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RECOGNITION OF A PERSONAL NAME ACQUIRED ABROAD, BETWEEN NATIONAL AND EUROPEAN EXPECTATIONS*

ABSTRACT

In the intertwined world in which we live today question of personal identity becomes more important than ever. One of the emergent aspects of personal identity is the personal name. In legal transactions, the name is one of the fundamental „keys“ to the identification of an individual and an indicator of the connection between the individual and their family and/or society. Therefore, the expectation that someone's personal name will be recognized in other States, especially in the State of their nationality, is not surprising. However, it is not always the case. Recognition of a personal name depends on private international law rules of the requested State which, often, are not perfect. Sometimes may even lead to the non-recognition of a name of their own nationals. Croatian law is one of them. Despite being enacted in 2017 with the intention to grasp all of the European values, in some cases it seems to restrict the use of rights and freedoms granted to the individuals in other Member States. Such is the case with personal names. This article aims to establish whether it is acceptable and how (if needed) it can be mended.

Keywords: *personal name, recognition, European law, Croatian PIL Act.*

1. INTRODUCTION

Personal name is one of the identifiers of a natural person. It is attributed at birth but it can be changed, either because of some personal reasons or because of the change of status (ie. adoption, marriage, change of gender, etc.). Thus, attribution or change of personal name is (in most cases) connected to significant moments in one's life, moments that are inextricably related to someone's status as well as to someone's identity.

As one of the manifest aspects of personal identity, the name is „a means of individualization and an attribute of a person's personality“, ¹ „a personality that is unique and not found anywhere else“. ² As a consequence, the right to one's name is considered a personality right. ³⁴

In legal transactions, a name serves as an important symbolic representation of personal identity and reflects the individual in a family and social context. ⁵ Therefore, it is no surprise that legal protection of personal name falls within the legitimate expectations of the party (bearer of a name), in domestic and in cross-border setting.

While, in domestic cases it is easier to know what to expect since national legal framework as well as the case law are well known from the beginning, in cross-border cases legitimate expectations of the parties are often challenged, either due to multiplicity of legal sources, or different legal setting, or public policy, etc.

As a result, parties are faced with the so-called limping legal relationships, ie. situations in which a name validly acquired abroad is not recognized as a valid in another State. Negative outcome often comes with many inconveniences for the party, such as doubts about the identity of a person, difficulties when crossing borders, loss of family name affiliation, jeopardised professional recognition, etc. Following the above and having in mind the rights guaranteed by the human rights law, as well as the EU law, the parties often seek judicial protection even beyond the respective national judiciary, either from the European Court of Human Rights (ECtHR) or the Court of Justice of the European Union (CJEU).

In the following text we are going to take a closer look into the different recognition techniques used to recognise a name acquired abroad. Then we will

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¹ Matijević, B., *Prava osobnosti – pravo na identitet i ime*, Hrvatska pravna revija, 2006, p. 15.

² Radolović, A., *Pravo ličnosti kao kategorija građanskog prava*, Doctoral thesis, Zagreb, 1985, p. 264.

³ Rosolillo, G., *Personal identity at a crossroad between private international law, international protection of human rights and EU law*, Yearbook of Private International Law, Vol. 11, 2009, p. 143.

⁴ See also: art. 19 of the Croatian Obligation Act, Official Gazette, No. 35/05, 41/08, 78/15, 29/18, 126/21, 114/22, 156/22, 155/23: „(1) Every natural and legal person has the right to protection of his or her personality rights under the conditions regulated by law. (2) Personality rights in the sense of this Act are understood to mean the rights to life, physical and mental health, reputation, honor, dignity, name, privacy or personal and family life, freedom, etc.“

⁵ Rosolillo, G., *Identità personale e diritto internazionale privato*, CEDAM, 2009, pp. 8-13.

examine the existing case law of the ECtHR and the CJEU regarding a name recognition. Following that, we are going to present a current state of play in Croatia, with the aim of establishing whether it can remain the same or it needs an upgrade. Finally, we are going to present our main conclusions.

2. CROSS-BORDER PORTABILITY OF A NAME – AVAILABLE METHODS

It is well known in private international law that cross-border portability of a status acquired abroad depends on recognition of that status in another State. Recognition of a name is considered a recognition of an element of a status,⁶ thus the recognition of a name is subjected to the same recognition methods. In general, there are two main paths to recognition of a status acquired abroad – procedural recognition and recognition *via* private international law (PIL) rules.

Procedural recognition as a rule, implies recognition of a status acquired abroad if it satisfies recognition requirements of the State of recognition. In the strict sense, it applies only if the status was established by the judgment.⁷ However, nowadays it is often extended or remodelled in order to encompass recognition of a status established by other public authorities or other public acts.⁸ The difference between the two is that extended procedural recognition includes not only judicial decisions but also any other decision delivered by public authority, which is equated with a court decision in the state of origin; while remodelled procedural recognition also includes other public acts but they are subject to additional recognition criteria. Both are present in the law of European Member States although comparative research shows that national laws in European countries are generally moving towards abolishing or decreasing impact of procedural recognition.⁹ Thus, separate exequatur proceedings are only required if the validity of the judgment has been challenged or if it is needed for some other purpose. While some are of the opinion that procedural recognition can be substituted through unified conflict rules, the case law shows that it may not be so desirable,

⁶ „Status is a broad notion including the name and gender of a person, legal capacity and family relations such as parentage (filiation, adoption, surrogacy), marriage, divorce, conclusion and dissolution of formalised partnership.“ See: Gössl, S.; Melcher, S., *Recognition of a status acquired abroad in the EU – A challenge for national laws from evolving traditional methods to new forms of acceptance and bypassing alternatives*, Cuadernos de Derecho Transnacional, Vol. 14, no. 1, pp. 1014-1015.

⁷*Ibid.*, p. 1016.

⁸ *Loc. cit.*

⁹ Gössl, Melcher, *op. cit.*, note 6, pp. 1017-1018.

especially if the recognition of personal status would be contrary to the public policy of the forum.¹⁰

Recognition by PIL rules includes „use of the connecting factors of the *lex fori* to determine the law applicable to the review of the establishment of the status“. ¹¹ It means that the recognition will only follow if the *lex fori* refers to the same applicable law as is used in the State of origin or if the content of the applicable laws overlaps. Otherwise, foreign status is not recognised, resulting in a „limping relationship“. ¹² In the newer conflict-of-law rules this has been mitigated in different ways – through the use of connecting factors which promote *de facto* recognition or by allowing some party autonomy or by introducing a „favour-principle“. ¹³

Recently, in order to comply with the requirements set in the EU law and in the human rights law, more and more European legislators also envisage an acceptance method. ¹⁴ It is based on rules that simply accept a status established abroad without any additional (recognition) requirements. It requires a publicly documented status, which is scrutinised only in relation to the public policy of the forum. This particular method is most often used regarding the names that have been acquired abroad.

However, despite the general tendency in favour of recognition of a name acquired abroad, different recognition techniques may lead to different, more or less acceptable results. Consequently, many of the cases end up either before the ECtHR or the CJEU.

3. PORTABILITY OF A NAME IN THE ECtHR JURISPRUDENCE

Although seemingly divergent, the jurisprudence of both European Courts aims at balancing the interests of the nation-State with the interests of the individual. ¹⁵

¹⁰ Kunda, I., *Utjecaj međunarodnopravnih rješenja Europske unije na status migranata*, u: Barbić, J. (ed.), *Položaj migranata u međunarodnom i europskom pravu*, HAZU; Zagreb, 2020, pp. 84-91.

¹¹ Gössl, Melcher, *op. cit.*, note 6, p. 1019.

¹² *Loc. cit.*

¹³ Gössl, Melcher, *op. cit.*, note 6, pp. 1020-1024.

¹⁴ *Ibid.*, 1024.

¹⁵ Medić, I., *Identitet i ime u prekograničnom pravnom prometu*, in: Barbić, J.; Župan, M. (eds.): *Identitet u prekograničnim privatnopravnim odnosima*, HAZU, Zagreb, 2021, p. 134.

In the case law of the ECtHR, the right to a name, as an element of personal identity, is protected in the context of the right to private and family life (Article 8 of the ECHR).¹⁶ Right to private and family life is a qualified right and as such can be limited provided that: the restriction is lawful, aimed at a specific aim, necessary in a democratic society and proportionate.¹⁷ In cases concerning personal names, such restrictions are relatively common, aiming to protect collective interests, such as language, tradition, national history, ensuring equality of all citizens, etc.¹⁸

The spatial continuity of a name, i.e. its existence beyond the borders of the country of origin, has a dual role. On the one hand, it allows an individual to have the same name in any country they enter, and on the other hand, it allows the state apparatus to reliably identify the individual.¹⁹ Bearing this in mind, the ECtHR strengthened the right to a single name, the continuity of which must be protected even in cross-border cases, using all available legal means, including the non-application of national conflict of law provisions and provisions on the recognition of foreign judicial and administrative decisions.²⁰

The decisions of the ECtHR concerning cross-border continuity and stability of a personal name can be divided into two groups. The first consists of those decisions in which the continuity of a personal name is sought through the recognition of a new personal name acquired in another country. Thus, in the *Burghartz*²¹ case protection of a personal name was ensured by reference to Art. 8 (right to private life), but also to Art. 14 (prohibition of discrimination) of the ECHR. The ECtHR considered that a personal name, which had already become known in professional circles, formed an integral part of the private life of that person, and also a means of his identification in society and in the professional environment: "As a means of personal identification and of linking to a family, a person's name none the less concerns his or her private and family life. The fact that society and the State have an interest in regulating the use of a personal name does not exclude this, since

¹⁶Al Tamimi, Y., *Human Rights and the Excess of Identity: A Legal and Theoretical Inquiry into the Notion of Identity in Strasbourg Case Law*, Social & Legal Studies, Vol. 3, 2018, p. 288.

¹⁷Marshall, J., *Personal Freedom through Human Rights Law? Autonomy, Identity and Integrity under the European Convention on Human Rights*, Martinus Nijhoff Publishers, Leiden, 2009, p. 4.

¹⁸Župan, M., *Identity of a child in cross-border legal transit (Naming law at focus)*, Human Rights Protection Yearbook, Protection of the rights of the child „30years after the adoption of the Convention on the rights of the child“, 2020, p. 288.

¹⁹Rosolillo, G., *op. cit.*, note 3, p. 147.

²⁰Marino, S., *The cross-border continuity of personal identity in the European Union*, London: UACES 46th Annual Conference, 2016, p. 3.

²¹Application no. 16213/90 *Burghartz v. Switzerland*, 22. 4. 1994.

these public-law aspects are compatible with private life conceived in such a way that, to a certain degree, it includes the right to establish and develop relationships with other human beings, in professional or business contexts as in all others.”²²In the *Mentzen*²³ case, ECtHR found no violation of the ECHR despite the fact that Latvia did not accept the German surname in its original form. Instead, ECtHR stated that the margin of appreciation which the States authorities enjoy in this sphere is particularly wide and that phonetic transcription is allowed if the language in the State of recognition is one of the fundamental constitutional values; except in cases when the original form of the surname is written in the same alphabet as that in which the document is to be drawn up. Also, if a document contains phonetic transcription as well as original version of a name, “which enables officials to make a visual comparison of both written forms of the surname and to satisfy themselves of their equivalence” than there is no violation of art. 8 of the ECHR. In the same vein, ECtHR dismissed the application in *Kuharec* case.²⁴ Circumstances of the case were the same as in *Mentzen*, meaning that the Latvian authorities adjusted the foreign (in this case Ukrainian) surname according to Latvian grammar which, according to the ECtHR did not cause any problems for the applicant since there is an option to have also the original name inscribed in the passport (not on the same page though).

The second group consists of the decisions that seek to ensure the continuity of a personal name through the right to retain the same personal name, as a means of personal identification, in another state. Although, due to the specific factual context, the decision in the *Burghartz* case partly fits into this category, the decision in the *Kismoun*²⁵ case is based exclusively on Article 8 of the ECHR. In the aforementioned case, the plaintiff requested from an EU Member State to retain the personal name (first and last name) under which he was registered in a non-member state and which he used for most of his life, and which he therefore perceived as part of his personal identity.²⁶ The ECtHR concluded that the right to

²² *Ibid.*, para 24. Also, in number of other cases ECtHR subsequently confirmed that the personal name is integral part of identity and a means of identification. See: Application no. 18131/91 *Stjerna v. Finland*, 25. 11. 1994.; Application no. 31178/96 *Petersen v. Germany*, 6. 12. 2001.; Application no. 36797/97 *G.M.B. and K.M. v. Switzerland*, 27. 9. 2001.; Application no. 41843/98 *Szokoloczy-Syllaba and Palfy de Erdoed Szokoloczy-Syllaba v. Switzerland*, 29. 6. 1999.; Application no. 42973/98 *Bijleveld v. the Netherlands*, 27. 4. 2000.; Application no. 50614/99 *Taieb known as Halimi v. France*, 20. 3. 2001.; Application no. 59727/00 *Šiškina nad Šiškins v. Latvia*, 8. 11. 2001.; Application no. 11369/05 *Golemanova v. Bulgaria*, 17. 2. 2011.; Application no. 56759/08 *Negreptis-Gianninis v. Greece*, 3. 5. 2011., etc.

²³ Application no. 71074/01 *Mentzen alias Mencena v. Latvia*, 7. 12. 2004.

²⁴ Application no. 71557/01 *Kuharec alias Kuhareca v. Latvia*, 7. 12. 2004.

²⁵ Application no. 32265/10 *Henry Kismoun v. France*, 5. 3. 2014.

²⁶ See also: Application no. 71074/01 *Mentzen alias Mencena v. Latvia*, 7. 12. 2004.; Application no. 29865/96 *Ünal Tekely v. Turkey*, 16. 2. 2005.; Application no. 44378/05

a name serves the function of personal identification in the private sphere. Consequently, all contracting states to the ECHR have a positive obligation to balance the interest of the individual in having a personal name with the interests of the state related to the identification of its citizens. The ECtHR confirmed that, given the presence of a public interest in this case the state has a wide discretionary assessment, however, by disregarding the individual's right to a personal name it applied that discretionary assessment incorrectly.

Existing case law clearly shows that art. 8 of the ECHR does not guarantee an unconditional right to change one's name and that in this area of law the Contracting States have wide margin of appreciation.²⁷ In order to succeed with their application the applicant must prove that there has been interference with the guaranteed rights which was not justified, meaning: it was not in accordance with the law, it did not pursue a legitimate aim and it was not necessary in a democratic society. Also, an applicant must prove to the ECtHR "that the difficulties are serious enough to amount to disproportionate interference with private or family life".²⁸

4. PORTABILITY OF A NAME IN THE CJEU JURISPRUDENCE

The protection of personal names, in cross-border cases has also been addressed by the CJEU on several occasions. However, its approach to the issue of personal names is significantly different than that of the ECtHR. The reasoning of the CJEU operates entirely within the concepts of EU law.²⁹ It is based on the right to free movement thus, it applies only to persons who actually made use of that right. As a consequence, in cases in which person did not exercise their right of free movement only ECHR applies.

Daróczy v. Hungary, 1. 6. 2008. In all this cases ECtHR underlined that „while it is true that States enjoy a wide margin of appreciation concerning the regulation of names, they cannot disregard its importance in the lives of private individuals: names are central elements of self-identification and self determination.“ (para 32 of *Daróczy*) Therefore, forcing the applicant to alter a name which they used for most of their life is unacceptably rigid and completely disregard their interests.

²⁷ For cases not mentioned in this Article see: Retea, O.-N., *Infringement in one's right to name, intrusion in private life or family life? The European Court of Human Rights perspective*, Perspectives of Business Law Journal, Vol. 5, Issue 1, 2016., pp. 133-141.

²⁸ Application no. 71074/01 *Mentzen alias Mencena v. Latvia*, 7. 12. 2004.

²⁹ Kohler, C., *Towards the Recognition of Civil Status in the European Union*, Yearbook of Private International Law, Vol. 15, 2013/2014, p. 20.

However, after the adoption of the EU Charter of Fundamental Rights in 2000³⁰ the CJEU also was formally bound to take into account human rights.³¹ Not only that. In accordance with the Article 52(3) of the Charter, the level of protection of fundamental human rights established by the ECHR represents a minimum standard, which can be expanded.³²

Unlike earlier cases related to the issue of cross-border stability of personal names in which the issue of human rights was hardly mentioned, starting with the *Sayn-Wittgenstein* case, the CJEU began to include (albeit incidentally) a reference to the right to personal identity/name as a fundamental human right in its decisions.³³ However, as already mentioned, cross-border stability of personal identity, and thus of personal name, has been recognized as one of the conditions for the exercise of fundamental rights and freedoms guaranteed to every citizen of the Union.³⁴ It is precisely on this platform, and not on the recognition of personal name as a fundamental human right, that the CJEU bases most of its decisions related to personal names. Fundamental human rights are evidently of a subsidiary nature and in the function of fundamental freedoms.

Thus, in the *Konstantinidis*³⁵ case, the CJEU ensured the protection of personal names in the context of the protection of the rights to freedom of establishment and freedom to provide services, ie. protection of fundamental economic freedoms. In view of the CJEU, both the incorrect transcription and correct transliteration equally altered the phonetic characteristics of the name, which CJEU interpreted as a potential obstacle to the exercise of fundamental economic freedoms.

³⁰ OJ EC C 364/1, 18. 12. 2000.

³¹ Craig, P.; De Burca, G.: *EU Law: Text, Cases and Materials*, Oxford University Press, 2015, pp. 383-384.

³² See: C-4/23 *Mirin*, ECLI:EU:C:2024:845, para. 63 – „In that regard, as is apparent from the Explanations relating to the Charter of Fundamental Rights (OJ 2007 C 303, p. 17), in accordance with Art. 52(3) of the Charter, the rights guaranteed in Art. 7 thereof have the same meaning and the same scope as those guaranteed in Art. 8 of the Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR), ... the latter provision constituting a minimum threshold of protection (see, by analogy, Judgment of 29 July 2024, *Alchaster*, C-202/24, EU:C:2024:649, para 92 and the case law cited).“

³³ C-208/09 *Sayn-Wittgenstein*, ECLI:EU:C:2010:806, para 52; C-391/09 *Runevič-Vardyn and Wardyn*, ECLI:EU:C:2011:291, para 66; C-438/14 *Bogendorff von Woffersdorff*, ECLI:EU:C:2016:401, para 35.

³⁴ See: Čapeta, T.; Rodin, S., *Osnove prava Europske unije*, Zagreb: Narodne novine, 2011, pp. 91-114.; Ehlers, Dirk (ed.), *European Fundamental Rights and Freedoms*, Berlin, Boston: De Gruyter, 2007.

³⁵ C-168/91 *Christos Konstantinidis v. Stadt Altensteig*, ECLI:EU:C:1993:115.

In all other cases, the CJEU based its decision on citizenship of the Union, the principle of non-discrimination and the right to freedom of movement.

The *Garcia Avello*³⁶ was the first case in which the CJEU explicitly highlighted the right to freedom of movement and the need to protect the stability of a personal name.³⁷ It stated that the principle of non-discrimination requires that similar situations must be treated equally and unequal situations differently, unless the treatment is justified by objective reasons unrelated to the nationality of the person concerned and proportionate to the legitimate aim pursued. It concluded that dual nationals are in a different situation from nationals who hold the nationality of only one State, since under the laws of both States of which they are national they may have different personal names.

He pointed out that a possible discrepancy in surnames, as in the present case, could cause serious inconvenience, both in professional and private life; and in relation to the use and legal effect of diplomas and personal documents issued in one state of which they are citizens in another state of which they are also citizens.³⁸ Therefore, "the administrative authorities of one State, in circumstances such as those in the present case, are not permitted to refuse a request to change the surname of minor children who are nationals of several Member States of the EU, if the request is intended to ensure that the children bear the surname which they would otherwise bear on the basis of the law and tradition of another State whose nationals they are".³⁹ In short, in the circumstances as in this case, the decisions concerning the name registered in another Member State must be accepted as "*faits accomplis*".

The *Grunkin Paul*⁴⁰ case is also interesting in many ways. It is the first case in which the CJEU has "forced" a Member State to recognize a surname acquired in another State where its national was born and lives. In doing so, it has indirectly limited the exclusive competence of a Member State to determine the name of its own nationals who do not hold another nationality. It has also strengthened the

³⁶C-148/02 *Garcia Avello*, ECLI:EU:C:2003:539. See also: Ballarino, T.; Ubertaini, B., *On Avello and other judgements: A new point of departure in the conflict of laws?*, Yearbook of Private International Law, Vol. 6, 2004, pp. 85-128.

³⁷Winkler, S., *Pravo na osobno ime u praksi europskih sudova*, in: Europsko obiteljsko pravo (Bodiroga-Vukobrat, N.; Hlača, N.; Hrabar, D.; Jakovac-Lozić, D.; Korać Graovac, A.; Lapaš, D.; Majstorović, I.; Medić Musa, I.; Novak, B.; Sikirić, H.; Smokvina, V.; Winkler, S.; Žnidaršić Skubic, V.; Župan, M.), Zagreb: Narodne novine, Zagreb, 2013, p. 137.

³⁸Para 36 of the *Garcia Avello* Judgment.

³⁹Para 45 of the *Garcia Avello* Judgment. See also: Winkler, S., *Praksa Europskog suda o korištenju više prezimena*, in: Zbirka presuda Europskog suda (Izbor recentne prakse) (Bodiroga-Vukobrat, N.; Derđa, D.; Pošćić, A. (eds.)), Zagreb: Inženjerski biro, 2011, p. 146.

⁴⁰C-353/06 *Grunkin Paul*, ECLI:EU:C:2008:559.

autonomy of parents, allowing them to choose between the name given in the State of birth and the name given in the State of which the child is a national. It has also shown determination to put an end to the limping legal relations. However, it has opened up some other "fronts", primarily the question of possible different (systemic) solutions to this issue.⁴¹

In this case, the CJEU reminded that a national regulation that puts some of its own citizens in a disadvantageous position, just because they exercised freedom of movement and residence in another Member State, represents a restriction of fundamental freedoms.⁴² He reiterated that serious inconveniences can equally arise in the situation of dual citizenship of the persons in question and in the situation when in the State of birth and residence the determination of the surname is linked to the residence, while in the State whose nationality those persons have that determination is linked to nationality.⁴³ According to the CJEU, none of the reasons stated in support of the fact that the determination of a person's surname is linked to the nationality of that person, regardless of how legitimate these reasons are in themselves, is so important that it would justify, in circumstances such as those in the main proceedings, the refusal of the competent authorities of a Member State to recognize the child's surname as already determined and registered in another Member State in which the child was born and in which he has resided since birth and who, like his parents, only has the nationality of the first Member State.⁴⁴

The *Sayn-Wittgenstein*⁴⁵ case is the first case in which the CJEU explicitly stated the obligation to respect personal identity as a fundamental human right, in support of which it also referred to the relevant case-law of the ECtHR.⁴⁶ The CJEU found that the decision of the national court on the impossibility of changing the personal name constituted a serious inconvenience for the applicant,⁴⁷ and also an obstacle to the freedom of movement within the territory of the EU. However, it supported the position of the Austrian Government that the aforementioned restriction

⁴¹ See: Lehman, M., *What's in a Name? Grunkin-Paul and beyond*, Yearbook of Private International Law, Vol. 10, 2008, pp. 149-163.

⁴² Para 21 of the *Grunkin Paul* Judgment.

⁴³ *Ibid.*, para. 24.

⁴⁴ *Ibid.*, paras 31 and 39.

⁴⁵ C-208/09 *Sayn-Wittgenstein*, ECLI:EU:C:2010:806.

⁴⁶ *Ibid.*, para. 52.

⁴⁷ *Ibid.*, paras 63-71.

protected national identity⁴⁸ and the equality of all citizens before the law.⁴⁹ In other words, the restriction provided for by the national legislation was justified by the protection of public order.

In the *Runevič-Vardyn*⁵⁰ case, the CJEU gave priority to the protection of the national language of Lithuania as a part of its national identity, ie. national public order. The CJEU acknowledged the need to protect the rich European heritage,⁵¹ but reiterated that such efforts should not disproportionately affect fundamental rights of citizens of the EU. In relation the absence of a diacritical marks, the CJEU concluded that this does not represent a violation of the right to freedom of movement, given that such marks are often omitted due to various technical limitations.⁵²

In the *Bogendorff von Wolffersdorff*⁵³ case, the CJEU reiterated that although the rules governing the entry of a person's surname and first name in the register of civil status are within the jurisdiction of the Member States, they must, when exercising that jurisdiction, respect the law of the Union and especially the provisions of the Treaty relating to the freedom granted to every citizen of the Union to move and reside on the territory of the Member States.⁵⁴ According to the CJEU, there are only four reasons that could justify the refusal to recognize and register the name and surname acquired in another Member State. These reasons relate to the principles of specificity and continuity of names, the fact that the change of name in another Member State was a deliberate choice independent of and unrelated to a change in personal status, the length and complexity of the chosen name, and reasons related to the German constitutional choice and the abolition of titles of nobility.⁵⁵ According to the CJEU, the principle of equality of German nationals before the law⁵⁶ as well as constitutional choice of abolishing

⁴⁸ As in: C- 379/87 *Groener*, ECLI:EU:C:1989:599 and C-36/02 *Omega*, ECLI:EU:C:2004:614. For more see: Von Bogdany, A.; Schill, S. W., *Overcoming Absolute Primacy: Respect for National Identity under the Lisbon Treaty*, *Common Market Law Review*, Vol. 48, 2011, p. 1421; and Novak, S., *Dijalozi između ustavnih sudova država članica Europske unije i Suda Europske unije*, *Pravni vjesnik*, No. 3-4, 2020, pp. 113-136.

⁴⁹ Para 74 of the *Sayn-Wittgenstein* Judgment.

⁵⁰ C-391/09 *Runevič-Vardyn and Wardyn*, ECLI:EU:C:2011:291.

⁵¹ *Ibid.*, para. 86.

⁵² Paras 81 and 82 of the *Runevič-Vardyn and Wardyn* Judgment.

⁵³ C-438/14 *Bogendorff von Wolffersdorff*, ECLI:EU:C:2016:401.

⁵⁴ Para. 32 of the *Bogendorff von Wolffersdorff* Judgment.

⁵⁵ Para. 49 of the *Bogendorff von Wolffersdorff* Judgment. See, also: Mohay, A.; Tóth, N., *What's in a name? Equal treatment, Union citizens and national rules on names and titles*, pp. 9-10, <http://ceere.eu/wp-content/uploads/2016/03/Mohay-T%C3%B3th-Whats-in-a-name-WP04.pdf>, 10 February, 2025.

⁵⁶ Para. 67 of the *Bogendorff von Wolffersdorff* Judgment.

privileges and inequalities and prohibiting the wearing of titles of nobility (ie. public order)⁵⁷ could be a legitimate reason for refusing to change a surname, but not for refusing to recognize a change of name.⁵⁸ However, answer to this question requires proportionality test since in German legal system there is no strict prohibition on maintaining titles of nobility as a part of the family name or a name acquired through adoption.

Finally, in the *Freitag*⁵⁹ as well as in the *Mirin*⁶⁰ case, the CJEU based its decision exclusively on freedom of movement. In *Freitag* case, the CJEU emphasizes that the circumstances in this case can raise doubts about the plaintiff's identity as well as the credibility of the documents used or the truth of the information contained in them, which represents a restriction of freedom of movement.⁶¹ Therefore, "the registry office of a Member State may not refuse to recognize and enter in the civil status register a name which a national of that Member State has lawfully acquired also in another Member State of which he is also a national, and which corresponds to his birth name, on the ground that the possibility of requesting such registration on the basis of a declaration in the registry office is conditional on the fact that that name was acquired during habitual residence in that other Member State, UNLESS there are other provisions in national law which effectively allow the recognition of that name".⁶²

In the *Mirin* case, the CJEU emphasized that the Member State's refusal to recognize the name of its national, validly acquired in another Member State, hinders the exercise of the right to move and reside freely in the territories of the Member States, enshrined in art. 21 of the TFEU.⁶³ Since it can be justified „only where it is based on objective considerations and is proportionate to the legitimate objective of the national provisions“,⁶⁴ national legislation which prevents recognition of a personal name must, in principle, be regarded as being incompatible with the EU law.⁶⁵

⁵⁷ *Loc. cit.*

⁵⁸ Para. 83 of the *Bogendorff von Woffersdorff* Judgment.

⁵⁹ C-541/15 *Freitag*, ECLI:EU:C:2017:432.

⁶⁰ C-4/23 *Mirin*, ECLI:EU:C:2024:845.

⁶¹ Paras 37 and 38 of the *Freitag* Judgment.

⁶² *Ibid.*, para. 47.

⁶³ Paras 41 and 54 of the *Mirin* Judgment.

⁶⁴ *Ibid.*, para 59.

⁶⁵ *Ibid.*, para. 60. This case concerns not only recognition of the name but also of the gender.

5. RECOGNITION OF A PERSONAL NAME IN CROATIA

5.1. Setting the stage on a national level

There are lots of legal sources dealing with personal name in Croatia. On substantial level there are: Personal Name Act⁶⁶ and Law on State Registers.⁶⁷ Also, Croatia is a contracting State to the Paris Convention⁶⁸ as well as to the Convention on the Issue of Multilingual Extracts from Civil Status Records.⁶⁹

On the conflict-of-laws level there is a Private International Law Act (PIL Act).⁷⁰ There are also a numerous bilateral agreements that apply to recognition of foreign decisions which are, given that they are concluded during the former State (SFRY), sometimes even more burdensome for the applicant than contemporary legal sources.⁷¹

With regard to the recognition of status in the Republic of Croatia, the method of recognition depends on the particular element of a status which needs to be recognised. Thus, there is a procedural as well as recognition by PIL rules, but also automatic recognition within the scope of application of European or international law.

Traditional (procedural) recognition concerns foreign judgments, issued by a (competent)court or other (competent) public authority.⁷² It envisages control of several formal requirements which may affect recognition. One of the formal requirements is finality, attested by the court of origin, which sometimes proves to be impediment to recognition. In line with the doctrinal views, as well as the

⁶⁶ Personal Name Act, Official Gazette, No. 118/12, 70/17, 98/19, entered into force 1.1.2020.

⁶⁷ Law on State Registers, Official Gazette, No. 96/93, 76/13, 98/19, 133/22, entered into force 1. 1. 2023.

⁶⁸ Paris Convention on the issue of certain extracts from civil status records for use abroad, 27. 9. 1965. (Official Gazette of the SFRY – International agreements and other agreements, 9/1967, 4/1970) and notification of succession (Official Gazette of the Republic of Croatia– International agreements, 6/1994).

⁶⁹ Convention on the Issue of Multilingual Extracts from Civil Status Records, 18. 9. 1976. (Official Gazette of the SFRY – International agreements and other agreements, 8/1991) amd notification of succession (Official Gazette of the Republic of Croatia– International agreements, 6/1994).

⁷⁰ Private International Law Act, Official Gazette, No. 101/17, 67/23, entered into force 29. 1. 2019.

⁷¹ More about it see in: Hoško, T., *Recognition of a status acquired abroad: Croatia*, Cuadernos de Derecho Transnacional, Vol. 14, no. 1, 2022, pp. 1198-1199..

⁷² Vuković, Đ.; Kunštek, E., *Međunarodno građansko postupovno pravo*, Zgombić & Partneri, Zagreb, 2009, p. 424. It includes also a judicial settlements, but they are not relevant in connection to personal names.

case law, impossibility to prove finality or the lack of finality in the country of origin renders the application for recognition inadmissible.⁷³ Other requirements which may lead to non-recognition are: violation of *audiatur et altera pars principle*,⁷⁴ exclusive jurisdiction of Croatian courts,⁷⁵ exorbitant jurisdiction of the court of origin,⁷⁶ manifest incompatibility with public policy,⁷⁷ existence of a final earlier domestic decision between the same parties in the same subject matter or a final foreign decision which is recognized or recognizable in Croatia.⁷⁸ Although there are also other methods of recognition, if the validity of the judgment is challenged or recognition is needed for other purposes, traditional recognition will be required.

Recognition by PIL rules is not discussed in Croatian private international law theory.⁷⁹ However, it takes place with respect to the recognition of a personal name. Usually, recognition by PIL rules requires a submission of an authentic instrument or certificate or equivalent document providing the facts of the case. There is also an acceptance method, also used regarding the names acquired abroad, without reference to a foreign decision or use of a classic connecting factor.

5.2. Recognition by PIL rules

In Croatia, the question of name recognition usually comes up in the context of the registration of a name acquired abroad. Registration is dependant on recognition by the corresponding rules, except in a case of change of personal name abroad. The Private International Law Act, which entered into force in 2019, for the first time offers the explicit provisions regarding the personal names.

According to Croatian PIL Act, „The personal name of a natural person is governed by the law of the State of which he/she is a national.“⁸⁰ At first sight a simple conflict rule allowing for application of any national law. However, read

⁷³ Dika, M.; Knežević, G; Stojanović, S., *Komentar Zakona o međunarodnom privatnom pravu*, PiP „NOMOS“, Beograd, 1991., p. 286.

⁷⁴ Art. 68 of the PIL Act.

⁷⁵ *Ibid.*, art. 69 (1).

⁷⁶ *Ibid.*, art. 69 (2).

⁷⁷ Art. 71 of the PIL Act. Since in this Act no special *fraus legis* provision exists, fraudulent intention may also be considered in the public violation context. See: Hoško, T., *Novo uređenje međunarodnog privatnog prava u Hrvatskoj – Zakon o međunarodnom privatnom pravu*, Zakonitost, Vol. 1, No. 1, 2019, p. 22.

⁷⁸ Art. 70 (1) of the PIL Act.

⁷⁹ Hoško, *op. cit.*, bilj. 71, p. 1201.

⁸⁰ Art. 18 para. 1. of the PIL Act.

in conjunction with art. 3 para 2 of the same Act, dealing with the determination of relevant nationality in cases of dual or multiple nationality, it leads to problematic outcomes.

First scenario, in which one of nationalities is the Croatian nationality will lead to the exclusive application/relevance of Croatian nationality. Such an approach practically equates the single and multiple nationals holding Croatian nationality, both categories being subjected to Croatian substantive law. Giving precedence to Croatian nationality without a requirement that there is a substantial connection goes against the basic principle of private international law, which is application of the most closely connected law. Not to mention that, according to arts. 18 and 20 of the TFEU, it is considered discrimination based on nationality.⁸¹

Second scenario, in which person holds a multiple foreign nationalities will lead to the application of the effective nationality, which is easier to justify from the point of view of private international law but can also be challenged as discriminatory.

These problems can be solved through the direct reference to CJEU and/or ECtHR jurisprudence,⁸² depending on the circumstances of the case.

There are exceptions to this general rule with regard to spouses as well as with regard to children, but they also have their weaknesses.

According to art. 18 para 2, „If the marriage is concluded in the Republic of Croatia, the bride and the groom can determine their surname according to the law of the country of which one of them is national or, if at least one of them has a habitual residence in the Republic of Croatia, according to Croatian law“. This particular provision represents an exception not only with regard to the para 1 of the art. 18 but also with regard to the method of recognition of the new name. Namely, according to art. 6 para 5 of the Law on Personal Names, „Changes in personal names that have been approved for Croatian nationals under the laws of other States, and which they no longer use because they acquired a new personal name, are registered without carrying out the personal name change procedure.“ Thus, in these cases straightforward acceptance is the only method of recognition. However, in the PIL Act there is no mention of the applicable law(s) for the determination of a surname in case of registered partners. Due to provision of art. 6 para 5 of the Law on Personal Names it should not create any difficulties

⁸¹ Confirmed by the *Garcia Avello* Judgment (C-148/02 *Garcia Avello*, ECLI:EU:C:2003:539).

⁸² See titles III. and IV. of this Article.

regarding the recognition of a name validly changed abroad, due to prescribed acceptance of the name validly changed abroad; but the question remains which law is applicable for the change of surname when partnership is concluded in Croatia.

According to art 18 para 3, „Legal representatives may determine the child's personal name in front of the registry office according to the law of the country of which one of them is a national or, if at least one of them has a habitual residence in the Republic of Croatia, according to Croatian law,“. It is safe to say that this limited party autonomy that legislator allowed increases the chances of recognition of a name acquired abroad. However, even a „favour principle“⁸³ based rules may not always give a straightforward answers.

Namely, in scenario in which Croatian nationals as a legal representatives of the child born abroad named their child according to the law of their habitual residence abroad and according to that law surname is formed in a way contrary to the art 3 para 1 of Croatian Law on Personal Names,⁸⁴ question may arise whether this provision must be applied as an overriding mandatory rule.

In our view the answer should be negative due to several reasons. First, although there is no doubt about their application, even national mandatory rules do not have an absolute character.⁸⁵ Thus, whenever the *lex causae* gives the same or greater protection than national overriding mandatory norms, their application would not be justified.⁸⁶ Second, Croatian Personal Name Act is very liberal, accomodating a number of names and surnames which in itself shows the intention of the legislator to accomodate as many situations as possible. Third, despite the constitutional protection of the Croatian language and latin script, case law shows that Croatian authorities regularly recognise the names using the diacritical marks which are not known in Croatian alphabet. Forth, and maybe the decisive reason, according to art 6 para 5 of the Law on Personal Names, changes in personal names that have been approved for Croatian citizens under the laws of other States, are simply accepted without any further procedure. Thus, without control on how the name is formed.

⁸³ More about it see in: Gössl, Melcher, *op. cit.*, note 6, p. 1021.

⁸⁴ „A child can have the surname of one or both parents“ and the name given abroad encompasses neither of the two.

⁸⁵ Bogdzevic, K., *Overriding Mandatory Provisions in Family Law and names*, ELTE Law Journal, No. 1, 2020, p. 55.

⁸⁶ Bogdan, M., *Private International Law as Component of the Law of the Forum*, Recueil des Cours: Collected Courses of The Hague Academy of International Law, Brill/Nijhoff, 2011, Vol 348., p. 186; as cited by Bogdzevic, *op. cit.*, p. 55.

Unfortunately, on top of all the elaborated vaguenesses of the art 18 of the PIL Act, another one piles up. Namely, according to art. 9 para 2. of the PIL Act, a *renvoi* applies in personal name matters. There the question remains whether it has to be taken into account in relation to recognition by PIL rules also. In our view, it should be generally excluded in name matters since it goes counter a favour principle and makes no sense in light of the favor principle.

6. CONCLUSION

As is obvious from all that has been said so far, there is still no general international or European legal framework with regard to personal names. Consequently, national provisions of the EU Member States apply, which may lead to non-recognition of a name validly acquired abroad. It may be difficult to predict in advance whether or not the recognition of the name acquired abroad will go straightforward in the State of recognition or not.

Although a limping personal status is an ordinary risk of life and the responsibility for the proper precautions is on the parties,⁸⁷ heterogenous factual circumstances make it difficult not only for the parties but also for the States to know in advance what conditions must be fulfilled to ensure the cross-border portability of a name. European citizenship, fundamental freedoms and human rights often take on the role of facilitating recognition of a personal name. Despitedifferent approaches (either from the human rights angle or, primarily, fundamental freedoms angle) jurisprudence of both European courts (ECtHR and CJEU) unequivocally supports the need for a uniform personal name across State borders.

In order to accommodate legitimate expectation of the holder of the right to the name, but also the requirements laid upon national judiciary *via* ECtHR and CJEU case law, many national legislators adapt their national law accordingly. In the conflict-of-laws area, there is a visible trend of accepting the „favour principle“ approach, while in relation to recognition number of methods increases, mainly due to influence of the EU law.

Judging by the legislation and the case law, intention of the Croatian authorities is to enhance (in as many cases as possible) recognition of a personal name acquired abroad. However, there are still some scenarios left which leave the room for a

⁸⁷ Kinsch, P., *Recognition in the Forum of the Status Acquired Abroad – Private International Law Rules and European Human Rights*, in: Boele-Woelki, K.; Einhorn, T.; Girsberger, D. & Symeonides, S. (eds.): *Convergence and Divergence in Private International Law – Liber Amicorum Kurt Siehr*, Eleven International Publishing, 2010, p. 260.

direct invoking of fundamental freedoms or human rights, ie. ECtHR and CJEU jurisprudence.

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