

# LEGAL STATUS OF INDIVIDUALS IN PRIVATE INTERNATIONAL LAW OF THE REPUBLIC OF MOLDOVA WITHIN THE FRAMEWORK OF THE UPDATED CIVIL CODE

Natalia OSOIANU, PhD, associate professor (ORCID: 0000-0002-6259-1200)

*The article examines the legal status of the most typical subjects of private international law of the Republic of Moldova – Individuals; rules of conflict of law and substantial norms, theoretical and practical aspects of relations with the participation of these persons and problems that may arise, as well as ways of their solution, are also analyzed.*

**Keywords:** individual, citizen, stateless person, foreign citizen, refugee, national treatment, private international law, conflict of law rules.

## **STATUL JURIDIC AL PERSOANELOR FIZICE ÎN DREPTUL INTERNAȚIONAL PRIVAT AL REPUBLICII MOLDOVA ÎN CADRUL CODULUI CIVIL ACTUALIZAT**

*Articolul examinează statutul juridic al celor mai tipice subiecte ale dreptului internațional privat al Republicii Moldova — persoane fizice; conflicte de legi și norme materiale, aspecte teoretice și practice ale relațiilor cu participarea acestor persoane și probleme care ar putea apărea, precum și modalitățile de soluționare a acestora.*

**Cuvinte-cheie:** persoana fizică, cetățean, apatrid, cetățean străin, refugiat, tratament național, drept internațional privat, norma conflictuală.

Private international law is a branch of law that regulates private property and personal non-property relations, which is why its subjects can be, as a general rule, individuals and legal entities. In certain cases and subject to certain conditions, international organizations and states may also become subjects of private international law, but they are not among the main ones. Some authors refer to subjects of private international law as *foreigners in the broad sense of the term*; this is typical, for example, of the Romanian doctrine. In relation to individuals, the definition is legitimate, but in terms of legal entities it seems inaccurate, since it carries connotations related primarily to persons, and not to companies. However, it can not be called erroneous, since legal entities, as well as individuals, are associated with a certain state — and therefore in all other States act as “foreigners”. This relationship, however, is of a different nature, which is not the subject of this article.

The primary and main subject of private international law is an **individual**. From the point of view of such a person’s belonging to a certain state (and law and order of this state), the following categories are usually distinguished, which are important in the context of legal relations with a foreign element:

- Own citizens — citizens of the Republic of Moldova; citizenship is understood in accordance with article 3(1) of the law on citizenship no. 1024 of 02.06.2000<sup>1</sup> as defining a permanent political and legal relationship between an individual and the Republic of Moldova, giving rise to mutual rights and obligations;
- Foreign citizens — all other persons who have the citizenship of a state; “determination and confirmation of citizenship shall be carried out in accordance with the law of the state to whose citizenship the reference is made” (article 2586 (6) of the Civil Code of the Republic of Moldova<sup>2</sup>);
- Persons with multiple citizenship; as noted in the doctrine of private international law, “the causes of dual citizenship are territorial changes, economic and political migration, as well as differences in the legislation of States on the acquisition and loss of citizenship<sup>3</sup>”;
- Stateless persons, including those who have permanent residence in the Republic of Moldova and those who have permanent residence in a foreign country;
- Refugees — persons with a special legal status other than the listed categories;
- Citizens of the Republic of Moldova who, in addition to the citizenship of the Republic of Moldova, have a foreign citizenship (or citizenships). Formally, this is a separate category, but according to article 2586 (3) of the Civil Code of the Republic of Moldova, it is considered that they are citizens of our country, that is, foreign citizenship is simply not taken into account, and these individuals do not have any peculiarities in terms of legal status, theoretically. In practice, problems still exist.

When referring to the sources that regulate the legal status of individuals in the Republic of Moldova, we should first mention the Constitution, which in article 19(1)<sup>4</sup> provides that foreign citizens and stateless persons have the same rights and obligations as citizens of the Republic of Moldova, with exceptions established by law. This provision is referred to as *the principle of national treatment* in the international private law doctrine and is applied very widely, with small variations on specific rights and obligations. It is slightly specified in article 2587 (2) of the Civil Code of the Republic of Moldova, which provides that “foreign citizens and stateless persons enjoy legal capacity in the Republic of Moldova on an equal basis with citizens of the Republic of Moldova, except in cases stipulated by the Constitution, other laws of the Republic of Moldova or international treaties to which the Republic of Moldova is a party”.

1 Monitorul Oficial Nr. 98-101 от 10.08.2000. [online] [http://lex.justice.md/document\\_rus.php?id=22054258:156FAF87](http://lex.justice.md/document_rus.php?id=22054258:156FAF87)

2 Monitorul Oficial Nr. 82-86 от 22.06.2002. [online] <http://lex.justice.md/ru/325085/>

3 Белькова Е.Г. Правосубъектность граждан в международном частном праве. В: Известия ИГЭА. 2008. № 4 (60). С. 105.

4 Monitorul Oficial Nr. 1 от 12.08.1994. [online] <http://lex.justice.md/viewdoc.php?id=311496>

Previously, the main legal act, which, in turn, specified article 1588 of the Civil Code in the old version (with similar content) of this act, was the Law on the legal status of foreign citizens and stateless persons in the Republic of Moldova No. 275 of 10.11.1994<sup>5</sup>. However, in 2016, due to changes in the legislation, it became invalid, and the provisions regulating the issue in question were transferred to the law on the treatment of foreigners in the Republic of Moldova No. 200 of 16.07.2010<sup>6</sup>. Chapter IX<sup>1</sup> of this law is referred to as “Basic rights, freedoms and duties of foreigners” and contains rules concerning, for example, the right to work and protection of work (article 84<sup>2</sup>), the right to property and intellectual property (84<sup>6</sup>), the right to education (article 84<sup>7</sup>), the right to freedom of movement throughout the territory of the Republic of Moldova (article 84<sup>11</sup>), and so on. The law provides, in addition to a number of formalities relating to foreigners, the following restrictions on their rights:

- Foreigners do not have the right to elect and be elected to legislative, executive and local public administration bodies, as well as to participate in the popular vote;
- Foreigners cannot be members of parties or other socio-political organizations;
- Foreigners are not allowed to perform military service in the Armed forces of the Republic of Moldova.

The national regime is postulated in article 84<sup>1</sup> in a wording that differs slightly from the wording of the Constitution and the Civil Code, but does not contradict them: “Foreigners residing in the territory of the Republic of Moldova enjoy the same rights and freedoms as citizens of the Republic of Moldova, guaranteed by the Constitution of the Republic of Moldova and other laws, as well as the rights provided for by international treaties to which the Republic of Moldova is a party, with exceptions established by current legislation”.

In addition to the Law on the treatment of foreigners in the Republic of Moldova, there is the Law on the integration of foreigners No. 274 of 27.12.2011<sup>7</sup>, which provides such a classification of subjects that fall under the scope of this legal act:

- foreigners who have the right to temporary residence for family reunification;
- foreigners who have the right to temporary residence for the purpose of employment;
- foreigners who have the right to temporary stay for study;
- foreigners who have the right to temporary residence for the purpose of carrying out humanitarian or religious activities;
- foreigners who have the right to permanent residence;
- persons who are recognized as stateless in the Republic of Moldova;
- foreigners who have received international protection or political asylum in the Republic of Moldova (article 2, part 1).

5 Monitorul Oficial Nr. 20 of 29.12.1994. [online] <http://lex.justice.md/viewdoc.php?action=view&view=doc&id=311642&lang=2>

6 Monitorul Oficial Nr. 179-181 of 24.09.2010. [online] <http://lex.justice.md/ru/336056/>

7 Monitorul Oficial Nr. 48 of 13.03.2012. [online] <http://lex.justice.md/viewdoc.php?action=view&view=doc&id=342438&lang=2>

This law, however, is of an administrative rather than a private legal nature, and regulates the actions of state bodies aimed at implementing integration programs, rather than relations between individuals and/or legal entities. This classification has no practical significance for private international law.

In accordance with the principle of national treatment, the legal status of individuals is determined, including, first of all, issues of legal capacity, as well as certain aspects relating to civil status, citizenship, domicile, and so on. But, as we know, one of the most important tasks of private international law is to determine the applicable law by means of conflict-of-laws rules. Article 2586 of the Civil Code provides for the following variants of the applicable law, which is also referred to as national or personal law (*lex nationalis/lex personalis*):

- For persons who have citizenship of a foreign country - the law of citizenship (*lex patriae*);
- For persons without citizenship — the law of the place of residence/domicile (*lex domicilii*);
- For persons with multiple citizenship — the law of closest connection (*lex connectionis fermitatis*);
- For refugees, the law of the state that granted asylum;
- For citizens of the Republic of Moldova who also have foreign citizenship — the law of the Republic of Moldova.

Of the listed variants of the applicable law, first of all, the law of the closest connection needs to be commented on. In the Civil Code of the Republic of Moldova it is not explained, but the necessary clarification can be found in the Code of Civil Procedure: according to article 455(2), “when a person has several foreign citizenships, his national law shall be the law of the state in which it has a place of residence”. This conclusion is confirmed by paragraph 17 of the resolution of the Plenum of the Supreme Judicial Chamber of the Republic of Moldova on judicial practice in civil cases with a foreign element (No. 3 of 25.04.2016)<sup>8</sup>. The decree also specifies that, under article 30(1) of the Civil Code (in the old edition) “place of residence [domicile] of a natural person shall be the place where he/she lives permanently or primarily”, which is consistent with the theory and practice of private international law. We can agree with the opinion of E.G. Belkova, who points out that “the application of the criterion of residence often contributes to the choice of the law and order of the state with which the person actually has the most stable close relationship. In the face of rising migration the principle of nationality does not always provide the use of the legal system, which is closely connected with the relationship”<sup>9</sup>.

With regard to the legal status of refugees in private international law and the

8 Cu privire la practica judiciară de examinare a pricinilor civile cu element de extraneitate. [online] [http://jurisprudenta.csj.md/search\\_hot\\_expl.php?id=209](http://jurisprudenta.csj.md/search_hot_expl.php?id=209)

9 Белькова Е.Г. О правоспособности физических лиц в международном частном праве. URL: <https://cyberleninka.ru/article/n/o-pravosposobnosti-fizicheskikh-lits-v-mezhdunarodnom-chastnom-prave>

definition of the law applicable to them as the law of the state that granted asylum, this issue cannot be considered without taking into account the provisions of the Law on asylum in the Republic of Moldova No. 270 of 18.12.2008<sup>10</sup>. According to article 3, refugee status is “a form of protection recognized by the Republic of Moldova for a foreign citizen or stateless person that meets the conditions provided for by the Geneva Convention of 28 July 1951 and the Protocol relating to the status of refugees of 31 January 1967”, and asylum is “a legal institution through which the state provides protection to an alien by recognizing their refugee status and granting humanitarian, temporary protection or political asylum”. In accordance with article 17 (1), “refugee status is recognized at the request of an alien who, due to a well-founded fear of being persecuted on the basis of race, religion, nationality, belonging to a particular social group or political opinion, is located outside the country of his or her nationality and cannot enjoy the protection of that country or does not wish to enjoy such protection because of such fears; or, having no specific citizenship and being outside the country of their usual residence as a result of such events, cannot or does not wish to return to it due to such fears.” Article 17 (1) thus explains well enough why neither the law of citizenship nor the law of ordinary domicile applies to refugees if they are located in the country from which the person was forced to flee.

The Law on asylum in the Republic of Moldova does not contain provisions on the applicable law that would supplement article 2587 of the Civil Code, but at the same time it provides for special rights of refugees, sometimes specifying that they are granted on an equal basis with citizens of the Republic of Moldova: to be informed in writing in a language that they understand or for which there is a reasonable reason to believe that they understand it, as soon as possible after receiving a form of protection, of their rights and obligations; the right to choose a place of residence and free movement, subject to the conditions established by law for foreigners; the right to work for individuals or legal entities, engage in free professions, carry out business activities in accordance with the current legislation; the right to receive wages and use other material rights arising from the activities carried out, as well as the right to social security in accordance with the law; the right to receive compulsory education, as well as other forms of education in accordance with the conditions established by law for citizens of the Republic of Moldova; etc.

The general, not special, rights of refugees in the Republic of Moldova in accordance with article 2586 (5) of the Civil Code normally coincide with the rights of citizens of the Republic of Moldova, and therefore do not need separate regulation.

It should also be noted that the Republic of Moldova is a party to the aforementioned Geneva Convention of 28 July 1951<sup>11</sup>, and this Convention provides in article 12(1) that “the personal status of a refugee is determined by the laws of the

10 Monitorul Oficial Nr. 53-54 от 13.03.2009. [online] <http://lex.justice.md/ru/330978/>

11 Женевская конвенция от 28.07.1951 г. [online] [http://www.un.org/ru/documents/decl\\_conv/conventions/refugees.shtml](http://www.un.org/ru/documents/decl_conv/conventions/refugees.shtml)

country of his domicile or, if he does not have one, by the laws of the country of his residence”. At the same time, the Convention also contains some rules of the international private law: article 12(2) states that “the rights previously acquired by a refugee related to his personal status, and in particular the rights arising from marriage, will be respected by the Contracting States upon the completion, if necessary, of the formalities prescribed by the laws of that state, provided that the right in question is one of those rights that would have been recognized by the laws of that state if that person had not become a refugee”. Thus, the Convention provides not only for the national treatment of a refugee in the country where he / she has received asylum, but also for the recognition of his / her rights acquired under the laws of the country of his / her citizenship or previous domicile. Interestingly, in a number of cases, the Convention provides refugees with most-favored-nation treatment rather than national treatment. There are, in particular, the following specific rules:

- In respect of the acquisition of movable and immovable property and other related rights, as well as in respect of leases and other contracts relating to movable and immovable property, the Contracting States will provide refugees with as favourable a position as possible and, in any case, no less favourable than that normally enjoyed by foreigners in the same circumstances (article 13).
- Contracting States will grant refugees who are lawfully resident in their territory the most favourable legal status in respect of their right to work for employment, which is enjoyed by foreign nationals in the same circumstances (article 17 (1)).
- Contracting States will grant refugees legally residing in their territory a legal status that is as favourable as possible and, in any case, no less favourable than that normally enjoyed by foreigners in the same circumstances with regard to the right to engage in agriculture, industry, handicrafts and trade on their own, as well as the right to establish commercial and industrial partnerships (article 18).
- Each Contracting state will grant refugees who are lawfully resident in its territory and who have a diploma recognized by the competent authorities of that state and wish to engage in free professions a legal position as favourable as possible and, in any case, a position no less favourable than that normally enjoyed by foreigners in the same circumstances (article 19(1)).
- Since the housing issue is regulated by laws or regulations or is under the control of a public authority, Contracting States will grant refugees legally residing in their territory a legal position that is as favourable as possible and, in any case, no less favourable than that normally enjoyed by foreigners in the same circumstances (article 21).
- Contracting States will provide refugees with the most favourable legal status possible [in the field of education] and, in any case, a position no less favourable than that normally enjoyed by foreigners in the same circumstances (article 22).

Continuing the comment on attachment formulas relating to individuals, we note that the wording of article 2586 (3) of the Civil Code is a unilateral conflict of laws rule, which is less common than a bilateral one and expresses the state's interest in regulating a certain category of legal relations. Theoretically, this interest is understandable and comprehensible, but in practice, the will of the state to regulate the legal status of a person with multiple citizenship often collides with a similar will of another state, whose citizenship this particular person also has. To resolve such issues, additional rules are required — for example, references to the place of permanent residence, fiscal domicile, place of employment, etc.

Another important aspect of the legal status of individuals in private international law concerns the extent of their legal capacity and the possibility of its restriction, as well as deprivation. The applicable law for determining legal capacity is established according to the above-mentioned attachment formulas, that is, for a foreign citizen, this will be the law of the country of citizenship, for an stateless person with domicile outside the Republic of Moldova, the law of the country of permanent residence, and so on.

More interesting in this context are the special rules contained in article 2588 of the Civil Code. In particular, according to part (2) “a person lacking full capacity according to his national law, is not entitled to rely on this fact if it is capable by law of the Republic of Moldova when the law is the law of the place of the transaction, except for cases when it is proved that other party to the transaction knew or should know about absence of capacity in respect of the relevant transaction”. In accordance with part (3), “the legal capacity of foreign citizens and stateless persons in respect of transactions made on the territory of the Republic of Moldova and obligations arising from damage caused on the territory of the Republic of Moldova is determined by the law of the Republic of Moldova”. Part (4) provides that “the effect on a person of the new national law does not affect his or her legal age acquired and recognized in accordance with the previously applied law”.

In the previous version of the Civil Code, article 1591 regulated the recognition of a foreigner as incapacitated or with limited legal capacity. The article provided that this can be done on the basis of the legislation of the Republic of Moldova. It was also clarified that “legal representation of an inept foreign citizen or a stateless person, as well as assistance to a foreign citizen with limited legal capacity or a stateless person, is carried out in accordance with the law governing the legal relations of representation or assistance.” In previous publications we have noted that reference to the law of the Republic of Moldova, which in the relevant case would be the law of the court (*lex fori*), is a bad way to resolve the conflict. The attitude of the legislator to the issue of restriction and deprivation of legal capacity through a court decision may not coincide in different States. The conflict of laws issue is also addressed in different ways: for example, the Romanian Civil code provides that restrictions on legal capacity relating to certain legal relations must be regulated in accordance with the law applicable to

these legal relations (article 2.572, part 2<sup>12</sup>). The application of the law of the Republic of Moldova could thus lead to non-recognition of the decision abroad.

The updated Civil Code does not contain this problematic norm.

A number of other articles of the updated Civil Code regulate other aspects of the legal status of individuals. Thus, according to article 2589 (1), the name of a person, its use and protection are regulated by its national law, unless the Civil Code or other laws provide otherwise. Part (2) provides that protection from acts committed on the territory of the Republic of Moldova that infringe on the right to a name is provided in accordance with its legislation.

Article 2590 regulates issues related to the protection of an adult individual. Thus, it is provided that protection measures in respect of an adult or a person who has otherwise acquired full legal capacity are subject to the law of the state in which it has its usual place of residence on the date of establishment of the protection measure (part 1). Exceptionally, to the extent necessary for the protection of an individual, the competent authority may apply or take into account the law of another state with which the legal provision is most closely related (part 2).

The existence, scope, modification and termination of the powers of a representative office established by a fully capable person under a contract or unilateral transaction for a situation where it will not be able to protect its interests are regulated by the law of the state in which the person has a place of habitual residence at the time of conclusion of the contract or unilateral transaction. This person, however, has the right to choose one of the following laws:

- (a) national law;
- (b) the law of the previous place of usual residence;
- (c) the law of the state in which the property is located, with regard to measures for the protection of that property (part 3).

Measures taken with respect to the protected person or his property are regulated by the law of the state whose authorities direct and control the implementation of protection by authorized persons (part 4).

The absence of the status of a representative or other person entrusted with protection, determined in accordance with the law to be applied to the protection of an individual, is not opposed to a third person who has faithfully accepted this status, according to the law of the place where the transaction was made, if the transaction was made in the presence of the parties and on the territory of one state (part 5).

According to article 2591, recognition as missing, declaration of death, statement of death, as well as assumptions about the presence or absence of an individual among those that are alive, are regulated by the last national law of this person. If this law cannot be established, the law of the Republic of Moldova is applied.

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12 Codul civil, republicat. 2011. [online] [http://www.dreptonline.ro/legislatie/codul\\_civil\\_republicat\\_2011\\_noul\\_cod\\_civil.php#cartea7](http://www.dreptonline.ro/legislatie/codul_civil_republicat_2011_noul_cod_civil.php#cartea7)



Article 2592 provides that the registration of civil status acts of citizens of the Republic of Moldova residing outside its borders is carried out by the consular offices of the Republic of Moldova, and in the absence of such, by the embassies.

In this context, it is also necessary to quote the Law on civil status acts No. 100 of 26.04.2001<sup>13</sup>. According to article 15 (4), the Ministry of foreign Affairs and European Integration and the Public Services Agency perform the functions of supervision and control over the activities of diplomatic missions and consular offices of the Republic of Moldova on civil registration. Article 72 (5) provides that the printing of civil registration forms, civil registration certificate forms, and other forms used in the registration of civil status acts, as well as their distribution among the civil registration authorities of the country, is provided by the public services Agency. At the request of the Ministry of foreign Affairs and European integration, such forms are transmitted to the diplomatic missions and consular offices of the Republic of Moldova.

But there are other important rules. Article 13 of this law states that documents on civil status registration issued to foreign citizens and stateless persons by the competent authorities of foreign states in accordance with the laws of these states are recognized as valid in the Republic of Moldova if they are legalized in accordance with the established procedure and unless otherwise provided by international agreements (part 1).

Civil status records of citizens of the Republic of Moldova, compiled by the competent authorities of foreign States, have evidential force in the country only if they are re-registered (registered once again) in the civil status registers of the Republic of Moldova. Re-registration of civil status records and entering marks received from abroad in the civil status records are made by the civil status registration authority. Citizens of the Republic of Moldova are obliged to apply for re-registration within six months from the date of the return or from the date of receipt from abroad of certificate of registration of civil status, copies of records of civil status or extract of such record (part 2).

Within the framework of article 2593 of the Civil Code, the right of an individual to carry out business or professional activities without forming a legal entity is determined by the law of the state in which this individual has received permission to carry out business or professional activities. If this provision is not applicable because there is no obligation to obtain a permit, the law of the state of the main place of business or professional activity is applied.

As a result, we can conclude that the legal status of individuals in the international private law of our country is regulated in sufficient detail and adequately. The relevant rules are scattered throughout the text of a number of legal acts (codes, laws), which in practice can cause difficulties in their application, but to overcome this complexity, there is an explanatory resolution of the Plenum of the Supreme Judicial Chamber.

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13 [https://www.legis.md/cautare/getResults?doc\\_id=112686&lang=ro](https://www.legis.md/cautare/getResults?doc_id=112686&lang=ro)