

INFRINGEMENT IN ONE'S RIGHT TO NAME, INTRUSION IN PRIVATE LIFE OR FAMILY LIFE? THE EUROPEAN COURT OF HUMAN RIGHTS PERSPECTIVE

PhD. Student **Oana-Nicoleta RETEA**¹

Abstract

The name is important both to the individual and to the society. Therefore, it is important to understand its role in both shaping the private sense of self and identity and in reflecting and sustaining the social institutions such as the state, family. The aim of this article is to contribute to the better understanding of the scope of Article 8 from the European Convention of Human Rights in what concerns the right to bear a name. The great variety of issues that have been covered by this article has generated a huge literature in which Article 8 was treated as one of the most open-ended provisions of the ECHR. In this context, it was underlined the inclusion of the right to name into the domain of this article, while tracing the connotation given by the Court in the attempt to establish an infringement of the right to privacy and family. Moreover, the case law presented reveals that there are fluctuations in the approach of the Court, showing also the cases in which it was not found a violation of Article 8. However, the infringement of one's right to name could reveal different ways of intrusion in the private life or family life, but in any situation, it is engaged liability for the damage caused.

Keywords: right to name, article 8 from the European Convention of Human Rights, private life, family life, caselaw.

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1. Preliminary issues concerning the right to a name

People's identification through the name is as old as the emergence of social life². The name is not only an individual attribute, but also a family right reasoned by the descendants' prerogative to act in order to protect the name of their ancestors. Therefore, legal action against the unjustly wearing of a name could be introduced by both the person who is bearing that name and the one who is not, but instead demonstrates a moral interest to defend that name with the purpose of preserving the family heritage³. Thus, the name belongs to both civil state and personality rights⁴, as a result of parentage and also as a bearer of one's identity⁵. Therefore, the authorities enjoy a certain freedom to regulate in the exercise field of the right to a name, in a manner that seeks to ensure that public interests would be combined with the personal ones, the society and the state being directly involved in shaping the legal framework of the right to name⁶.

In this context, the function of the name as a means to individualize⁷ a person in society and in the family, lead to an interconnection between various aspects of private law and public law⁸. From the point of view of private international law, the use of nationality as a connecting factor in the choice of the law in the name field could symbolize the interest of each state to ensure that names are configured and acquired in accordance with its own provisions. Instead, the close links that the right to name has with the right to life and personal integrity of an individual, determined that the name is subject also to the provisions that are governing the fundamental human rights.

¹ Oana-Nicoleta Retea - Faculty of Law, University of Craiova, retea.oana.nicoleta@gmail.com

² Dumitru Lupulescu, Ana Maria Lupulescu, *Atributele de identificare ale persoanei fizice*, Universul Juridic Publishing, Bucharest, 2015, p.65.

³ Ovidiu Ungureanu, *Uzurparea și utilizarea abuzivă a numelui*, "Revista română de drept privat", no. 2, 2007, pp. 227-228.

⁴ Gérard Cornu, *Droit civil. Introduction. Les personnes-les biens*, Montchrestien Publishing, edition 13, Paris, 2007, p.110.

⁵ Ernest Lupan, Szilárd Sztranyiczki, *Persoanele în concepția Noului Cod civil*, C.H.Beck Publishing, Bucharest, 2012, p.105.

⁶ Diana-Alina Rohnean in Mădălina Afrăsinie (coord.), *Noul Cod civil-comentarii, doctrină, jurisprudență. Vol. I Art. 1-952. Despre legea civilă. Persoanele. Familia. Bunurile*, Hamangiu Publishing, Bucharest, 2012, p. 1062.

⁷ Oana-Nicoleta Retea, *Right to A Name. Insight into the Evolution of Legal Provisions*, "Journal of Law and Administrative Sciences", no. 3, 2015, pp.168-179.

⁸ Oana-Nicoleta Retea, *Dreptul la nume în viziunea jurisprudenței europene*, "Revista de Științe Juridice- Supliment", Universul Juridic Publishing, Bucharest, no.2, 2015, p.90.

The European Convention of Human Rights (ECHR) does not explicitly grant protection to right to name⁹ unlike other international instruments for the protection of human rights such as: the International Covenant regarding Civil and Political Rights¹⁰ (article 24, paragraph 2), Convention on the Rights of the Child¹¹ (article 7 and article 8), Inter-American Convention on Human Rights (article 18).

In its caselaw, the European Court of Human Rights held that a person's right to a name and surname¹², as an identification attribute of one person and as a means that emphasizes a connection with a certain family, should be included in the domain of Article 8 or in the structure of the concept of "private life"¹³. In the same direction, the right to name could be inserted into the area of the concept of "family life"¹⁴, within the meaning of the same provision. The means of invading one's private and family life by violating the right to name, are different and when is necessary they are involving liability for damage caused¹⁵. Next we are going to analyze the infringements on the right to name found by the Court¹⁶, stopping us comprehensively on how it was justified the inclusion of the right to a name under the protection of certain provisions. We structure our analysis according to the name's inclusion in the notion of private life or of that of family life, while stressing the situations in which the Court refused to include the right to name within the scope of Article 8 ECHR.

2. Caselaw of the European Court from Strasbourg on the right to name under Article 8 of the European Convention on Human Rights

The plethora of issues that have been treated by the scope of Article 8 of the Convention imposed an approach and also a generous interpretation, being perceived as one of the most comprehensive and open provisions of the ECHR. In this context, it was felt the necessity to determine the circumstances that were perceived by the European Court as a violation of the right to name, for the purposes of an infringement of Article 8 enshrined to the respect of the right of private and family life, in the absence of express provisions in the Convention of the right to name as a personality right and an attribute of individual identification. Violations of the right to name concern multiple and a variety of situations that differ one to another and that are distinct qualified by the European Court in Strasbourg. The notion of "private life" and "family life" does not have a particular content. Therefore this analysis depicts both situations that are included in the scope of the two notions and the meaning and appreciation of the Court as an infringement of the right under Article 8 ECHR.

The European Court of Human Rights decides it is in the scope of article 8, in the sense of interference with the private life, what happened in the judgment of *Znamenskaya v. Russia*¹⁷. This situation reveals the applicant being pregnant and having a miscarriage at 35 weeks. Despite her efforts, her ex-husband's name was filled in the birth and death certificate entry, although she declared she had a certain relationship for some time with another person. Because the mother's partner was arrested, he was unable to recognize the paternity. Following these events, the latter deceased and the applicant asked the court to change the father's name in the dead child's document¹⁸. In March

⁹ Walter Pintens in Jürgen Basedow, Klaus J.Hopt, Reinhard Zimmermann, Andreas Stier, *The Max Planck Encyclopedia of European Private Law*, Vol. I, Oxford University Press, Oxford, 2012, p.1036.

¹⁰ Romania ratified the pact on October 31, 1974 by Decree no. 212, published in the "Official Gazette of Romania", part I, no. 146 of 20 November 1974.

¹¹ Republished in the Official Gazette no. 314 of 13 June 2001.

¹² Radu Chiriță, *Convenția europeană a drepturilor omului. Comentarii și explicații*, Vol. II, C.H. Beck Publishing House, Bucharest, 2007, p. 43.

¹³ Liz Heffernan, *Human rights: a European perspective*, Round Hall Press, Dublin, 1994, pp.155-156.

¹⁴ Isabelle Barrière Brousse, Méline Douchy-Oudot, *Les contentieux Familiaux. Droit interne, international et Européen*, Lextenso Publishing, Paris, 2013, p.120.

¹⁵ Călina Jugastru, *Respectul vieții private-delimitări conceptuale, precizări privind domeniul protecției legale*, Inst. de Ist. "G. Barițiu", Series Humanistica, Cluj-Napoca, tom.II, 2004, p.347.

¹⁶ Ovidiu Ungureanu, Cornelia Munteanu, *Drept civil. Persoanele în reglementarea noului Cod Civil*, Hamangiu Publishing, Bucharest, 2015, p.239.

¹⁷ ECHR, Case *Znamenskaya v. Russia*, 2 June 2005.

¹⁸ The document is available online at: <http://jurisprudencedo.com/Znamenskaya-contra-Federatia-Rusa-Copil-nascut-mort-Numele-tatalui-din-certificatul-de-deces-Schimbar-numelui.html>, accessed on 26.07.2016.

2001 the Russian national court refused the request citing the grounds that its provisions apply only to the paternity question for children born alive. The European Court ruled on the request stating that changing the name of the dead child was trying to underline the link with the biological father and the applicant acted in virtue of this aspect integrated into the right to private life¹⁹.

In addition, also as an interference in one's private life is the criminal offence of identity theft considered, the Court ruling in this regard in the case of *Romet v. Netherlands*²⁰. In 1995 his driving license was stolen, the applicant denouncing the crime to the competent authorities in November. Subsequently, in the vehicle monitoring system were recorded 1737 registrations on his name, and the applicant received an impressive number of fines, notifications in order to pay the taxes. The applicant was not only sued for not paying the fines, but he was also detained by the police, and all social benefits he was receiving were withdrawn due to the number of vehicles on his name. After numerous requests, only in 2004 those registrations were canceled, but only with effect for the future and not for the past ones.

As we can see, the authorities' mistake to invalidate the driving license has triggered an abuse of law included by the Court in the scope of art. 8. The European court sanctioned the Netherlands on the rationality that the competent authorities have failed to take the necessary steps at an administrative level to avoid such a situation. To be noted that the stolen license was invalidated when a new one was issued (March 1997) and the competent institutions took action only in 2004. Therefore, the state was fined with 9,000 euros because of infringement of art. 8 of the Convention²¹.

The Court also decided in the case of *Daróczy v. Hungary* (judgment of 1 July 2008) that, beyond the recognition of a broad discretion of states in matters, the applicant's request, (Tibor Ipolyné Daróczy,) to change the patronymic name constitutes a violation of the right to private life. After marriage, in 1950, the applicant chose to use her husband's name Tibor Daróczy Ipoly, which was adjusted the suffix "-né". Based on the regulations in force at that time, her name had to be of the form: "Tibor Ipolyné Daróczy" but on the grounds that her life partner often used only his first name, she was registered as: "Tiborné Daróczy". What is remarkable, is that the error was revealed only in 2004 when after she had lost her identity document, she asked for the release of a new one and her name was entered in the correct version²². Since she used that name for more than 50 years, she made a request to the competent authorities to continue with it. Her application was refused because there was no possibility to use a name, other than the one of her husband.

The Court noted that since the original name which she had used for more than 50 years including to open a bank account, to vote, being registered as so on the electoral lists, did neither violate her husband's right who had died in the meantime nor jeopardize the authenticity of the state records, ruling that there was an unjustified imbalance between the public interest and her rights. Because of the "inappropriate" registration by civil service, the infliction to change the name was considered as a rigid restriction, violating art. 8 of the Convention. It should be noted that when the procedure²³ regarding the name change lasts very long, it falls under art. 6 of the Convention.

Both the Court of Justice of the European Union (in the case *Ilonka Sayn-Wittgenstein v. Landeshauptmann von Wien*²⁴) and the European Court of Human Rights delivered that the noble titles even if they are in the composition of a name, they cannot be accepted as part of it as an identifier of an individual in the family and social level. Thus, the ECHR decision in this regard in the case *Bernadotte v. Switzerland*²⁵. ECHR held that although the issue of personal names and forenames as such falls within the scope of private life and very often also family life notions under Article 8, the same could not be said about the hereditary titles of nobilities. In this case, a son of the late Swedish

¹⁹ Radu Chiriță, *Convenția europeană a drepturilor omului. Comentarii și explicații*, Vol. II, C.H. Beck Publishing, Bucharest, 2007, p. 44.

²⁰ ECHR, Judgment from 14.02.2012.

²¹ Radu Chiriță (coord.), *Dreptul la viață privată și de familie. Jurisprudența C.E.D.O.* Hamangiu Publishing, Bucharest, 2013, p. 244.

²² *Idem*, pp. 239-240.

²³ See also ECHR, *Mustafa v. France*, from 17.06.2003, no. 63056/00, unpublished apud Jean-François Renucci, *Tratat de drept european al drepturilor omului*, Hamangiu Publishing, Bucharest, 2009, p. 243, note 656.

²⁴ C-208/09, *Ilonka Sayn-Wittgenstein against Landeshauptmann von Wien*, CJEU, Judgment from 22.10.2010.

²⁵ ECHR, Judgment from 3.06.2004.

King Gustav VI Adolf complained that as a result of removing from him the title of prince (because of his marriage with the daughter of a foreign private person without the King's approval, and the subsequent refusal to restore his title by King Carl XVI Gustav) amounted to interference with his right to respect for his private life. The applicant stressed that the title of prince, given to him at birth, should be considered as part of his name or of his identity in the same way as a name. The humiliation caused by the removal of his title of prince was no less than that caused by the deprivation of a name.

As an example of humiliation, the applicant stated that he had to hand over a number of orders and decorations as well as his royal passport. According to him, he was 'thrown out of his family' and was deprived of all financial means, as his name was removed from the Civil List and his bank account was immediately frozen. In vain, he tried to earn his own living; for instance, his application to become an assistant film director was rejected 'due to intervention by the King'. In addition, often when travelling abroad, he had been exposed to embarrassment and humiliation in the face of questions as to how it was possible that a descendant of King Gustav VI Adolf was not invited to gatherings of the European royal houses and other occasions. These awkward situations had left him and his wife, Marianne, with a degrading and humiliating sensation of being suspected of having committed crimes or other reprehensible conduct as the reason for the loss of title. By rejecting his petitions for restoration of his title, the current King, who was himself married to a commoner, had contributed to increasing that suspicion.

Nevertheless it was indicated that the dispute in question did not concern an arguable claim under the ECHR. Once the Court has ruled that a title is not part of a person's name, refusing to grant him this title does not fall within the scope of art. 8, thus it is not considered a violation of Article 8 of the Convention.

To give also some examples of manifestly ill-founded cases in which the interventions, though falling within the scope of private life as such, were found not to be serious enough to amount to interference as required by Article 8, one can start with *Hagmann- Hüsler v Switzerland*²⁶. The applicant complained that she had been refused permission to stand for election to the Parliament under her maiden name of Lucie Hüsler, or possibly as Lucie Hüsler, the wife of Hagmann. In particular, she alleged that, since she was known to the public by the name of Hüsler, this refusal damaged her prospects of being elected. The ECHR, however, noted that the Swiss authorities gave the applicant the option of adding the name Hüsler after the name Hagmann and the applicant had thus a reasonable possibility of precise identification available to her. As a result, there was no appearance of a violation of Article 8 and the complaint was manifestly ill-founded.

Another example is the case *Stjerna v Finland*²⁷. The Finnish applicant complained about his inability, under Finnish law, to change his surname from Stjerna to Tavaststjerna violated Article 8. Citizen of Finnish nationality, Stjerna was born in 1936 and he was working as a customs inspector in Helsinki. In 1989, he requested the authorities to change his surname in Tavaststjerna, the name of his ancestors. His request is refused in 1990 under Art. 10q2 of the Finnish law applied since 1985 to names. He claimed that his Swedish surname caused problems as it was liable to be mispronounced by Finnish speakers, causing delays in mail and giving rise to a nickname. According to the provisions in force is brought into question the continued use of the name concerned by the applicant's ancestors, since the first user of the current name was a child resulted outside marriage.

The Court considers that the name issue in the present case, falls within the scope of art. 8 as the element that provides identification of a person and connection with a particular family. Furthermore, the applicant's arguments submitted in order to an infringement to the right to private life were the following: the inconveniences caused by spelling and pronunciation of the current name, the attribution of nicknames based on its name, the commitment to long deceased ancestor whose name requested to use. In these terms, the Court ruled that the authorities' refusal to change his patronymic do not represent a violation of the rights enshrined in art. 8, taking into account the criterion for determining the situations for name change by the Finnish authorities²⁸. The facts from

²⁶ ECHR, Judgement from 15.12.1977.

²⁷ ECHR, Judgement from 25.11.1994.

²⁸ Jean-François Renucci, *Tratat de drept european al drepturilor omului*, Hamangiu Publishing, Bucharest, 2009, p. 243.

this case were not classified in any sphere of article 14 ECHR, such a decision has been influenced by the premise that the name had not been used constantly by the petitioner's family members. The Court, therefore, found that there has been no violation of art. 8 in conjunction with art. 14 of the Convention.

Moreover, the choice of a forename²⁹ of a child exerted by his parents fall within the concept of "private life" according to European court. So in *Guillot v. France*³⁰ the refusal of the civil status officer to record the forename wanted, was invoked as representing a not admitted violation of the Convention³¹. Gérard Guillot with his wife, Marie-Patrice, decided to assign their daughter as forename "Fleur de Marie" joined the other two forenames Armine, Angéle. Fleur de Marie was actually the name of a character from "Mysteries of Paris" by Eugene Sue. Both the officer of civil status and the french courts to whom they addressed, rejected their demand. The Court of Appeal (Versailles) in 1984 and the Court of Cassation in 1986 upheld the judgment of the first court, which admitted just adding the words "Fleur-Marie" on the grounds that a name can not be made up of a word that is articulated and preceded by a preposition and besides this, it was not part of any calendars of that period from which according to the dispositions in force the French chose their forenames.

Although, as noted in article 8, there are no clear provisions for including the forename in its scope, the quality of means of identifying a person concerns private and also family life. In addition, the method of establishing the forename by the parents take the form of an emotional and intimate processes included in this area of private or family life. In light of the foregoing, the court did not find that the inconvenience complained about the applicants was sufficient to raise an issue of interference with either their private or family life according to art.8 ECHR.

Furthermore, it should be observed the judgement from *Salonen v Finland*³², which concerned the refusal to register the name 'Ainut Vain Marjaana' ('The One and Only Marjaana') and in which it was found that if the reason for preventing the registration of a forename was to protect a person from inconveniences caused by his name, the Contracting States enjoyed a wide margin of appreciation.

Otherwise, in the cas of *Johansson v. Finland*³³, the plaintiffs have requested permission to the authorities, such as their child, born in 1999, to wear as first name "Axl Mick". The request was denied invoking the ground that the written formula of the forename asked does not correspond to how the others Finnish forenames are written. The court which they addressed, ruled that the forename "Axl" is not compatible with the practice relating to names in Finland and to be accepted such a request it must first be supported by the relationship based on nationality, family or other situations that justify a link with another state that would impose such a formulation.

As in the case *Guillot v. France*, the Court included the first name in the scope of art. 8 of the Convention and it has ruled that the public interest may be affected by certain practices in this matter such as the use of ridiculous formulations, being touched in the same time also the child's interests. Since the forename in question was not different from other similar formulas accepted in Finnish law as "Ulf" or "Alf" and by the fact that the same formula had previously been accepted by Finnish authorities as first name (three people had been registered with the same appellation, above), in conjunction with the impossibility of bringing harm to the child, led to the premise that there is no sufficient evidence to prove the negative effect that would have the use of such formulas on the cultural identity or on the language of that country³⁴.

A different approach from the Court is noted in the case of *Güzel Erdagöz v. Turkey*³⁵. The Turkish authorities' refusal to correct the spelling of the forename was motivated by the fact that the

²⁹ Ion Dogaru, Sevastian Cercel, *Drept civil. Persoanele*, C.H. Beck Publishing, Bucharest, 2007, p.149.

³⁰ ECHR, Judgement from 24 October 1996.

³¹ Corneliu Bîrsan, *Convenția europeană a drepturilor omului. Comentariu pe articole*. C.H. Beck Publishing, Bucharest, 2006, pp. 604-605.

³² European Commission of Human Rights, 2 July 1997(First Chamber).

³³ ECHR, Judgement from 6.09.2007.

³⁴ Radu Chiriță (coord.), *Dreptul la viață privată și de familie. Jurisprudența C.E.D.O.* Hamangiu Publishing, Bucharest, 2013, pp. 235-236.

³⁵ ECHR, Judgement from 21.10.2008.

formula "Gözel" sought by the applicant is based on a regional pronunciation and not the national language dictionary. In addition, the Court has sanctioned that the refusal of the applicant's request, the Turkish courts have not invoked reasons of public policy or public interest but of regional character and the unwritten formula. Therefore, the Turkish state has not fulfilled its obligation to state clearly and in detail the procedure aimed at rectifying forenames and the authorities' tasks in such situations through national legislation. The Court, based on the finding that it is not justified and necessary such restriction in a democratic society, decided that there is a violation by the Turkish state in the right of private and family life according to article 8 ECHR³⁶.

Also the Turkish state is concerned and in the case *Kemal Taşkın, Medeni Alpkaya, Abdulkadir Fırat, Emin Anğ și Emir Ali Şimşek*³⁷, this time, it were raised problems posed by the use of Turkish alphabet in spelling of a first name in the identification documents. So, the applicants who had Kurdish origin, hve been denied the request to modify their forenames, motivating that the chosen names could not be transcribed in Turkish as it contained more letters than the 29 that make up the alphabet. They wished that the phrase "Kemal" should be replaced with the first name of Kurdish origin "Dilxwaz" (desire). In the same sense, they wanted to use the same words of Kurdish origin "Xoşewist" (respectable) and "Berxwedan" (resistance) as first names.

The Court in this case found that there was interference in the sense of art. 8 but it is justified since the imposition of the Turkish state's official language use in official documents was meant to avoid certain disruptions and was seeking to protect the rights of citizens. Furthermore, Turkey is one of the member states of the International Commission on Civil Status (ICCS) and the Convention no. 14 of this Commission, settled out the rules for the transposition of names, including rules on phonetic transcription. Therefore, a transposition of required formulas in Turkish language would not only have given rise to bizarre, ridiculous words but would have created a series of phonetic difficulties. Also, under the provisions set out in the ICCS, it was compulsory required that the transcript of the name should be literally, a thing impossible because in those particular phrases there were included letters that hadn't their equivalent in the Turkish alphabet. So, unlike the case *Güzel Erdagöz v. Turkey*, in this case, Turkey is no longer sanctioned stating that authorities had not exceeded its powers, not been confirmed a violation of art. 8 of the Convention.

Though the issue of names is a fertile breeding ground mainly for all kinds of interference with private life, there are a lot of examples in which a person's name also concerned his or her family life. The ECtHR has stated that there are a variety of recognised public interest considerations which well justify state regulation and restrictions on name changes and choice, such as upholding the unity of the family name (which in itself reflects the unity of the family towards the outside world), importance placed on the child being united, by means of its name, with the family name, preserving the stability required in the legal rules governing names, or accurate population registration. Unless such regulating restrictions have not treated men and women differently, they have not amounted to discrimination in violation of Article 14 in conjunction with Article 8, they have been found compatible with respect for family life in the majority of cases.

Swiss law infringes art. 8 in conjunction with art. 7 of the Protocol when is allowed only the wife, not the husband to join the common name determined by marriage, the name used by her before marriage. Therefore, it is a violation of both the right to family and private life and the principle of equality between spouses. In addition, such a situation is an infringement of art. 14 of the Convention, according to which it is prohibited the discrimination based on the values that it protects.

In this manner, in *Burghartz v. Switzerland*³⁸, the Court stated that the issue of designating patronymic name is no longer just a matter for the national states³⁹, but also it circumscribes the scope of the rights recognized at European level, disputes arising in this matter being dealt with by the European courts. The applicant in this case has dual citizenship, both Swiss and German. Burghartz

³⁶ Radu Chiriță (coord.), *Dreptul la viață privată și de familie. Jurisprudența C.E.D.O.* Hamangiu Publishing, Bucharest, 2013, pp. 235-236.

³⁷ ECHR, Judgement from 1.02.2010.

³⁸ ECHR, Judgement from 22.02.1994.

³⁹ Jean-François Renucci, *Tratat de drept european al drepturilor omului*, Hamangiu Publishing, Bucharest, 2009, p. 243.

Susanna married in 1994 in Germany, with Albert Schnyder. He is a Swiss citizen. According to existing legislation at that time in Germany, the wife can use her name, Burghartz, as a patronymic, and the husband chooses to reunite them, Burghartz-Schnyder. Swiss authorities refused to recognize names such as the husbands established and they determine as a common name the one of Schnyder. The applicants dispute that their request has been denied, and once with the entry into force of the Swiss Civil Code (01/01/1988), the Federal Court accepted their request in that it recognizes as a common name that of Burghartz, dismissing her husband request to use the names reunited.

Furthermore, Swiss Civil Code allowed only the wife to join the common name acquired by marriage, the previously name used by her, but did not allowed it to the husband. The Court finds a violation of equal treatment under Art. 14 in conjunction with art. 8 of the Convention, since it carried out an unjustified difference in treatment⁴⁰. In this regard, the regulation of the right to a name in the national legislation must aim to balance the options offered relating to names of spouses, regardless of national traditions and culture.

In terms of discrimination⁴¹ on sex, in this circumstances, Swiss law allows only the wife to wear the name reunited and not to her husband. It is therefore the principle of equality between spouses, even if one of them chooses to use the common name and the other the names reunited, but it is necessary that both partners are to be given the same right⁴².

Contrary to this solution, the Court states in the *G.M.B and K. M. v. Switzerland*⁴³ rejecting the applicants' request to assign their child's surname the lat name used before marriage by the wife. Therefore, after marriage they opted, under Swiss law, to use as a patronymic that of the husband, although they could choose the wife's one. Later, in 1995 when they had a little girl, they applied for her registration with the wife's surname, request that the authorities have rejected. The Court analysed this issue through the protection imposed by art. 8 and found that there was no interference in this right because the applicants have not shown any inconvenience that might meet their daughter by using the patronymic name that they use as husbands and that it is a result of their choice when they married. In addition it was retained to maintain the same patronymic by virtue of family unity. The Court considered that it is in the society's interest to protect the child's interests through such judgement, taking into account also the degree of flexibility of national law. So, in this situation the Swiss state has complied with the obligations that were imposed on the basis of art. 8.

At the level of the Council of Europe, there was the direction that the patronymic name for spouses should be chosen by respecting the principle of equality between them. In this matter, the Court draw some signals in the judgment *Ünal Tekeli v. Turkey*⁴⁴, ruling on the issue of the name's use after marriage. So, since Turkish law does not allow the wife after marriage to continue in using her own patronymic, but requires her to use her husband's name, such a situation falls within the sphere of article 8, representing a violation of it. The applicant requested that she should use her own surname and not that of her husband's, taking into account her profession, she was a lawyer, she had all the business records under that name and in addition, she was also known with that last name in the professional environment.

The rejection of her request on the ground that the law requires the wife to wear the husband's name for the purpose of the family unity, given that all European countries provide a right of choice, constitutes a infringement of the principle of equality between man and woman. The suggestions of the European court aimed the acceleration of reforms in family law field, taking into account the present judgement, as an interference of Art. 8 and 14 of the Convention. This traditional name system in which the spouse retains the name used before marriage, and the wife is bound to use his name once they married, is considered to rely on the old premise that places man on a major role, while

⁴⁰ Marieta Avram, *Numele soților în dreptul român și în lumina Convenției europene pentru protecția drepturilor omului și libertăților fundamentale*, "Curierul Juridic", no. 10/2002, p. 4.

⁴¹ Iulius Cezar Dumitrescu, *Un aspect privind reglementarea alegerii numelui de familie de către soți*, "Dreptul", no. 10, 2004, p. 134.

⁴² Marieta Avram, *Numele soților în dreptul român și în lumina Convenției europene pentru protecția drepturilor omului și libertăților fundamentale*, "Curierul Juridic", no. 10, 2002, p. 6.

⁴³ ECHR, Judgement from 27.09.2001.

⁴⁴ ECHR, Judgement from 16.11.2004.

woman are having a secondary one. Currently, the non-discrimination⁴⁵ principle requires the dismissal of these exceeded conceptions.

3. Conclusions

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 name⁴⁶. 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 identity⁴⁷. Another aspect of one's right to a personal identity is that represented by the possibility 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, fact that has generated a significant amount of case law before the Convention organs.

European Convention on Human Rights does not expressly regulate the right to a 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. 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 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 against 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 article 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 and 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*).

It is classified as an infringement of the right to private life, 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. It also represents an infringement of family life under the same article as the name played a deep connection with her dead husband, in order to preserve unity that characterizes family relationships (*Daróczy v. Hungary*).

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*).

Therefore, the national authorities are granted freedom in regulating the procedures applicable to this aspect of private and family life. The multitude of national solutions is justified on different legal

⁴⁵ Jean-François Renucci, *Tratat de drept european al drepturilor omului*, Hamangiu Publishing, Bucharest, 2009, p. 244.

⁴⁶ Isabelle Veillard, *La dévolution du nom de famille*, "Études Suisses de Droit Comparé", no. 1, 2006, p. 2.

⁴⁷ Oana-Nicoleta Retea, *Aspecte privind armonizarea legislației cu privire la dreptul la nume în context național și european*, "Revista de Științe Juridice" Supliment 2014, Universul Juridic Publishing, Bucharest, p. 76.

traditions⁴⁸. Also it is explained by recent developments in some legislation which are granting equal status of both parents in transmitting their family names⁴⁹. Therefore, it is not pleaded for the "uniformity" at the European level since the tradition and the custom are decisive factors in society, but for the harmony.

Bibliography

1. Bernard Beignier, Jean-René Binet, *Droit des personnes et de la famille*, LGDJ Publishing, Paris, 2014.
2. Bernard Teyssié, *Droit civil. Les personnes*, Lexis Nexis Publishing, Paris, 2012.
3. Călina Juguastu, *Respectul vieții private-delimitări conceptuale, precizări privind domeniul protecției legale*, Inst. de Ist. "G. Barițiu", Series Humanistica, Cluj-Napoca, tom.II, 2004.
4. Corneliu Bîrsan, *Convenția europeană a drepturilor omului. Comentariu pe articole*. C.H. Beck Publishing, Bucharest, 2006.
5. Diana-Alina Rohnean in Mădălina Afrăsinie (coord.), *Noul Cod civil-comentarii, doctrină, jurisprudență. Vol. I Art. 1-952. Despre legea civilă. Persoanele. Familia. Bunurile*, Hamangiu Publishing, Bucharest, 2012.
6. Dumitru Lupulescu, Ana Maria Lupulescu, *Atributele de identificare ale persoanei fizice*, Universul Juridic Publishing, Bucharest, 2015.
7. Ernest Lupan, Szilárd Sztranyiczki, *Persoanele în concepția Noului Cod civil*, C.H.Beck Publishing, Bucharest, 2012.
8. Gérard Cornu, *Droit civil. Introduction. Les personnes-les biens*, Montchrestien Publishing, edition 13, Paris, 2007.
9. Ion Dogaru, Sevastian Cercel, *Drept civil. Persoanele*, C.H. Beck Publishing, Bucharest, 2007.
10. Isabelle Barrière Brousse, Méline Douchy-Oudot, *Les contentieux Familiaux. Droit interne, international et Européen*, Lextenso Publishing, Paris, 2013.
11. Isabelle Veillard, *La dévolution du nom de famille*, "Etudes Suisses de Droit Comparé", no. 1, 2006.
12. Iulius Cezar Dumitrescu, *Un aspect privind reglementarea alegerii numelui de familie de către soți*, "Dreptul", no. 10.
13. Jean-François Renucci, *Tratat de drept european al drepturilor omului*, Hamangiu Publishing, Bucharest, 2009.
14. Liz Heffernan, *Human rights: a European perspective*, Round Hall Press, Dublin, 1994.
15. Marieta Avram, *Numele soților în dreptul român și în lumina Convenției europene pentru protecția drepturilor omului și libertăților fundamentale*, "Curierul Juridic", no. 10, 2002.
16. Oana-Nicoleta Retea, *Dreptul la nume în viziunea jurisprudenței europene*, "Revista de Științe Juridice-Supliment", Universul Juridic Publishing, Bucharest, no.2, 2015.
17. Oana-Nicoleta Retea, *Aspecte privind armonizarea legislației cu privire la dreptul la nume în context național și european*, "Revista de Științe Juridice-Supliment 2014", Universul Juridic Publishing, Bucharest.
18. Oana-Nicoleta Retea, *Right to A Name. Insight into the Evolution of Legal Provisions*, "Journal of Law and Administrative Sciences", no. 3, 2015.
19. Ovidiu Ungureanu, Cornelia Munteanu, *Drept civil. Persoanele în reglementarea noului Cod Civil*, Hamangiu Publishing, Bucharest, 2015.
20. Ovidiu Ungureanu, *Uzurparea și utilizarea abuzivă a numelui*, "Revista română de drept privat", no. 2, 2007.
21. Radu Chiriță (coord.), *Dreptul la viață privată și de familie. Jurisprudența C.E.D.O.* Hamangiu Publishing, Bucharest, 2013.
22. Radu Chiriță, *Convenția europeană a drepturilor omului. Comentarii și explicații*, Vol. II, C.H. Beck Publishing, Bucharest, 2007.
23. Walter Pintens in Jürgen Basedow, Klaus J.Hopt, Reinhard Zimmermann, Andreas Stier, *The Max Planck Encyclopedia of European Private Law*, Vol. I, Oxford University Press, Oxford, 2012.

⁴⁸ Bernard Teyssié, *Droit civil. Les personnes*, Lexis Nexis Publishing, Paris, 2012, p.168.

⁴⁹ Bernard Beignier, Jean-René Binet, *Droit des personnes et de la famille*, LGDJ Publishing, Paris, 2014, p.64.