

I. The personal name and its meaning for the individual

The personal name is a key attribute of the individual's personality, and its function is to mark the person as an individual and thus differentiate him/her from other people. In a narrower sense, the personal name serves as a means of identification and individualization; in a broader sense, it is a symbol of the personality, with all the idiosyncrasies and qualities that distinguish the person as a particular social being.

In terms of its differentiating function, the personal name often reveals the individual's connection with a specific geographic space and indicates his/her nationality, ethnicity, and/or religious belonging; in certain *milieus*, it also indicates the person's social status. Last names, in particular, are often indicative of connections between specific people that would have otherwise remained more or less invisible.¹

In everyday life, making these connections known is not always beneficial to the individual and can even become an obstacle in the process of the individual's integration into his/her environment.² The personal name can thus become a trigger for discrimination and a pretext for limiting the individual's freedom of expression in a broader sense.

II. The right to the (change of) name as a human right

Initially, the individual's possession of a name was a public duty; the transformation of this from the duty to *the right* to have a name occurred later.

The judicial nature of the right to a name was contentious for a long time. The French theory considered the right to a name a right of ownership; others believed that the right to a name constituted a right to a non-material good. The opinion was gradually established that it was a personal right. A combined theoretical approach – exemplified in Mitič's work – argues that

¹ NOVAK, Barbara. »Osebno ime in človekove pravice«. *Pravnik*, ISSN 0032-6976, Vol. 52, No. 1/3, 1997, p. 84.

² Historical evidence shows that people have changed their names under various kinds of hegemonic pressure.

the right to a name constitutes a personal right as well as a legal obligation.³ The institution of the personal name exists not only for the benefit of the person possessing a name, but also for the benefit of the judicial order and judicial security.⁴

Various human rights are related to the personal name: the right to privacy, freedom of expression, the right to use one's own language and alphabet, the right to express one's nationality, the right to a cultural identity, the right to dignity, and equal rights under the law.

The right to a personal name has been an international standard for a while. It is explicitly stated as such in the second paragraph of Article 24 of the International Covenant on Civil and Political Rights, wherein it states that immediately after birth, every child must be entered into the Register and s/he must have a name.⁵ The same provision is made in Article 7 of the Convention on the Rights of the Child.⁶

The right to the change of personal name has not yet acquired the same international recognition, and it is reasonable to assume that this will not happen any time soon. On a national level, the right to the change of name is recognized only in legislation, but it is not mentioned in the constitution, the highest judicial document of the state.

III. The European Court of Human Rights judicature

On several occasions, the European Court of Human Rights has had to deal with questions related to the individual's right to the change of personal name.⁷ Since the right is not managed directly by the European Convention for the Protection of Human Rights (ECPHR), the Court can only judge about limitations and abuses of this right from the perspective of other rights and freedoms covered by ECPHR, such as the right to respect for private and

³ FINŽGAR, Alojzij. *Osebnostne pravice = Die Persönlichkeitsrechte*. Ljubljana: Slovenska akademija znanosti in umetnosti, 1985, p. 92.

⁴ ŠTURM, Lovro. *Upravnopravne institucije, izbrana poglavja* (study material). 4th revised and enlarged edition. Ljubljana: Pravna fakulteta, 1986, p. 42.

⁵ The International Covenant on Civil and Political Rights was adopted by the United Nations General Assembly Resolution No. 2200 A (XXI) of 16 December 1966. It came into force on 23 March 1976.

⁶ The Convention on the Rights of the Child was adopted by the United Nations General Assembly Resolution No. 44/25 of 20 November 1989. It came into force on 2 September 1990.

⁷ The most famous example is the sentence in the *Stjerna versus Finland* case of 25 November 1994. Also important are the sentences in the following cases: *Johansson versus Finland* of 6 September 2007, *Burghartz versus Switzerland* of 22 February 1994, *Guillot versus France* of 24 October 1996, and *Cossey versus the United Kingdom* of 27 September 1990.

family life (Article 8), the freedom of expression (Article 10), and the prohibition of discrimination (Article 14).⁸

In the *Stjerna* case,⁹ the Court used the right of respect for private and family life to adjudicate a request for the change of last name; the Court deemed that the personal name as a means of one's identification and one's tie to one's family concerns the individual's private and family life.¹⁰ This connection between personal name and privacy originates in the differentiating function of the name, by means of which the individual communicates certain personal information to his/her environment. In this sense, the individual's name (inadvertently) reveals to the community the individual's national/ethnic identity, his/her membership in a certain caste or clan, his/her religious beliefs, nobility or the lack thereof, socio-economic status, and – last, but not least – the individual's sex. Therefore, the Court ruled, the limitation of the right to the change of personal name may interfere with the individual's right to privacy.

In principle, the right to privacy guarantees the individual the right to decide how much of his/her privacy s/he is prepared to share with others. For this reason, the individual has the right to change his/her name to be able to conceal private information evident from his/her name. This is particularly important in those cases where the individual does not want his ethnic background, nationality, or another aspect of his/her identity to be manifest, for they might hinder his/her integration into the environment where s/he resides.¹¹ If the state imposes excessive limitations on the possibility of changing one's personal name, this can affect the individual's privacy, for the public will know more about the individual in question than the latter desires.

Yet, the right to privacy is not unlimited. As the second paragraph of Article 8 of ECPHR stipulates, the right to privacy may be limited in the interest of national security or the

⁸ The European Convention for the Protection of Human Rights, drafted by the Council of Europe, was signed on 4 November 1950. It came into force on 3 Sept 1953.

⁹ Mr. *Stjerna* wanted to change his last name into *Tavaststjerna*, which was his family's surname more than two hundred years ago. The name was changed into *Stjerna* when one of Mr. *Stjerna*'s ancestors was born as an illegitimate child, and was only given a part of his father's surname (*Stjerna*). Mr. *Stjerna*'s request for the change of name was rejected due to the very restrictive measures in Finnish legislation concerning the change of the family name.

¹⁰ Contemporary theory defines privacy as the sphere of the individual's activities, which must not be interfered with unless special (legal) authorisation is given. The right to privacy establishes for the individual a space of intimacy, and the state guarantees the individual the right to choose which interventions into this space, if any, s/he will allow.

¹¹ NOVAK, Barbara, 1997, p. 85.

economic well-being of the country, for the protection of health or morals, or for the protection of the rights and freedoms of others. In the *Stjerna* case, the Court pointed out this stipulation and explained that the public interest—regardless of the reasons given by the individual why s/he wants to change his/her name—may require (judicial) limitations of the right to the change of name. What follows from this is that a rejection of the request for the change of personal name does not necessarily constitute an unacceptable interference with the individual’s privacy. When deciding about limiting the individual’s human right, the balance between individual and collective interests is decisive, and the limitation of the right is acceptable if the interests of the community take precedence over those of the individual.

Finally, in the *Stjerna* case, the Court also touched upon the issue of the legitimacy of limiting the right to the change of personal name within the context of freedom of expression, which entails the freedom to communicate any kind of information to the public.¹² In this case, the Court found that the state must never force the individual to change his/her name, yet, the Court took no further step. The right to the change of name was not treated as a right which enables the individual to appear and act in public (official) life with a name of his/her choice, even though this certainly constitutes an important aspect of the individual’s freedom of expression. Since Article 10 of ECPHR mentions freedom of expression and the right to privacy for the same reason, the issue of limiting freedom of expression again brings to the fore the decisiveness of the balance between collective and individual interests.

IV. Judicial regulations world-wide (APPENDIX)

The table in the appendix features a short review of judicial regulations regarding the change of personal name in several countries around the world. Some states give the individual a fair amount of freedom to choose his/her personal name, while other states impose severe restrictions. In some states, the limitations are content-based (the change is possible only if sound reasons are stated), while in others, formal aspects of the change are brought to the foreground (the change is allowed if a special procedure confirms that all required conditions have been met). Finally, the costs (fees) of such procedures may, also, be considered a limitation.

¹² The stipulation of Article 10 of ECPHR regarding freedom of expression requires complex interpretation. On the one hand, freedom of expression is interpreted as freedom of self-expression and freedom of free flow of information; on the other hand, freedom of expression reflects important rights, freedoms and even social needs concerning acquisition of information.

In most countries, the change of personal name requires sound justification:

the content or the meaning of the name (scornful, offensive, shameful, indecent, humiliating, extravagant)

the grammar of the local language (difficult pronunciation and spelling, translation from a foreign language)

indication of belonging to a social group (religion, sex, nationality, citizenship)

pragmatic circumstances (long-term use of the name which is different from the individual's official name)

differentiation between people (homonymy – two people with the same first name and the same surname, frequent occurrence of particular surnames)

Some countries also limit the right to the change of the personal name with a time limit, that is, with the specification of the minimum period of time since a previous name change; in some countries, the number of name changes is also limited. The procedure itself is fairly simple in the countries where the change of name is regulated by common law (e.g. England, Wales, Northern Ireland, USA); the most complicated are the procedures in those countries where a formal investigation is required to determine whether or not the individual meets all required criteria (e.g. Belgium, Australia). Public notice and possible objections by third parties are also considerable obstacles in acquiring a new personal name.

V. In lieu of a conclusion

For now, it is impossible to speak about a general, universal right to the change of personal name, which would be applicable everywhere and to everyone. The states limit this right in various ways, and in its cases thus far, the European Court of Human Rights has ruled that the individual has the right to change his/her personal name if this is required for the protection of the individual's privacy. No doubt, the Court will soon deal with the question of whether or not freedom of expression gives the individual the right to appear and act in his/her public life with a name of his/her own choice. This would be an important step towards achieving judicial uniformity in regard to the change of personal name in all ECPHR states. Of course, the possibility of limiting this right will remain open in those cases where the change of name could constitute a threat to the national security, health, morals, or the rights and freedoms of others.

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