

What's in A Name?¹

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Abstract

In order to individualize the personality of an individual in relation to another individual, the name of the physical person (surname and forename) must be used. The name is attributed to the individual at the same time with his registration in the birth certificate so that the act of civil status is the title that will justify wearing a name and it will also prove it. The name becomes a legal concept, its structure and rules of assigning are the subject of the regulations, and not the name itself. A person's name concerns his family and private life, constituting a way of personal identification and a family relationship. The function of a name as a means to individualize a person has resulted in that private law and public law aspects are inter-twined.

Key words: right to a name, family, person, civil subjectiv right, conflicting rule.

Preliminary Data

According to Black's Law Dictionary, by "name" it is understood: "a word or phrase identifying or designating a person or thing and distinguishing that person or thing from others". In order to individualize the personality of an individual in relation to another individual, the name of the physical person (surname and forename)

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must be used. Therefore, the “surname” also known as “family name” represents: “the family name automatically bestowed at birth, acquired by marriage, or adopted by choice; Although in many cultures a person’s surname is traditionally the father’s surname, a person may take the mother’s surname or a combination of the parents’ surnames”. Moreover, it is called “first name” or “Christian name” an individual’s “name or names given at birth, as distinguished from a family name”. Additionally, in the same dictionary mentioned above we found the term “legal name” explained as “a person’s full name as recognised in law” (Garner, 2014: 1181-1182).

Name’s National Valences

In Romania, there was the unique and non-transferable name system, at the beginning, people simply called John, Peter. Later, it became more difficult the people's individualization almost those who wore the same name, so they started to use phrases such as John, the son of George. The first law governing the -name- issue is the "special" Law from March, 1895, which offers concrete solutions for different situations (Hamangiu, Rossetti-Bălănescu & Băicoianu, 2002: 139). So it came to indicate lineage by appending suffixes such as: -escu, -eanu, who determined names such as : Ionescu, Petrescu. These names are the result, in principle, of the development of culture in schools and churches (Popa Val, 2006: 393).

Therefore, the name is a complex notion whose birth, historically speaking, represents primarily the result of a long usage, as any element related to language. The name becomes a legal concept, its structure and rules of assigning are the subject of the regulations, and not the name itself. Legal literature has proposed several definitions, of which we retain the one that states that the name is "that attribute of the physical person which consists in the human right to be individualized, within the family and society, by the words set out in the law, in this meaning " (Beleiu, 2005: 381).

The name structure is established by Article 83 of the new Civil Code which provides: "The name consists of a surname and

forename". In addition, art. 1 para. (1) of Government Decree no. 41/2003 repeats the same idea and develops it in the provisions regarding the acquisition and change of individuals' names administratively. From the perspective of civil law, the name represents the reunion of two non-patrimonial civil subjective rights of an individual, the right to a surname and the right to a forename (Chelaru, 2003: 10).

The name is a subjective civil right from the point of view of its legal nature, since art. 81 of the new Civil Code speaks of "the right to a name". The same legal nature of the name results from art. 7 pt. 1 of the Convention on the Rights of the Child, adopted by the United Nations General Assembly on 20 November 1989 and ratified by Romania by Law no. 18/1990, published in the Official Gazette no.109 of September 28, 1990, which provides: „the child shall be registered immediately after birth and shall have the right to a name from this point forward". This principle is reinforced by art. 9 of Law no. 272/2004, republished in the Official Gazette no. 159 of March 5, 2014, according to which the child has a right to a name, as part of its right to identity. Being a part of the personality, the name is not a patrimonial value (Cornu, 1991: 276) and is therefore a personal non-patrimonial right (Ungureanu & Munteanu, 2013: 110). However, there is controversy over the legal nature of the name, some authors in foreign legal literature as well as F.Zenati-Castaing, believes that this is a good that can be acquired by long possession (Zenati-Castaing & Revet, 2006: 57-62).

Currently, we can see a tendency of "patrimonization" of certain personality rights. There is accepted the validity of the agreements for good and valuable consideration by which it is allowed the publication of stories about a person's private life or use of the image or voice for commercial purposes. The name can gain some economic meanings when it's used to identify a merchant, natural or legal person (Malaurie & Aynés, 2003: 45-46) or natural persons exercising a liberal profession, such as those of lawyer, notary, doctor, architect, and judicial executor (Cercel & Olteanu, 2009: 41-54).

According to article 82 of the new Civil Code "everyone has the right to name established or acquired under the law", which determines the scope of the legal instruments provided for protection of the right to the name. Therefore, subject to the defense of the right to a name could be: the surname acquired by filiation or adoption effect, the name chosen at the time of marriage, any person's first name, the found child's name, the one born from parents unknown, and the first name and last name changed by administrative means (Cercel & Dogaru, 2007: 114-140). The right to a name, in his quality as personal non patrimonial right, is protected by art. 252 to 257 of the new Civil Code, which is the general rule protecting personal non-patrimonial rights.

European Perspective on the Right to a Name

Problems regarding names have emerged in cross-border situations in Europe. The possibility of a child to bear both of his or her parents' surnames is especially subject of conflicting rules in different Member States. It is especially allowed, for example in Romania, or even imposed, as in Spain, by laws, whereas in others, it is especially prohibited, such as in Sweden. The situation is complicated by the fact that there are various legal cultures within the Union, which determine and recognize names in considerably different ways (Renucci, 2009: 244). This has resulted in creating the inconvenient situation where citizens of the Union might find themselves having different names in different Member States. Since there are no harmonized substantive rules or unified conflict rules regarding names at EU level, fundamental EU rights have come to play an important role in this matter (Grabenwarter, 2014: 200-202). The function of a name as a means to individualize a person has resulted in that private law and public law aspects are inter-twined. From a private international law point of view, using nationality as a connecting factor in choice-of law rules in name matters can symbolize a State's interest to make sure that names are configured and acquired in a manner consistent with their own laws. The close ties that a name has with an individual's personal life and integrity,

has furthermore resulted in that name matters are subjected to rules governing fundamental and human rights. The Court of Justice of the European Union has been an important driver of EU integration, settling the problems of the name under the principle of free movement of persons, such as in *Carlo Garcia Avello against Belgium* (Judgement of the Court, 2 October 2003).

Moreover, in the European Convention on Human Rights, the right to a name is not expressly regulated. Given that the name is a means of identification of persons within the family and the community, the name regards the individual's private life, being protected by the Article 8 of the Convention. The European Court included in its case law both the person's right to a name as well as the right to a forename in the field of application of Article 8, being considered a component of the concept of "private life" or "family life" (Birsan, 2006: 600-601). The European Court held that the Swiss Law which allows only the wife, not the husband to precede the common name taken by the spouses as a result of marriage with the wife's previously name, held before marriage, contradicts with the provisions of art. 8, which protects the right to privacy, especially in terms of the provisions of Protocol. 7 which ensure full equality between spouses (*Burghartz against Switzerland*). At the same time, choosing the forename of a child by the parents is included in the concept of "privacy" (Brüggermeier & Colombi Ciacchi & O'Callaghan, 2010: 569-572) so that the refusal of the registrar to register that forename is considered to be an intrusion which is not admitted by the Convention (*Guillot against France*, October 24, 1996).

Conclusions

Names are important both to the individual and to the state. Thus, it is important to understand their intertwined role in both shaping the private sense of self and identity and in reflecting and sustaining social institutions such as the state, family, and gender.

The name is attributed to the individual at the same time with his registration in the birth certificate so that the act of civil status is the

title that will justify the person to wear a name and it will also prove it. The name is attached to privacy, as demonstrated in the first place by being a means of individualization of a person.

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