UNIVERSITY OF CRAIOVA
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STUDY ON THE RIGHT TO NAME IN SPECIALISED LITERATURE AND IN CASELAW

-ABSTRACT-

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The work who contains the result of the research undertaken during doctoral studies is entitled: „*Study on the Right to Name in Specialised Literature and in Case Law* “. This project was developed from the desire to mark the identification of the natural person by name in the society since a thorough analysis of the popular names of persons determined their recent and distant past while providing information about civil status, parentage, legal capacity or moral characters. The importance of this study lies precisely in the need to identify individuals. The human being is first concerned to be defined in relation to any other person. Therefore, the need of identifying the human being through the name, during the earthly existence, is not only a social or general goal but acquires personal valences, issues demonstrated and sustained in the analysis performed.

The name from its perspective as a linguistic sign has a special significance that we tried to determine from the beginning, by observing the connotations offered, for example, by the "language of angels", but also in the light of the views expressed at the level of psychoanalysis or sociology in this regard. In fact, the name represents that specific element of the language of any nation whose role is to designate the being in question.

Since the appearance of names is conditionated by the existence of a human group, of people as a social being, it is observed that once with the development of the society, as more complex the relationships between individuals are, the name takes on greater importance. As a result, nowadays, the name of person and the problems imposed by its use are covered by provisions specific to each state and not the name itself.

The main objective of the research is to improve and complete the studies doctrine in civil law field dedicated to the matter of natural person in general, and the right to name in particular. The structure of this paper is in six chapters with a special introductory section and a conclusive one, to which it is added the

bibliography organised on books, studies, websites and jurisprudence. Thus, the research conducted is following an evolutionary analysis of this institution.

In the first chapter entitled *General Terms regarding the Name* it is determined the origin of the right to name by highlighting the necessity of the existence of this attribute of identification at the social level as well as at the civil law level. In support of the hypotheses presented it is determined the content of one's right to name as well as its function.

Therefore, in order to subtend such a step it is necessary to make also in the first chapter, a section devoted to the evolution of onomastics systems, showing how is the designation of names for Egyptians, Eskimo, Greeks, Romans. There are also analyzed the systems that appeared once with the disappearance of the Roman system, continuing with the evolution of names on the European continent. Eventually, the name was analyzed in terms of its emergence and development in the Romanian space, stressing the influences taken from the neighbors. Subsequently, in a special section is analyzed the regulations development on the right to name in the Romanian legal system. So, the beautiful incursion culminated with the provisions of the Law of 18 March 1895, the first law devoted entirely to the right to a name, ending with the regulation from the new Civil Code regarding the right to name.

In addition, in Section IV of this first chapter is made a brief characterization of the name through the legal provisions in force. The right to name receives no express definition as a legal institution, since the civil law is pleased only with determining the modalities of acquisition, modification or change. However, we tried to identify a definition considered correct and complete as much as possible of the right to a name. Analyzing the structure of the right to name (originally established by art. 12 par. (2) of the Decree 31/1954, is subsequently resumed in art. 83 of the new Civil Code and in art. 1 para. (1) of the Government Ordinance no. 41/2003 concerning the acquisition

and changing of names that belong to natural persons through administrative proceedings) reveals that it aggregates two civil subjective non-patrimonial rights of a natural person, namely the right on the last name and the right on the first name. Thus, both specific prerogatives and joint legal features are highlighted.

As the name not only appears as a subjective non-patrimonial right (according to article 54, Decree 31/1954), but also has the function of identifying the person at the society level, therefore it becomes that identification attribute (institution that records names). So, this right is followed by the correlative obligation to carry the name acquired in accordance with the law. In addition, the right to name according to the new Civil Code is included in the category of personality rights, so a presentation is made in order to debate this feature in a section of the same first chapter. Also, an analysis is undertaken of the right to name in terms of the applicable law, emphasizing how the national state through the bond represented by the citizenship requires the determination of this element.

Chapter II was named *Attribution of the Elements of the Right to Name*. The procedure of attribution of both the child's surname and forename is debated. As follows, the component of the name called "surname" is determined by the links between various families, while voluntarism characterizes the procedure for determining the "forename" by the parents. In the section dedicated to the last name it is shown that the procedure for awarding this element can be achieved by two methods, namely the acquirement and the establishment of names, concepts presented in detail which in fact aimed essentially the same result: conferring this item.

It is outlined in the content of the same section that the surname means belonging to a family, for which the Romanian legislature has considered that its attribution should dependent on filiation. Therefore, there are presented the

classical hypothesis for name attribution (name of the child from marriage and outside marriage, and the child's name whose filiation has not been determined to neither of his parents), and also the hypothesis regulated by the new Civil Code, of parentage resulting from medically assisted human reproduction.

Furthermore, it is emphasized that establishing the parentage link is required in the procedure of acquiring the last name by a person. So, the family name is assigned by law, there is no possibility of any voluntary manifestations in its choice. As an exception, a form of voluntarism is allowed if the parents of a child do not have a common patronymic.

Also, the new methods of procreation have determined the appearance of some legal concepts that have been discussed (for example, artificial filiation). An example of the applicability of Article 8 ECHR with regard to medically assisted human reproduction was conducted through the solution[1] provided by the Timisoara Court of Appeal in this field. Therefore, it was affirmed at the level of Romanian legal system the issue of motherhood of substitution with the consequence contrary to Romanian law, of amending the filiation of children conceived through such a procedure.

In the section allocated to the attribution of the forename, it is specified that those responsible for this choice are the child's parents, the public authority can intervene only in the detriment of the provisions established by art. 84 para. (2) from the new Civil Code that limit in a certain manner this freedom. In addition, a boundary tried to be underlined in order to limit the parent's choice, by debating aspects related to the number of words which can compose a first name, or the nature of these words.

Into Chapter III entitled *The Modification of the Family Name*, is initially made a brief analogy of the name with other civil insitutions, also determining the aspects that differentiates the modification of the name and the the name's change

[1]Timişoara Court of Appeal ,Civil Decision no. 1196/26.09.2013.

through administrative proceedings. An analysis of the cases and conditions in which the modification of personal status determines the surnames modification is presented, such cases being classified as: transformations occurring in the filiation of a natural person; changes imposed by the institution of adoption; mutations caused by the institution of marriage.

Later, there are discussions on specific aspects of each situation of the name modification, focusing on the concerns but also on some changes introduced by the new Civil Code. So, the modification of the name due to changes in the filiation of the natural person is debated whether the filiation of a found child or born of unknown parentage is established, if the child born out of marriage, has subsequently established filiation towards the second parent and if is the case of a denial of paternity of a child born during marriage. Also a modification in a person's filiation is represented by the hypothesis in which is contested or canceled a recognition of parentage.

The changes imposed by the institution of adoption in the matter of family name modification are detailed in the section allocated to this issue. As following, the exposure is shaped by the consent or cessation of this proceeding, also showing the implications of the international adoption. The rule concerning the effects of adoption is to modify the surname of the person adopted, as it has not been differentiated between the adult and the minor.

Regarding the modification of the surname as a result of the institution of marriage, the mutations regarding surnames are organized according to the hypothesis of the marriage contracted, its dissolution through divorce and when it is canceled or terminated as a result of the death of one partner. Thus, are presented the possibilities offered to the future spouses in the matter of choosing the name, which may, by mutual agreement, to opt to use the name they had prior marriage, or to use as a name during marriage, the name of any of them or their names reunited. There is also the pissibility that only one of the partners

could opt to use the name prior marriage, and the other to use their names reunited.

On the occasion of dissolution of marriage through divorce, the rule is the return of former spouses at the name that each of them used before the celebration of marriage, but it is also presented the hypothesis of keeping the name used during marriage. It is carried out, in this section a discussion of the phrase "reasonable grounds" according to which the court approves the use of the name acquired as a result of marriage and after its dissolution, when couples do not reach at such an agreement. We note that the main connotations identified are: the best interests of the child, the notoriety gained in society with that patronymic justifying its maintenance after termination of marriage. In addition, it has been debated whether it is possible that the ex-husband, who has kept the name acquired by marriage, to bear that name as common, if she/he remarries. Moreover, the difference between the concepts of divorce and nullity of marriage is outlined by the fact that the sanction of the nullity produces its effects for both future and past, considering that a person was never married, but in the matter of name, cancellation or nullity of marriage causes its modification only for the future.

Chapter IV, entitled, *The Administrative Proceeding of Name Change and Transcription*, debates, in the first section, the administrative procedure of the name change through the provisions of O.G. No.41 / 2003 in conjunction with other legislation containing regulations in this matter. So after tracing the legal framework, the holders of this procedure are identified based on the legal regulations, presenting issues to be included in the application form that pursues this goal. In analyzing the reasons provided as grounds for such a request some comments are made on issues considered controversial, such as those referred to transforming a pseudonym into a real name. All hypothesis of such "transformation" are captured both the conditions (a person uses that name that

seeks to obtain, to exercise his profession; the person proves to be known under that pseudonym not only into the professional world but also in society, in general) and the obligations resulting from it (by the usage of that name in the professional field that person will not have usurped someone else's name, in order to create confusion) being analysed.

Also, the entire procedure of name change through administrative means and its effects are explained. The second section of this chapter is dedicated to the proceeding of the transcription of the name. So after a presentation of the process itself and of the non-contentious procedure, there are highlighted the effects of such demand and their lenght.

Into Chapter V, *Correlations and Interferences between the Right to Name and the Right to Pseudonym*, is demonstrated that the freedom in choosing a pseudonym is not limitless. Also, there is a discussion on the causes that determine the choose of one pseudonym, and in the end of the section we undertook a comparative analysis between pseudonym and nickname. In the second section of this chapter we have found other complementary means to identify the natural person. So, it was revealed the link that exists between the natural person name and the identification number and between the natural person identification based on genetic fingerprints.

An exhaustive analysis of the name in terms of issues concerning the legal nature, reveals an evolution in its regulation from property right (particularly, in the French system) to extrapatrimonial right with private valence (currently, the vast majority of the laws adopted this direction). The name belongs to both the induvidual state and the personality rights, as a result of filiation and as a sign of the identity of one person. Therefore, Chapter VI entitled *Legal Mechanisms of Protection of the Right to Name*, begins with an analysis that had as its object the distinction between the trade name and the civil name, concluding that the civil name concerns personality, family and the individual while trade name

separates from the natural person and becomes subject of a genuine contract. Unlike trade name, in the case of the natural person there is no exclusivity of its use, as there is no possibility of reserving it.

It is revealed that subject of the protection of the right to name are all its components such as: the family name acquired by the effect of filiation or by adoption, the name chosen when they married, the first name of any person, the name of the child found or born of unknown parents, the name changed by administrative procedure, and also the pseudonyme. Therefore, it was considered the protection of the right to a name in terms of the protection offered to the subjective, non-patrimonial rights from several levels (from the new Civil Code level, to the Constitution and special laws level), showing also the protection of the criminal law (considered the highest level of protection) granted to the right to a name through the crime of identity theft (accordint to article 327from the new Criminal Code).

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 citizenship 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 its 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 subjects of rules governing fundamental and human rights. All these issues are presented in the same last chapter, in the sections dedicated to both C.J.E.U. and E.C.H.R. case law.

The problems regarding the right to name are settled by the Court of Justice of the European Union under the principle of free movement of persons. In this paper, the C.J.E.U. case law on the right to name is examined. It is illustrated that the interpretation of the C.J.EU. on the fundamental rights of the

EU regarding the name has come a long way from inconvenience caused by circumstances coded in Konstantinidis case, where, in essence, the applicant's name has been completely changed by the German authorities, to the situation where diacritical marks have not been registered in Runiewicz – Wardyn case. It was also pointed out how the C.J.E.U. methodology in the name field has gone from a focus on discriminatory treatment of EU citizens, in Garcia Avello case, to the people's right to move and reside freely within the Union in cases Grunkin and Paul, Sayn - Wittgenstein and Runiewicz - Wardyn. Rights covered in regulations applicable to EU member states are given a broad interpretation by the European Court and therefore becomes very important for Member States to justify restrictive measures in these areas.

On the other hand, European Convention on Human Rights does not expressly regulate the right to name. Thanks to dynamic interpretation of the Article 8 of the Convention, the name is a relevant element of private and family life, issues also demonstrated through the caselaw of the European Court of Human Rights. So, the Court included under article 8 of the mother's request to change the name of her dead child which sought to underline the connection with the biological father (Znamenskaya v. Russia) to the authorities' refusal to grant a change of the last name through the administrative procedure (Stjerna v. Finland).

In addition, the Court finds a violation of Article 8 of the Convention by the applicant’s compulsion to renounce to the name given more than 50 years ago, as a result of loopholes in legislation when it was determined (Daróczy v. Hungary) but also by the problem imposed by the Swiss law that allows only the wife, not also the husband, to join the common name acquired as a result of marriage, the maiden name (Burghartz v. Switzerland). Contrary to this solution, in a similar situation (G.M.B and K.M. v. Switzerland) the Court does not

constat an interference in articole 8, therefore it is rejected the applicants request to give their child as a surname, the maiden name.

It is noted also the inclusion in the scope of protection of Article 8, of the first name of the natural person. Therefore, the Court has established that the public interest may be affected by certain practices in the forename's field (Guillot v. France) such as the use of ridiculous formulations, that could affect the child's interests (Johansson v. Finland). A different approach of the Court on the right to a forename, it is observed in the judgement of Güzel Erdagöz against Turkey, where it is sanctioned that in the refusal of the request, the Turkish courts did not invoke reasons of public policy or public interest, but only the regional and unwritten character of the required formula. On the other hand, falls under Article 8 also the problems posed by the use of the Turkish alphabet in the forename's spelling in the identity documents (Kemal Taskin, Meden Alpkaya, Fırat Abdulkadir Emin Emir Ali Şimşek and Ang v. Turkey).

The Court has drastically sanctioned the intrusion in family life and the non-compliance of the principle of gender equality. The inability to use her maiden name after marriage, is classified as an infringement in the meaning of the article 8 (Ünal Tekeli v. Turkey). It was included in the concept of private life even the offence of identity theft (Romet v. Netherlands). On the other hand, the Court refuses to include hereditary nobility titles in the field of personal names and forenames (Bernadotte against Switzerland), C.J.E.U. adopting the same tratment in case Ilonka Sayn – Wittgenstein c. Landeshauptmann von Wien.

In everyday actions, one person must prove his identity through his personal status but also through the nature of relations between members of different families. The issue is complicated because there are different legal cultures, imposing distinct manner of attribution and recognition of name. The consequence is represented by unpleasant situations in which citizens of a

country are using different names specific to the procedure of each state. This lack of harmony at an international level causes a difficult procedure for proving a person's identity. Another aspect of one's right to a personal identity is that represented by the posibility given to the States to regulate and limit the freedom of their citizens, to freely determine under which names or surnames they want to live and exist. The state and the society follow the regulation of the relations that concern situations arising from the use of the right to name. Therefore, the purpose of such provisions pursues public and personal goals, which should be proportionately combined in order to achieve the "ultimate goal" namely harmony in the society.

The results of the taken research follow to be able to fulfill the purpose, being convinced that it will be a basic work for both those who want to familiarize themselves at primary level with this important part of civil law, and for those who want to deepen the study of the right to name from a unique perspective. Meanwhile, the research is not contented to take a look on the functioning of this institution, but also tried to offer some possible solutions to problems encountered in practice.