

Right to A Name. Insight into the Evolution of Legal Provisions.*

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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 a component part of the usage ability as well as a non-patrimonial, civil, subjective right, presenting their characteristics. 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. The name is attached to privacy, as demonstrated in the first place by being a means of individualization of a person. The social, individual and family interest are all joined by name. Each of these interests are legitimate and an excess of one of them threatens the existence of the others. Humans can not be outside the legal life at no time.

Keywords: *person, right to a name, surname, forename, provisions.*

PRELIMINARY ISSUES

Constituent of the language of every people, every person's name is in fact a sound sequence used constantly in the community to designate a person. [1] To search someone is called the use of names, who are expressing the necessary distinction between members of a community. The appearance of names is conditioned by the existence of a human group, of people as a social being. On the other hand, the name is an emblem of the family. Visible sign of belonging to a particular family, a sign of relationship to a house, the name implies a family connection, and applies only to those who descend from a common ancestor.[2]

Carrying, choosing, changing the name for primitive populations was determined by the people's faith in the power of the name. According to a conception of that period, the name was identified with the life of the person who wore it, the power of the name consisting in the name itself. To the ancient Egyptian, the name (ren) was held as being part of the individual elements with the soul (ba) and the alter ego (ka) [3] which do not die once with the body. In ancient Greece, the assignment system for the names was simple, people having a "unique" [4] name, such as: Solon, Demosthenes, Aristotle, Plato. The same system is used by the Hebrew and

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Egyptian people. Instead, the Roman name was composed of three elements: nomen (was common for members of the same tribe), praenomen (a personal name used in the family) and cognomen (the nickname). After the fall of the Roman Empire, the use of this system was abandoned and replaced by the patronymic name system.

According to old Romanian Law, legal personality begins at birth and ends with death, applying the Roman rule *infans conceptus pro nato habetur quontis de commodis ejus agitur*. According to art. 34 of the Calimah Code: "Laws care for those conceived, since the time of their conception, because they are considered as newborn babies when the cause is reached by themselves, and not the third person" and art. 986 applies this rule in successions matter. It was required for the newborn "to be alive and viable and have human appearance", solution taken also by the current legislation, except for the requirement of viability. The moment of birth is particularly important to establish legal personality and the appearance of birth records marked the beginning of the era of Augustus. Therefore they imposed the obligation to declare a birth within 30 days and the obligation to give a name to the newborn - the name being assigned on the eighth day of life for girls and on the ninth day for boys. That day was called the name day, which was preceded by various ceremonies, including purification by fire. [5]

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. Then 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.[6] 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 "[7]. Such a definition presents the failure to not reveal the essential quality of the name, that of being a personal non-patrimonial right, from the class of identification attributes.

HISTORICAL VIEW OF THE PROVISIONS CONCERNING THE RIGHT TO A NAME

In our country legislation, Organic Regulation provided that any person should have a double name, that is composed of a forename and a surname. The name achieved in this way was written on the birth certificate of each person.[8] In addition, "Romanian Civil Code of 1865 contains provisions concerning the name in Chapter II (" On Birth acts ") of Title II (On Civil Status Acts"), Book I ("About people"): art. 43 states that the birth certificate will show "with clearly" the first name "which will be given at baptism" to a child and the "surname"; art. 44 para. (2) requires that "the record index of all surroundings" drawn up if the child is found must also show the "name that will be given to"him . It is required that the civil status of persons must be individualized by their full name, meaning the surname and the forename.[9]

Later on November 28, 1866 is issued the Regulations of civil status acts service which in its forms attached emphasizes the need to be put down the newborn's name and surname as well as "surname, name, age, profession and address of his father and mother".[10] In addition, it is regulated a standard protocol to be completed by the person who finds a child. Also, art. 14 of the decree imposes the obligation to issue "birthday card" [11] needed to identify the child. If in Caragea Act, all the "registry books" on which it was meant the main events in a person's life, such as: birth, death, marriage was largely the responsibility of priests, according to the Decree of 1866 that responsibility lies on the civil status "officer" [12] from each commune.

The first law governing the whole name issue is the "special" Law from March, 1895, which offers concrete solutions for different situations, not containing " scattered provisions " [13] like the Code. Due to legislative provisions that were void until then it dragged in serious problems. There were some foreigners who carried on a trade in a corner of the country, they went bankrupt, therefore they went to another corner of the country and Romanized their names, changing it completely, because there was no relative formality to change the name. So Rosenfeld changed into Rosetti, Rosenzweig into Roznoveanu and Braustein in Brateanu. Although this law was fought with great talent by Delavrancea Barbu it was, however, adopted to meet the needs of those times.[14]

Under this law any person must have a surname. No one was allowed to use a patronymic name other than the one that was registered in the register of civil status. If they did not had such a surname, they were forced to give a statement to the

mayor of the place of origin. Thereby demonstrating that they agree to have as a surname the father's Christian name plus one of the endings "-escu" or "-eanu", being designed to differentiate name by surname. For example, if the father had the first name as "Ștefan", his son was to be called "Ștefănescu". So, most of the villagers who did not have a patronymic name formed one, thus the name acquired was written down on the birth certificate of the person.

In art. 4 states that both legitimate and legitimated children had the same legal fate bearing the surname of their father and art. 47 shows the obligatory passage in the certificate birth of the child of the surname of his father. Article 6 of the same law states that when a child was not recognized at all by any of the parents, it will be recorded in the register of civil status under two names. If, later admitted he will be able to wear the surname of the father who recognized him since that time.[15] The Law also provides the fact that the woman was taking her husband's surname once she married, name lost if she divorced.

Art. 1 of the law states that it is not possible any voluntary change of name, being illegal; but sets no penalty for changing the name. Furthermore, the same article states that the name can be changed only for "cause blessed", leaving the court the freedom to appreciate what are these causes and how they can be determined. In general, it is considered as accepted a request to change the name where this was "ridiculous, obscene or immoral". The request for changing the name was addressed to the Ministry of Justice, following to be published in the Official Gazette and in newspapers. If in a certain time there was not any opposition, it had to be approved by the Council of Ministers. This change fully operate upon the wife and minor children, if necessary.[16]

The name would be for the bearer, as discussed in the French doctrine, the subject of a genuine right of ownership [17]. Each would be the owner of his name. The idea of the patronymic name property can be seen as a vestige of the feudal system in which the surname often represented the name of the lands. Element of personality, the name is not a heritage value and can not be considered as a heritage good, susceptible of property[18]. The ownership right implies a relation between a thing and a person, this right of ownership being, according to the definition, exclusive and individual. Analyzing the situation of co-ownership by joint tenancy, we can see that the property is owned by several people but none of them has exclusive use of the property. As a result, reporting these principles to the right of ownership of

the name, we find that the surname is assigned to the whole family, with situations where there are more than one family with the same surname, without being linked between them. In addition, the owner of the property right has also the right of alienation or use of the property, which demonstrates once again that the name is not susceptible of ownership.

Law of March, 1895 considered in Article 20 that the surname may be subject to a real property constituting by itself a right. Alexandresco stated that "One of the main tasks of the human personality is to have a patronymic or family name. This name is a sui generis property, which no one can usurp"[19]. Therefore, if "the usurper would have taken a name on which has no right or continue to bear a name that has been decided that it is not his, he will be followed after an order devoid of effect, by those of whose names were usurped, in front of the respective courts. Since this provision, it was concluded that "the right to pursue the usurper is not linked to any manifestation of particular interest, the identity of the name is sufficient to require the cessation of usurpation ". [20] In addition, it was believed that the public prosecutor also has the right to follow the usurper, considering that the name protection has a penal and not civil nature. So it is given to all individuals a right of action to quest others to adopt his name, without being considered the moral or material damages to such a "usurpation". Case law has established that it is necessary that the surname of the applicant to be identical to that of the defendant phonetically and spellingly, such as to be in the presence of an usurpation of name, situation that the legislature intended to remove.[21]

The Law above mentioned was repealed with the advent of Law no. 72 of April 1936, law that provided uniform provisions for the entire country, establishing the procedure for resuming the Romanian names in all the provinces that were united with the country [22]. This stated that the legitimate child takes the surname of the father. Illegitimate child, but admitted takes the surname of his mother. Another important provision was that the married woman could add her husband's name along with his own family name. The adopted child added to his name the surname of the adopter, putting this name even before his name, if it were consented. In addition, the name change administratively it could be done only by royal decree and it had an effect on the wife and minor children. Regaining lost or alienated ancient Romanian names was approved by the Ministry of Justice.

Another regulatory was Law no. 29 from January 1942. It provided that the approval of regaining one's name is given by the court. Law no. 29 of January 1942 stated that the benefit of regaining one's name belongs only to Romanian people. The Law no. 26 from 1944[23], expressly provided that the court decision entrusting regaining one's name should be published in tabular form by the Ministry of Justice in the Official Gazette and only after publication, the person in question could bear the name regained. Law no. 646 from 14 of August 1945⁹ repealed Law no. 72 from 1936 and retained the previous rules relating to the acquisition of surnames by law and the administrative name change was approved by the Minister of Justice. Decree no. 54 of 10 February 1949¹⁰ fills up Law. 646 of 14 August 1945. It gives the right to administratively change the name not only the family name, but also the forename. Until this moment the forename could not be changed, its award was linked to the rite of baptism. By Decree no. 272 of 30 December 1950¹¹, civil status is under the management, direction and control of the Department of State for Foreign Affairs, by the General Direction of the Militia (GDM). Decree no. 272 of 30 December 1950, on the name changing, provided that the name change administratively was approved of the Department of State for Foreign Affairs by D.G.M. and it had no effect on the wife and minor children.

Once with the Decree no.182 of October 19, 1951, it was created the institution of adoption, which is actually an adoption that produces all the effects of natural parentage. Family Code came into force on February 1, 1954. This contained provisions regarding the name in article 27, article 28, article 40, article 62 and 64. According to art. 27 and 28 of the Family Code, there are referrals to the name, only in the sense of the family name that would be used by the couple during the marriage.

In art. 12 of Decree no. 31 of 1954¹² regarding the name of natural and legal persons, it was held that "everyone has the right to a name established or acquired under the law", establishing the name structure and referring to how to change the name administratively. Provisions concerning the name contained also Decree nr.975 from 1968¹³. Meaning of the name was used in a broader sense in both

⁹ Published in the Official Gazette No. 183 of 14 August 1945.

¹⁰ Published in the Official Gazette No. 34 of 10 February 1949.

¹¹ Published in the Official Gazette No.124 of 30 December 1950.

¹² Published in the Official Bulletin No. 8 of 30 January 1954.

¹³Published in the Official Bulletin No.136 of 29 October 1968.

regulations, namely art. 12 of Decree no. 31 of 1954 and in art. 1 of Decree nr.975 of 1968, a person's name includes both family name and Christian name. According to these legal provisions "the name contains last name and first name"[24]. Likewise the expression family name was used in the old Civil Code, specifically in art. 47 and art. 312. In this sense, the family name indicates and appoints all members of a family, applying only to those who descend from a common author. Article 3 of the normative act establishes the rule that "Civil rights are protected by law."

The main argument supporting the concept that identification attributes, and implicitly the names, are personal non-property rights is provided by art. 54 of the Decree. 31 of 1954. "The person who has suffered damage to his right to name or pseudonym, to denomination, to honor, to reputation, in his personal non-property right as an author of a scientific, artistic or literary, of inventor work or any other personal non-patrimonial right, it could request the court the cessation of committing the act affecting the rights above mentioned"[25].

There are also a number of other special national laws contain numerous providingd concerning the right to name such as Law 119/1996¹⁴ regarding civil status updated. In accordance with art. 1 of Act 119 of 1996 on civil status, proof of all these events and activities related to the marital status of the individual, is made by authentic documents, called civil status, in the interests of the State and of the individual. The voluntary nature manifests with this provision, leaving the freedom of parents to choose their child's first name. However, the law imposes conditions that require limited intervention of public administration. Thus, in art. 18 para. (2) provides that "civil status officer may refuse registration of that name if it is made up of indecent or ridiculous words, parents could opt for a suitable name."

From the point of view of private international law in art. 14 para. (2) of Law no. 105/1992¹⁵ on the regulation of international law stated that: "Protection against acts of infringement to name, committed in Romania, are ensured according to Romanian law".

The Romanian Government Ordinance no. 41 of 2003¹⁶, regulated the procedure for the acquisition and administratively change the names of individuals.

¹⁴Published in the Official Gazette No. 339 of 18 May 2012.

¹⁵Published in the Official Gazette No. 245 of 1 October 1992.

¹⁶Published in the Official Gazette No. 68 of 2 February 2003.

This ordinance was approved with amendments by Law no. 323 of 2003¹⁷. The absolute novelty brought by the above-mentioned ordinance consists in regulating expressly the "main cases which the legislature considers to be reasonable grounds for changing administratively family name and first name, unlike art. 4 of Decree no. 975/1968, which was content to provide that the name change could be obtained for good reasons, not to give explanations in this regard "[26].

Law 272/2004¹⁸ on the protection and promotion of children's rights, as amended by art. V of Law. 257 from 2013 establishes in art. 9 para. (2) that every child has the right to be named immediately after birth, once he is registered. Law 273 from 2004¹⁹ on adoption includes provisions relating to the name in art. 53 and art. 59. It was amended by Law no. 233 from 2011. Another piece of legislation regulating aspects of the name is the methodology approved by Government Decision no. 64 of 2011 on civil status.

Convention on the Rights of the Child, adopted by the UN General Assembly provided in art. 7 the right to a name of the child: "The child shall be registered immediately after birth and shall have the right to a name at this time ...". It is noted in connection with this formulation that the right to a name of the child is born not from the date the child is registered "immediately after birth", but from the date on which it was born alive [27].

With the coming into force of the new Civil Code, the 1-st of October 2011, the right to name receives wider provisions in Book I, TITLE III, Section III- Identify individuals, Section 1-Name in art. 82-85. Provisions on the right to a name we find in the title concerning the marriage (art. 282, art. 383) and in the chapter on adoption (art. 473, art. 470, art. 482), affiliation (art. 438, art. 448, article 449, art. 450) or in the chapter on parental authority (art. 492) and not least in book VII of the provisions of private law, art. 2568 and art. 2576.

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 [28] repeats the same idea and develops it in the provisions regarding the acquisition and change of names administratively. Family connections are the ones that determine that part of the name called

¹⁷Published in the Official Gazette No. 510 of 15 July 2003.

¹⁸Published in the Official Gazette No. 159 of 5 March 2004.

¹⁹Published in the Official Gazette No. 557 of 23 June 2004.

"surname", often used in everyday speech as the expression "family name". It is acquired according to the law, without possibility of any manifestations of voluntary choice. As an exception, a limited manifestation of voluntarism is allowed when the child's parents do not share the same name. In this case, the child will bear the name agreed by the parents, that may be the surname of one of them or their surnames combined. If parents can not agree, the court of guardianship will decide according to Article 18, paragraph (3) of Law no. 119/1996 on civil status papers, republished in 2012.

Voluntarism is manifested as far as assigning the forename by the parents is concerned, designated in common speech as "Christian name". Assigning the forename is voluntary, meaning that the parents are the ones who choose their child's forename. However, the law allows, under certain conditions, limited intervention of the public authority in this area. Thus, according to art. 84 para. (2) second sentence of the new Civil Code, "the registrar must prohibit the registration of indecent, ridiculous forenames which are likely to affect the public order and the morality or interests of the child, as appropriate" .

The binary structure of the name was also provided by Article 12 para. (2) of Decree no. 31/1954, which had the same wording as that of art. 83 of the new Civil Code. Therefore, 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. Thus, unjustifiably, the component elements of the only right recognized as such by law, the right to a name, reached the status of independent rights. The wording of the provisions of Article 82 of the new Civil Code (text with the same wording as that of Article 12 para. (2) of Decree no. 31/1954, which states that "everyone has the right to an established name or to a name acquired according to the law") in conjunction with those of the art. 83 of the new Civil Code, allows no other interpretation than the one according to which the surname and forename are just components of a single right: the right to a name.[29]

Regarding the name, para. (1) of Art.2576 from the new Civil Code provides that one's name is governed by its national law, the family name and first name are included in the area of national law.[30] The provisions of par. (2) of the same article is accepted that determination of the child's name at his birth is governed, by choice, by the law of the common nationality of both parents and the child or by the law of the State where the child was born and lives in childbirth. If the person has no

nationality, according to par. (3), the applicable law shall be the law of the State where it has his common residence.

Establishment and change of name due to marriage, parentage or adoption are subject to the law governing non-material effects of these institutions being in the action area of personal law. In addition, the name change administratively set everything in the personal law unless another legal provision provides otherwise. Protecting name, for acts of violation of the law committed on the territory of Romania, according to the law of our country is ensured. This conflict rule established by par. (3) of art. 2576 specifies only the scope of its law, and without referring to foreign law.[31]

Our Civil Code draft, having as primary inspiration the Civil Code of Québec, which expressly regulates the right to a name in the category of personality rights, made reference in an early stage to the non-property rights and regulated such rights, without specifically using the phrase "personality rights". Therefore, the new Romanian Civil Code expressly regulates in the Article 58 only the right to life, health, physical and mental integrity, dignity, the right to privacy and the right to a good image. The enumeration made by the legislator is a declarative one and there are also other rights that may be characterized as personality rights. Due to this situation, the law implementing the new Civil Code, Article 20 paragraph 9 was renamed from "Personality Rights" to "Rights of Personality", and Article 58 was further improved in the way that there are also called personality rights, "such other rights recognized by law." Therefore, we also take into consideration the rights contained in Article 59 of the new Civil Code, namely the right to a name, the right of domicile and the right targeting the civil status.[32] The right to a name is one of those personality rights that are simultaneously identification attributes of the person.

CONCLUSIONS

Nowadays the name of the person and the problems imposed by its use are covered by specific provisions. Every human being, as bearer of civil subjective rights and civil liabilities should be individualized in the legal relationships in which they participate. The name, as an element or mean of identifying physical persons in civil right, contributes to determinate the status of one's individual holder of rights and obligations in a legal relationship. Peoples can not be outside the legal life at no time,

the individualisation of the physical person being "a permanent, general, social and personal necessity" [33]. A person's name concerns his family and private life .

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