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Nadia-Cerasela ANIȚEI

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WHAT DO WE MEAN BY THE NOTION OF “RESIDENCE” BY THE NOTION OF “RESIDENCE” IN THE CASE OF FOREIGNERS WHO ESTABLISH THEIR “RESIDENCE” IN ROMANIA?¹

Nadia-Cerasela ANITEI²

Abstract:

We will try to analyse in the first point which is the meaning of the notion of residence in Romania of Romanian citizens, and in the second point we will study the meaning of the notion of residence in the case of foreigners who establish their residence in Romania.

The study is based on articles from: Article 88 Civil Code; the provisions of Emergency Ordinance no. 194/2002 on foreigners in Romania republished (in 2011) and the provisions of Government Emergency Ordinance no. 102/2005 on the free movement of citizens of member states of the European Union and European Economic Area (republished in 2011) in order to derive the Romanian qualification of the notion “residence of the individual”.

Keywords:

Romanian citizens, foreign citizens, the residence of Romanian citizens in Romanian, residence of foreign citizens in Romania.

1. The notion of *residence* of Romanian citizens in Romania

Article 88 of the Civil Code defines the residence of the individual as "*the place where he has his secondary residence*".

In Article 30 of the Emergency Ordinance no. 97/2005 on *the registration, domicile, residence and identity papers of the Romanian citizens*, republished in 2011, the residence is defined as "*the address where the individual declares that he has his secondary place of residence other than his or her domicile*."

Article 26 (2) of the Emergency Ordinance no. 97/2005 republished in 2011 states that "*Romanian citizens can have at the same time only one domicile and / or one residence. If they have more homes, they can establish their domicile or residence in any of them*". So, Romanian citizens can only have **one residence** in Romania.

¹ Article presented at International Conference Legal and Administrative Challenges in Cross-Border Cooperation (LSCCC 2017) | April 6th, 2017 | Cernivtsi, Ukraine, pp. 15
http://conferinta.info/wp-content/uploads/2017/03/Program_LUMEN_RSACVP2017_Conference_associated-events.pdf

² PhD Univ. Prof. Faculty of Law, Social and Political Sciences, Dunărea de Jos University, Galați, Romania e-mail: nadia.anitei@ugal.ro; ncerasela@yahoo.com

According to Article 31 paragraph (1) of the Emergency Ordinance no. 97/2005 republished "The residence shall be entered in the identity document at the request of the individual who lives more than 15 days at the address where he has his secondary residence."

Studying Article 31 paragraph (1) of the Emergency Ordinance no. 97/2005 it would seem that the residence will have to be *mandatorily* entered in the identity document at the request of the individual if he lives for more than 15 days at that address. However, this term would be mandatory if the Emergency Ordinance no. 97/2005 had not undergone some modification through the 2011 republication. Article 43 letter c) of the Emergency Ordinance no. 97/2005 stipulates that non-compliance with the provisions of Articles 25 and 36 shall constitute a contravention and shall be sanctioned by a fine of 75 lei to 150 lei. It is noted that, as the ordinance was republished, Article 43 letter c) sanctions with a fine from RON 75 to RON 150 the person who hosts another person for an uninterrupted period of more than 30 days, except for the situations provided by Article 32 letter (a). From these provisions we find that the 15-day period is not mandatory, it is not mandatory for the registration of the residence at the request of the individual as long as a person can accommodate another person for 30 days, except for the situations provided by Article 32 letter (a), respectively the situation in which the person lives at a different address than the domicile one, in the interest of the service or for tourist purposes.

Paragraph 2 of Article 30 of the old regulation of the ordinance stated that "The indication of establishment of residence shall be granted for the requested period, but not longer than one year, and shall be valid for as long as the person actually resides at the address declared as a residence. Upon the expiration of this term, the person may request the registration of a new mention of establishment of residence." In the doctoral thesis "*Patrimonial relations between spouses in the Romanian private international law*" we stated that "*We do not understand why the Romanian citizen must apply for the residence renewal visa every year, as long as the person concerned has not changed his residence.*" At present, we have now found that the legislator abrogated this line in 2011 when the ordinance was republished.

Therefore, corroborating the provisions of Article 88 of the Civil Code and the provisions of Article 30 of the Emergency Ordinance no. 97/2005 republished, we can define the Romanian residence of the Romanian citizens as follows: the residence is the address in Romania where the Romanian citizens have their secondary residence and where they live for a shorter period than the one spent at the main dwelling.

2. The notion of *residence* in case of foreigner who establish their residence in Romania

Next we will try to investigate the meaning of the notion of *residence* in the case of foreigners who establish their residence in Romania. The regime of foreigners in Romania is regulated by the Emergency Ordinance no. 194/2002 on the regime of foreigners in Romania republished³.

Studying the Emergency Ordinance no. 194/2002 republished, we also find that in the 2008 republishing there is no section and not even an article expressly regulating the establishment of the foreigner's residence in Romania, as Article 76 regulates the residence of foreigners in Romania stating that "*Foreigners holding a permanent right of residence have the right to establish or change their domicile on the territory of Romania under the same conditions as the Romanian citizens*". If a foreign national holding a right of permanent residence has the right to establish or change his domicile on the territory of Romania under the same conditions as a Romanian citizen, we continue to consider that the emergency ordinance does not establish special formalities in the matter of determining the residence of the foreign citizen on the territory of Romania.

Article 3 (2) provides that foreigners who legally reside in Romania may move freely and may establish their residence or, where appropriate, their domicile, anywhere on the territory of Romania. From this paragraph it could be inferred that the right of the foreigner to establish his residence in Romania would depend on the lawfulness of his presence on the Romanian territory, namely on:

a. compliance with the provisions of: Article 6 paragraph (1) (conditions for entering the territory of Romania), Article 11 (which limits the legal temporary residence until the deadline established by the visa or by the residence permit or by the residence book), Articles 50-69 (conditions and procedure for extending the right of temporary stay); compliance with the provisions of Article 13 paragraph (2) stipulating that "The foreigner who changes his domicile or residence is obliged, within 15 days from the date of his transfer to the new address, to appear before the Romanian Territorial Office for Immigration, for being registered and making the appropriate mentions on the identity document. "

and of

b. failure to meet the requirements imposed by: Article 77 (Cases of cancellation and revocation of the right of residence in Romania), Article 85 (Declaration as Undesirable) and Article 94 (Making the expulsion of the foreigner).

³ Republished in 2004 and in 2008

According to Article 104 paragraph (6) of the Emergency Ordinance in question, the tolerated foreigner is required to appear monthly or whenever he is summoned to the territorial formation of the National Immigration Office which has granted him tolerance and announce any change of *residence*. It follows from this provision that a tolerated foreigner resides in the territory of our country. Pursuant to the first paragraph of Article 102, tolerance of stay on the territory of Romania is the permission to remain on the territory of the country, granted by the *National Immigration Office, to foreigners who do not have the right of residence* and who, for objective reasons, do not leave the territory of Romania. Therefore, the quality of tolerance implies the lack of right to stay on Romanian territory.

Corroborating the provisions of Articles 102 paragraph (1) and 104 paragraph (6), we conclude that a foreigner without a right to stay in our country (namely, not legally residing in Romania) may, however, have a Romanian residence. Although we have shown in the mentioned paper that the provisions of the Emergency Ordinance no. 194/2002 emphasize the false reasoning according to which the legality of the presence of the foreigner in Romania is an indispensable condition for the establishment of a Romanian residence, this falsity is maintained in the republishing of the mentioned ordinance in 2008 because a foreigner with no right of residence on the territory of our country (namely, who is not legally resident in Romania) may, however, have a Romanian residence. Taking into consideration that the Emergency Ordinance no. 194/2002, republished, does not contain any special provisions that particularize the institution of the Romanian residence of the foreigner, we consider that the Romanian legislature has left the definition of this notion under the common law (Article 88 Civil Code, interpreted *per a contrario* and Article 30 of the Emergency Ordinance no. 97/2005 republished) but also to the interpretation of the provisions of Article 76 of the Emergency Ordinance no. 194/2002 republished. Consequently, the Romanian residence of a foreigner, for the Romanian jurist must mean the address in Romania where the foreign citizens have their secondary residence and where they live for a shorter period than the one spent at the main residence.

Taking into account the fact that the provision of Article 30 of the Emergency Ordinance no. 97/2005 republished refers exclusively to Romanian citizens, is it possible for a foreigner to have several Romanian residences? *According to the Romanian legislator, a foreigner can have only one residence in Romania.* Although there is no express provision to this effect, in the Emergency Ordinance no. 194/2002, however, we can see the use of the common noun "residence" only in singular, in the drafting of Article 11

paragraph (2), Article 13 paragraph (2) and Article 104 paragraph (6) of the same normative act.

Conclusions

By corroborating the provisions of Article 88 of the Civil Code and the provisions of Article 30 of the Emergency Ordinance no. 97/2005 republished, we can define the Romanian residence of the Romanian citizens as follows: the residence is the address in Romania where the Romanian citizens have their secondary residence and where they live for a shorter period than the one spent at the main dwelling.

Through the residence of a foreigner in Romania, the Romanian jurist must understand the address in Romania where the foreign citizens have their secondary residence and where they live for a shorter period than the one spent at the main dwelling.

Legislation

Romanian Civil Code

Government Emergency Ordinance no. 194/2002 on foreigners in Romania republished (in 2011)

Government Emergency Ordinance no. 102/2005 on the free movement of citizens of member states of the European Union and European Economic Area (republished in 2011) in order to derive the Romanian qualification of the notion “residence of the individual