

ACQUISITION AND DETERMINATION OF SURNAME

Viorica-Mihaela FRÎNTU*

Abstract: *REGARDING THE WAYS OF RISING THE RIGHT OF NAME, THE CIVIL CODE PROVIDES TWO POSSIBILITIES: EITHER BY ACQUISITION AS EFFECT OF AFFILIATION OR BY ESTABLISHING IT BY CERTAIN PERSONS DESIGNATED BY LAW. THUS, IN TERMS OF FAMILY NAME, IT CAN BE ACQUIRED AS A RESULT OF AFFILIATION AND CAN BE ESTABLISHED FOR THE FOUNDLING, THE CHILD BORN OF UNKNOWN PARENTS OR ABANDONED BY HIS MOTHER IN HOSPITAL AND WHOSE IDENTITY COULD NOT BE ESTABLISHED WITHIN THE TERM STIPULATED BY LAW¹.*

Keywords: *SURNAME, CIVIL CODE, FILIATION, MARRIAGE*

1. Introduction

In terms of terminology, we specify that "the name of the natural person" can be used in a double sense:

- in the narrow sense, it means only the family name;
- in a broad sense, it indicates both surname and first name. This is the meaning that we will mainly take into account .2

Civil Code, in art. 83, with marginal denomination "Structure of name" stipulates that the name includes both the surname and first name.

The patronymic name or family name in modern society designates all the persons belonging to the same family, so its mode of acquisition, with some exceptions, is constituted by the affiliation.³

* Lecturer PhD - "Constantin Brâncuși" University of Târgu-Jiu, Romania, email: frintumihaela@yahoo.com

1 D. Lupulescu, A.-M. Lupulescu, *Attributes of identifying the natural person: name, first name and pseudonym, domicile and residence, civil status acts*, Juridical Universe Publishing House, Bucharest, 2015, p. 86.

2 T. Țiclea, *Identification of natural person, in New Civil Code persoanei fizice. Studies and Comments*, vol. I, Book I și Book II-a (art. 1-534), de M. Uliescu (coord.), M. Duțu, M. Uliescu, B. Pătrașcu, S. Neculaescu, I. Dojană, T. Țiclea, F. Pavel, R. Dimitriu, L. Uță, I. Boți, Gh. Buta, S. Angheni, I. Urs, S. Cristea, D. Dobrev, D. Lupașcu, C.-M. Crăciunescu, A. Gherghe, C. Jora, M. G. Berindei, Juridical Universe Publishing House Bucharest, 2012, p. 298.

3. D. Lupulescu, A.-M. Lupulescu, *op. cit.*, p. 85.

The surname, as provided by art. 84 para. (1) of Civil Code, is acquired by filiation effect and can be modified by effect of change in civil status, as provided by law. The same idea is expressed by provisions of art. 2 para. (2) of the Government Ordinance no. 41/2003 on acquiring⁴ and changing names of natural persons by administrative way ,according

to which the surname is acquired by filiation and amended due to changes occurring in the civil status of the natural person as provided by law.

As the family name is acquired by filiation , it indicates the natural person's belonging to a particular family. He belongs to a family heritage, being not only the decisive element in the individualization of the natural person in society in relation to other family members, but also a sign of honor, esteem and appreciation that family enjoys in the social order. It is the reason why the surname can be born only by the individuals who acquire it under the law .

The Civil Code establishes the right of every person to have a name, also providing the modes of birth of the right to a name. Thus, in Art. 82 of Civil Code it is provided that a person's name can be established or acquired under the law. Based on these provisions of principle in art. 84 of the Civil Code are provided the general rules concerning the birth of right of name, of changing the surname following the change of civil status and the way in which it is established the surname and first name of the foundling, born of unknown parentage and the child who is abandoned by his mother in hospital and whose identification could not be established within the period prescribed by law .

On ways of birth right to a name, the Civil Code provides for two possibilities: either through acquisition as a result of parentage or by establishing it by certain persons designated by law. Thus, in terms of name, it can be acquired as a result of filiation and may be set for the found child born of unknown parentage or who was abandoned⁵ by his mother in hospital and has failed to establish its identity in limit prescribed by law⁶ .

The notion of filiation has two meanings. Thus, in a broader meaning, filiation means a series of births that connects a person to his ancestor. In other words, in this sense, the term filiation designates all the links in the chain between which the fact of birth established the link from parent to child. In a narrow sense filiation means the relation of biological parentage of the child and each of his parents. Filiation is based on the blood relation between child and parents, which results in the fact of birth and conception .

Seen from the child's side, filiation expresses for a person the quality of a child of certain parents, while seen by the parents's side, filiation indicates their correlative qualities of mother and father, called maternity and paternity .

As the parents of a child can be married or unmarried, so filiation can be within the marriage or outside it. Filiation may also result from the adoption⁷, in which case it is no longer based on blood relation, but results from the act of adoption⁸ .

2. Acquisition and Determination of Surname

As acquiring the surname is the effect of affiliation, it is imperative that in assigning his names his filiation must be determined first . Depending on how the child's filiation is determined should be determined his surname too.

4. Published in the *Official Gazette* no. 68 of February 2, 2003, approved with amendments by Law no. 323/2003 published in *Official Gazette* no. 510 of 15 July 2003, and subsequently amended and supplemented.

5.G. Plastara, *Course of Romanian Civil Law, vol. I*, Cartea Românească Publishing House, București, p. 159 apud D. Lupulescu, A.-M. Lupulescu, *op. cit.*, p. 85.

6D. Lupulescu, A.-M. Lupulescu, *op. cit.*, p. 86.

7Ibidem.

8 *Idem*, p. 87.

9.Ibidem.

10 Ibidem.

Thus, in terms of filiation, the child at birth, can be in one of the following situations, in which he may acquire or his surname is determined: a) the surname of the child born in wedlock; b) the surname of the child born out of wedlock; c) the surname of the child born of unknown parentage (found or abandoned).

a) Acquisition of surname of the child born in wedlock

Since acquiring the family name is an effect of filiation [art. 84 para. (1) Civil Code] the child in marriage will take the marriage name of his parents, chosen by them when submitting the declaration of marriage within the limits of the option possibilities provided for by art. 282 of Civil Code.

So, regarding the name of marriage, the spouses must choose one of the options limitatively provided by art. 282 of Civil Code: either for different surnames by maintaining, by both spouses, the name held before the end of the marriage or for a common family name that may be of either spouse or their names combined, or for a mediated solution, namely that one of the spouses keeping the maiden name, and the other their names combined. The choice will be made taking into account the actual surname of each of the spouses, without any concern about the way in which or the moment when it has been acquired or determined, modified or changed in accordance with Art. 84-85 of Civil Code.

The surname of the child born in wedlock is acquired or is determined according to the rules contained in art. 449 of the Civil Code.

When the parents have a common name, according to art. 449 par. (1) Civil Code, the child born in marriage takes the common surname of his parents.

If the parents do not have a common name, according to art. 449 par. (2) of Civil Code, the child takes the name of one of them or their name reunited. In this case the name of the child is determined by parental consent and is declared, once the child is born, at the local community service for people.

Without parental consent, the guardianship court decides, and shall communicate at once the final decision to local community service for people where the birth was registered [art. 449 par. (3) of Civil Code].

It is to be noted that the ability of parents to agree on the baby's name and the possibility for the court to decide on this name are limited to the explicitly enumerated variants of text art. 449 par. (2) of Civil Code, which means that neither parents nor guardianship court may not provide the child a name different from that of their parents, even if their names were formed of ridiculous or indecent words or phrases. On the other hand, it should be noted that the name established by parents' agreement or by decision of guardianship court for one of the children does not create a precedent such as to require the establishment of the same name for subsequent children. Thus, although it doesn't seem to be adequate, according to the parents' agreement, for example the first child might bear the father's name, the second one the mother's name and the third one the combined names of his parents.

b) Acquisition of surname of the child born out of wedlock

The surname of the child born out of wedlock is acquired under the terms of art. 450 of the Civil Code.

In accordance with art. 450 par. (1) of Civil Code, the child born out of wedlock takes the surname of that parent to whom filiation was first established.

11 D. Lupulescu, A.-M. Lupulescu, *op. cit.*, p. 86

12. E. Florian, *Comment (on art. 449), in The New Civil Code. Comment on articles . Art. 1-2664* (coordinators: Fl.-A. Baias, E. Chelaru, R. Constantinovici, I. Macovei), C.H. Beck Publishing House, Bucharest 2012, p. 492.

13 . E. Florian, *Family Law, 4th Edition*, C.H. Beck Publishing House, Bucharest, 2011, p. 37.

14. I. Reghini, Ș. Diaconescu, P. Vasilescu, *Introduction to Civil Law*, Hamangiu Publishing House, Bucharest, 2013, p. 255.

The hypothesis of the legal norm contained in Art. 450 par. (1) of Civil Code takes into account the child who at birth, has his filiation established only towards one parent (usually affiliation to mother¹⁶). In this case, he will acquire the family name borne by this parent¹⁶.

In para. (2) of art. 450 Civil Code it is provided that, where filiation has been established subsequently to the other parent, too the child, through the parents' consent, may take the surname of the parent to whom filiation has been established subsequently or their reunited name.

Subsequent establishment of filiation to the other parent too gives the child vocation to bear the name of the latter, fact which arises the issue of changing the surname of the child and not that of its acquisition. The situation is the same whether affiliation to the second parent will be established by voluntary recognition or judicially¹⁷.

The new surname of the child is declared by the parents together at the local public community service of people records where birth was registered. Without parental consent provisions of art. 449 par. (3) are applied. So if parents do not agree on the surname of the child, the court guardianship decides and immediately communicates the final decision, with the new surname of the child, the local service of public records of persons which registered the birth.

According to art. 450 par. (3) Civil Code, if the child has established filiation to both parents, the provisions of art. 449 par. (2) and (3) of the Civil Code are properly applied.

c) Establishment of the found child's surname, born of unknown parents, as well as that of the child abandoned by his mother in hospital

In some exceptional cases filiation of a child can not be established because parents are not known. It is in such a situation the found child whose parents are unknown, and the child abandoned by his mother in the hospital whose identity has not been established within the period prescribed by law, ie, 30 days after ascertaining abandonment¹⁸.

According to art. 84 para. (3) of the Civil Code, the surname and first name of the found child, born of unknown parents and those of the child who is left by his mother in hospital and her identity has not been established within the period prescribed by law shall be regulated by the mayor of the village, town, city or sector of Bucharest in whose jurisdiction the child was found or, in the case his abandonment has been ascertained, under the special law.

Special laws in this matter are Government Ordinance no. 41/2003 setting the deadline of 30 days to identify the mother, term that commences from ascertaining abandonment and which at the same time makes express reference to Law no. 119/1996 on the civil status acts¹⁹, as subsequently amended and supplemented²⁰.

If the child found whose parents are unknown and the child abandoned by mother in the hospital, their surname and first name are known, they are established, by order, which is issued by the mayor of the territorial administrative unit where birth is registered. The provision concerning the determination of surname and first name shall be issued within 5 days from the request made by the public service of social assistance from the place where it the child was found or abandoned.

¹⁵ According to art. 408 par. (1) *Civil Code*: "Filiation to the mother results from the fact of birth; it can be determined through recognition or by court order." Nothing opposes that the filiation of the child born out of wedlock to be established first to father such as, for example, voluntary recognition of the found child, in which case the child will acquire the surname of the father (D. Lupulescu, A.-M. Lupulescu, op. cit., p. 90).

¹⁶ T. Ticlea, op. cit., p. 303

¹⁷ E. Chelaru, *Civil Law. Persons*, 3rd Edition, C.H. Beck Publishing House, Bucharest, 2012, p. 86.

¹⁸ D. Lupulescu, A.-M. Lupulescu, op. cit., p. 91.

¹⁹ Published in the *Official Gazette* no 282 from 11 November 1996, republished in the *Official Gazette* no 339 from 18 May 2012 and subsequently amended and supplemented

²⁰ D. Lupulescu, A.-M. Lupulescu, op. cit., p. 91-92.

In these cases the determination of the child's surname is not based on filiation but is at the mayor's discretion²¹.

The administrative decision issued by the mayor produces the same legal effects as the name determined by filiation, which is why in the determination of surnames and first names must be taken into account the provisions of art. 84 para. (2) of the Civil Code which prohibits registration by the registrar of births, marriages and deaths not only the first name, but also a family name consisting of indecent, ridiculous and other words likely to affect public order and morals or the interests of the child, as appropriate²².

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²¹ D. Lupulescu, A.-M. Lupulescu, *op. cit.*, p. 92.

²² *Ibidem*.