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# Personal Status and Conflicts of Laws

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**Abstract**: The legal status of the foreigner has always been of particular interest, as it has been found over time that the rights that a natural or legal person may have in a foreign country have particular consequences. Part of the population of a country other than the one in which he is located or lives, the foreigner who does not have Romanian citizenship, but who is found on the territory of a state, may have the status of stateless, refugee or displaced person. The foreigner's legal condition contains all the legal norms that regulate the legal acts and deeds of foreigners, natural or legal persons. The legal norms that regulate this matter are material norms that belong to Romanian law and, as such, the legal condition of the foreigner is subject to Romanian law, as the law of the forum, respectively as the law of the place where the foreigner is found. The sufficiently rich Romanian legislation that regulates the field took into account the particular nature of social relations, aiming to be as close as possible to concrete situations. The current trend, contained mainly in the provisions of the Civil Code that "liberalizes" the possibility of applying a different rule of law than the classical one, we consider to be a step forward and is in line with the obvious progress of the science of conflict law, also resulting from its historical evolution. The foreigner's legal status is made up of the set of rights and obligations they enjoy based on state legislation and according to international conventions. This means, concretely, the set of legal rules that regulate the foreigner's ability to use, i.e. the rights and obligations he has in a state as a foreigner. We emphasize that, also in the case of the legal person, the legal condition of the foreigner can be used, this being "that collective subject of law, holder of rights and obligations, whose personal status is governed by its national law".

**Keywords:** *personal status; conflict of laws; set of legal rules; collective subject of law.*

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## I. Introduction

The marital status and capacity of the natural person form, together with family relationships, the status of the natural person or personal status. We note that, in private international law, this notion has an extension, in the sense that it includes marital status, name, domicile, legal capacity and even family relationships, all of which are brought together in the so-called individual and family status of the natural person. Thus, in accordance with the provisions of art. 2572 para. Civil Code, "the personal status is subject to the national law of the natural person, unless, by special provisions, it is not provided otherwise" (Lupașcu, 2016, p. 520).

The conflicting rules in Romanian law that refer to both the marital status and the capacity of the natural person are contained in the provisions of art. 2572-2579 Civil Code, but also in those from art. 2568-2570 C. civ. In essence, we appreciate that the personal status includes the marital status, with all its elements, and the civil capacity, with the inabilities of use and exercise, while the family status includes aspects related to marriage and divorce or its termination: natural and legal kinship, as well as other important matters concerning parental authority, child protection and maintenance obligations. It is judiciously argued that in Romanian private international law, but also in civil law, the status of the natural person is an extremely thoroughly regulated notion including in the secondary legislation, the natural person being the main actor on the scene of law and, as such, it is both the premise , as well as the finality of the existence and application of a legal norm, he being the mobile and, at the same time, the recipient of the conflicting norm, without which private international law would not find its usefulness (Jugastru, 2016a).

## II. Personal status and marital status

Personal status, according to some authors, is made up of all the matters related to the state and capacity of people. Personal status constitutes a first category of connection whose unity is achieved in private international law by subjecting the various matters that make it up to the same law, personal law. The idea of recognizing a civil status for each person is the concern of some authors in the field, who also refer to the existence, at the same time, of the "right to nationality" of everyone (as a political status) (Ciuca, 2019, p. 27). This seems to be normal since a natural person remains the same, no matter how many borders he crosses and therefore the legal regime of his personal status tends to be the same. For this reason, laws

that refer directly to persons, such as those regarding status and capacity, must govern personal status permanently. The idea of permanence characterizes the personal status and imposes the competence of the national law, in the broadest sense (Jugastru, 2016b).

We believe that the law that governs personal status - lex personalis - is conceived differently, in different legal systems: some adopt, the personal way, the law of which the natural person is a citizen, therefore the national law; other legal systems the law of the country where the person has his domicile.

Marital status is not defined by law, leaving this mission to the specialists in the field, so some authors are of the opinion that marital status is presented as a set of elements, resulting from acts and acts of marital status, a set of elements through which the person physicality is individualized in the family and society. Other authors believe that the status of persons refers to a sum of inherent elements of the individual, to which the law links certain legal consequences. In this order of ideas, the state of the person is appreciated from the point of view of belonging to a certain state, family relations and physical or mental condition. By way of consequence, we deduce that the marital status combines the following characteristics:

- it is a set of elements;
- they originate from civil status acts and facts;
- the law links certain legal effects to these elements;
- these elements serve to identify the person in the family and society (Florea, 2022, p. 112).

We mention that marital status is not confused with each of the component elements, but is a distinct notion from them. In the same way, marital status is not confused with the effects that the law links to the elements that compose it. Marital status designates the sum of qualities and particularities that, through the consequences that the law provides, contribute to the individualization of the person in society and in the family. in reality, the civil status is the one that represents the civil status of the natural person and which consists in the loyalty of the rights and obligations that the person has at a given moment as a result of the facts and acts of civil status produced, respectively concluded by him, and which it distinguishes her from other people. As such, the essential element is that of identifying the natural person.

In conclusion, marital status includes: data on parentage from marriage, out of wedlock, adoption or child born of unknown or abandoned

parents; family data, married, single, divorced, widowed, in a relationship with a certain person; adoption data (adoptee, adopter); data on kinship (the person is related or not to another person) and data on affinity (the person is related or unrelated)" (Lupascu, 2012, pp. 8-9). To these, some authors add biological factors: gender and age. All of these are subject to the conflicting rule of lex personalis, which regulates, at the same time, the use of civil status and civil status action. However, the drawing up of civil status acts and facts is not governed by personal law, but by the law of the place of conclusion of the act (lex loci actus), respecting *the locus regit actum rule* or *the lex auctoris*, i.e. the law of the authority that carries out the registration.

For foreigners and stateless persons on the territory of Romania, a series of special rules are established, which aim at both the preparation of civil status documents and the issuance of civil status certificates. As for foreign citizens who have their domicile, habitual residence or are temporarily in Romania, they have the possibility, at their choice, to request the registration of acts or facts of civil status, either directly to the competent Romanian authorities, or to the diplomatic or consular representatives of the state of whose citizenship they have in our country. As such, foreigners mainly benefit from the national regime, in the sense that all documents and facts of civil status are registered under the same conditions as in the case of Romanian citizens (Jugastru, 2016b, p. 86).

According to the provisions of art. 4 of Law no. 119/1996 regarding civil status documents, in the case of the marriage or death of the foreign citizen on Romanian territory, the civil status officer who drew up the document is obliged to send an extract from the respective document to the competent body within 5 days of registration of the Ministry of Administration and the Interior and the Diplomatic Mission or the Consular Office of the respective country accredited in Romania, according to the obligations arising from treaties, agreements or conventions to which Romania is a party or on the basis of reciprocity. Stateless persons are also obliged to request the registration of civil status documents and facts at the local community public service for records of persons or, as the case may be, at the competent town hall.

If we refer to legal documents, their preparation, when it concerns the birth certificate, is done at the local community public service for records of persons or, as the case may be, by the civil status officer within the town hall of the administrative-territorial unit within whose radius the event occurred, based on the verbal declaration of the persons provided for by law, the identity document of the mother and the declarant, the medical certificate certifying the birth and, as the case may be, the marriage

certificate of the parents. The marriage certificate is drawn up by the registrar who has obtained the free and fully expressed consent of the future spouses, and the death certificate is made at the local community public service for the record of persons or, as the case may be, at the civil registrar from the town hall of the administrative-territorial unit within whose radius the death occurred. The medical certificate of death and the verbal statement made by the deceased's family members are taken into account. If the death concerns a Romanian citizen and occurred abroad, the certificate issued by the local community public service for records of persons or by the civil status officer within the town hall of the administrative-territorial unit within whose radius the burial is to be carried out is required.

We reiterate that the conclusion of marriage between Romanian citizens or if one of the future spouses is a Romanian citizen is done by the heads of diplomatic missions or the heads of career consular offices of Romania. In order to have evidentiary power, the civil status documents of Romanian citizens drawn up by foreign authorities must be entered or transcribed in the Romanian civil status registers (Lupascu, 2012, p. 77). We also emphasize that "civil status certificates issued by the local community public service for records of persons or, as the case may be, by the civil status officer in the town hall of the administrative-territorial unit who registered the civil status documents and facts are valid and abroad (Anitei, 2015, p. 136).

The national regime, in the sense of equivalence with the rights enjoyed by Romanian citizens, is also enjoyed by stateless persons in their civil status documents and facts. As we have shown, the registration of acts and facts of civil status is not subject to national law (as personal law), but to the law of the place of conclusion of the act (lex loci actus), according to the rule known as locus regit actum or the law of the authority that carries out the registration, lex auctoris. In exceptional situations, the registration of civil status documents or facts is done by the captain of the ship or aircraft in which the event takes place, with the obligation to, upon returning to the country, present them for re-registration to the competent authorities in the first port or airport, and in Bucharest, at the City Hall of Sector 1" (Chelaru, 2018, p. 145).

## III. Individual Capacity and Conflicts of Laws

There are two coordinates of the civil capacity, namely: the capacity to use, which consists in the person's ability to have rights and obligations, and the capacity to exercise, which is the person's ability to exercise their rights and assume their obligations, committing acts legal.

We specify that civil status is not confused with civil capacity either. From the point of view of exercise capacity, a person may or may not be able, but he always has a marital status. In this regard, the minor and the prohibited have civil status, but they do not have legal capacity. Marital status can have an influence on the capacity to exercise, as it happens in the case of a minor who marries and acquires the capacity to exercise. The civil status and capacity of persons are traditionally studied together in private international law, forming the personal status, subject to personal law, which ensures a certain unity.

The ability to use a natural person in a foreign country can be viewed from two points of view:

- of the law of the state on whose territory it is located;
- of the law of the state to which the natural person abroad belongs.

As long as a natural person is abroad, in practical terms, the content of his capacity to use is determined by the law of the state on whose territory he is (Florea, 2022, p. 113).

According to the provisions of art. 2572 C. civ., "the civil capacity of the natural person is governed by national law, unless special provisions provide otherwise. It is submitted that some matters are governed, however, by the law applicable to the legal relationship in question. Usually, this unilateral conflict rule was interpreted, in judicial practice, in the sense of a bilateral conflict rule" (Sitaru, 2013, p. 185). According to the provisions of art. 2568 C. civ., the national law is that of the state whose citizenship the person in question has. If the person has more than one nationality, the law of the state of which he has nationality and to which he is most closely connected, in particular through his habitual residence, applies.

As for *the capacity to use*, as I have pointed out, *it is subject, in principle, to the national law of each foreigner*. This law determines, as shown by the provisions of art. 2573 C. civ., *both the beginning and the termination of legal personality. The beginning of personhood in terms of the capacity to use is equivalent, in the usual way, to the birth of the person concerned, this in the conditions in which the child is born alive.* As the civil law also regulates the capacity for anticipated use, this notion includes the rights of the conceived child, according to the principle the conceived child is always considered born when it will be in his interest.

As a result, national law also governs the aspect related to the presumption established by substantive civil law. Thus, the beginning of the legal personality of a natural person is subject to the national law, and in Romania the provisions of art. 2573 Civil Code, art. 34 Civil Code (capacity

for use), art. 36 Civil Code (anticipated capacity for use) and art. 957 C. Civ. (anticipated capacity for inheritance).

Regarding the content of the capacity of use, it is also determined by the national law and results from the interpretation of the provisions of art. 2572 Civil Code, which speaks of the law applicable to the capacity and *the capacity of the natural person*, which is governed by its national law (Chelaru, 2018, p. 146).

In practice, we find a separate issue which is that of disabilities. Incapacity is qualified as the state of a person who has been deprived by law of the use or exercise of certain rights. Special disabilities, being an exception to capacity, and the law applicable to them will be different from the national law that normally applies to the content of the legal capacity of the natural person. The provisions of art. 2572 para. (2) Civil Code completes the table and mentions that *the special incapacities related to a certain legal relationship are subject to the law applicable to that legal relationship*. Divided into disabilities of use, disabilities of exercise, special disabilities or disabilities of a protective nature and disabilities of a sanction nature, they are all considered special, because the natural person lacks the ability to have rights and obligations, and in terms of relations with an element of foreignness, they are subject to different conflicting norms, depending on the qualification applied to them (Sitaru, 2013, p. 168).

There are some special incapacities that arise in the practice of relationships with an element of foreignness and which, as I mentioned, are governed by the law of the legal relationship to which they refer, and not by national law. For example: the inability to acquire the right of ownership over buildable land by a natural person not resident in Romania; the inability to acquire the right of ownership over agricultural land, forest land and forests; or, in the conditions in which the acquirer, a foreign citizen, belongs to a third country that is not a member of the European Union, can only acquire the right of ownership under the conditions regulated in international treaties based on reciprocity. The same law of the respective legal relationship applies in certain situations in the case of contracts or in the matter of successions. In this sense, the provisions of art. 2636 para. (1) lit. a) Civil Code, which states a special inability to dispose or receive by will, situation regulated by lex successionis (Chelaru, 2018, p. 147).

If we refer to the applicable law, in the situation of the declaration of death by court decision, apart from the provisions of art. 2573 Civil Code, stated above, in the case, the provisions of art. 2574 C. civ., which states: *The declaration of death, the establishment of death and the presumed date of death, as well as the presumption that the missing person is alive, are governed by the last national law of*

*the missing person. If this law cannot be identified, Romanian law applies*. Practically, the last sentence also solves a possible mobile conflict of laws. Likewise, the national law also applies when the end of the legal personality of each of the natural persons involved occurs through the simultaneous death of several natural persons. Therefore, *the lex causae* will be induced to the following aspects: the qualification of the notion of comorients, the establishment of the date of death and, implicitly, the determination of the successional capacity for each of those in question" (Jugastru, 2016a, pp. 34-36).

When it comes to exercise capacity, it starts from the date the person becomes of age. The person becomes an adult upon reaching the age of 18 (art. 38 of the Civil Code). Exceptionally, the married minor acquires full exercise capacity. Civil legislation also regulates anticipated exercise capacity, providing, through the provisions of art. 40 Civil Code, that "for valid reasons, the guardianship court can recognize the minor who has reached the age of 16 full exercise capacity", and by the provisions of art. 41 Civil Code, the minor who has reached the age of 14 is granted limited exercise capacity. The minor who has not reached the age of 14, the court-prohibited and other persons provided by law are considered not to have legal capacity" (Lupascu, 2012, pp. 30-31). Regarding the establishment of the law applicable to the foreigner regarding the exercise capacity, the wording in the text of art. 2572 para. (1) Civil Code, interpreted in the sense that it is also subject to national law, is found to be justified. That being the case, the foreigner's national law determines the beginning, content and termination of his exercise capacity, including anticipated and restricted exercise capacity, the minor's capacity to marry, as well as the regime of legal acts that a natural person can conclude personally.

In conclusion, we specify that "a possible conflict of laws is still resolved by applying the national law of the natural person, even when it regulates a series of exercise incapacities, such as:

- the formalities for concluding legal acts on behalf of the person without legal capacity or with limited legal capacity;
- the penalty for not fulfilling the legal requirements for the valid conclusion of legal acts in the name of the minor without legal capacity/with limited legal capacity;
- determining the persons who can have active procedural status for the actions in establishing the nullity of legal acts" (Chelaru, 2018, p. 150).

The specialized authors also refer to the personality rights that are inherent in the quality of a human person, in the sense that they belong to any individual and protect, in particular, the physical and moral characteristics of the human being, its individuality or personality, being

"extrapatrimonial prerogatives, intimately attached to the person which express the quintessence of the human being, being intrinsic to it" (Jugastru, 2007).

The current Romanian civil code, in the chapter entitled *Respect due to the human being and its inherent rights,* begins the regulation *with personality rights*, establishing, through the provisions of art. 58, that: (1) every person has the right to life, health, physical and mental integrity, dignity, self-image, respect for private life, as well as other such rights recognized by law. (2) These rights are not transferable, and in the second section, entitled *The rights to life, health and integrity of the natural person*, also requires their guarantee, by art. 61, entitled "Guarantee of the rights inherent to the human being", the content of which states "(1) The life, health and physical and mental integrity of any person are guaranteed and equally protected by the law. (2) The interest and good of the human being must take precedence over the unique interest of society and science, and we add the much-discussed references to the legal status of women and the instruments regulating women's rights in international society (Nemţoi, 2021).

The analysis of the legal framework leads us to the conclusion that the most important right, namely the right to life, is strictly regulated, both by domestic law and international conventions to which Romania is a party. The protection of the human being implies the prohibition of any touching brought to the human species and, as a consequence of the inviolability of the human body, physical and mental integrity can only be achieved in the cases and under the conditions expressly and limitedly provided by law. As such, the right to life, to health, to physical and mental integrity, the right to dispose of oneself, the right to expression, the right to private life, the right to dignity, the right to one's own image or the right to respect for the deceased are, all, rights inherent to the human being and are subject, in terms of their existence and content, to the national law of the foreigner. If the person has dual or multiple citizenship, the law of the state of which he has citizenship and to which he is most closely connected, in particular through his habitual residence, applies. In the case of stateless aliens or refugees, the law of the state of habitual residence shall apply.

## IV. Conclusions

The imperative provisions provided by Romanian law for the regulation of a legal relationship with an element of extraneousness are applied as a matter of priority. The imperative provisions provided by the law of another state for the regulation of a legal relationship with an extraneous element can also be applied directly, if the legal relationship is

closely related to the law of that state, and the legitimate interests of the parties require it. The content of the foreign law is determined by the court through certificates obtained from the state bodies that enacted it, through the opinion of an expert or through another appropriate method. The party invoking a foreign law may be required to prove its content.

The conflicting norms concerning the natural person are the "heart" of the special matter of private international law. The individual or natural person is the one who makes international private life exist; he is the mobile and, at the same time, the recipient of conflicting norms. Without natural persons who enter into cross-border family relations, who assume contractual obligations outside the borders of their own state of citizenship or residence, who establish commercial companies based abroad, who draw up wills for movable and immovable assets located on the territory of several states etc., private international law would not find its usefulness. Not only do conflicting rules on personal status refer to various national systems of private international law, but unification (within European private international law) takes on a major role when marital status, capacity, commencement and termination of legal personality are under discussion. of the natural person. The natural person is the preferred legal subject, par excellence, in civil law relations - in a broad sense, relations without an element of extraneousness. As the subject of relations with a foreign element, the natural person is protected, in all elements of his legal personality, by conflicting norms and, as the case may be, by national norms of immediate application and by unified norms at the regional level.

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