanian name;
- f) when the person has changed the family name of foreign origin into a Romanian one, by administrative means, and wishes to come back to the name he received at his birth;
- g) when the parents have changed their name by administrative means and the children require to have the same family name as their parents;

³ G.Boroi, op. cit. p. 336-337.

h) when the person requires to have the same name as the other members of the family, name that he received as a result of an adoption, of keeping the name after marriage, of establishing the filiation or as a result of some changes of name previously approved by administrative means;

i) when the spouses agreed to have both reunited family names on the occasion of their marriage and both of them request its changing by administrative means, choosing to have the family name received at birth by one of them or each of them to come back to the name he/she had before the marriage;

j) when the person makes the proof that he/she has been recognized by the parents after the registration of birth, but as he/she did not inform the court for getting the approval to have his parent's name during his / her life, there is no other possibility to obtain the name by administrative means;

k) when the person got the approval to change his/her sex by definitive and irrevocable court order and he/she asks for a corresponding name, by presenting a medical – legal document from which his/her sex results.

The request to change the name will be submitted to the community public service for evidence of persons which is subordinated to the local council of the commune, city or the sector of Bucharest city in the area of which the solicitor lives.

We have to mention, though, that there are not community public services for persons' evidence in all localities, reason for which the petitions for changing the name by administrative means will be submitted to the City Hall of the administrative – territorial unit where the solicitor has his/her residence.

The request regarding Romanian citizens living outside the country will be submitted to the City Hall of the last residence he/she had in Romania – to the City Hall of Sector 1 of Bucharest City.

The petition for changing the name has to be motivated by one or more of the cases provisioned by art.4 alin.2 if 3 in the Ordinance – which are considered by the legislator as solid reasons – they have no limits provisioned by the law as art.4 alin.2 letter m says that this category also includes “other such cases solidly justified”.

We may notice that the legislator, in order to explain the notion of solid reasons, separates the cases that circumscribe to this in two groups, namely: the cases mentioned in art.4 alin.2 letters a-m; the cases provisioned in the same article in alin.3 letters a-h. In the opinion of some authors this means that the disposition settled in art.4 alin.2 letter m cannot be interpreted by analogy only in the first group and not in those stated in alin.3, which have limits, this conclusion being the result of the different nature of the two groups of cases.

References

P. Petu (2008). *Actele de stare civila*, Bucuresti: Ed. Didactici si Pedagogica.

G. Boroi (2008). *Drept Civil*, Bucuresti: Ed. C. H. Beck.

P. Petu (2007). *Actele de stare civila a persoanei fizice*, Bucuresti: Ed. Didactica si Pedagogica.

P. Pețu, E. Velicu & V.Mardare, (2008). *Drept civil*, București: Ed, All Beck, (pp 129-pp143).