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Summary of the PhD thesis

The Surname in the European Human Rights Protection System

The PhD dissertation discusses the surname safeguards present in the European human rights System. In the absence of any coherent regulatory framework for the surname protection in the European legal space, the thesis endeavours to determine the existing surname protection levels in the European human rights system. Under such delineated research scope we posit that the two key functions of the surname, i.e. individualisation and identification, are realized in reliance upon legal institutions laid down in public and in private law. The assumption stems from the fact that the surname individualisation function, i.e. the differentiation of individuals in the society, is reflected in public law provisions concerning population registers, civil status registers and the rules applicable for granting and changing surnames. In turn, the surname identification function, which refers to personality dignity, reveals itself in safeguards granted to the surname as an element of personal identity under private law. Whatever the surname-related regulations, what is perceptible is the need to strike a reasonable balance between public interest, and namely the need to maintain accurate population registers required to ensure public order and security in a broad sense, on the one hand, and the individual interest of the person, i.e. his/her possibility of influencing the ways and means of using the surname in order to ensure the respect of his/her personal identity.

By analyzing the surname in the European human rights system in terms of its specific functions, we are able to determine the scope of its protection. This in turn helps us to show *differentia specifica* of the surname protection in Europe against the safeguards granted to the surname in the universal human rights system.

The thesis includes an introduction, four content chapters and conclusions.

The first chapter presents the surname as an essential element of the human identity. To this end, we discuss the history of the surname concept, together with its functions in specific periods of its development; the importance of the surname in human life where the surname still remains a fundamental means of identification considering its ties with particular tiers of personal identity; and the place of the surname in the national public and private law system. Against this backdrop, we are able to place the surname protection issues in the context of the human identity protection.

The second chapter deals with the very construct of surname protection in the European human rights system. It reviews surname protection sources in the human rights system of the Council of Europe and the European Union, and the scope of surname safeguards in the European system. The analysis allows us to compare these means with the scope of protection granted to the surname in the universal system of human rights protection and in other, non-European regional human rights protection systems.

The third chapter broaches upon the issues of using the surname in human economic activity in the context of human rights protection. More precisely, it highlights the links between human economic activity and the autonomous definition of privacy. Moreover, it discusses how the designations which bear surnames and which are used in transactions refer to the autonomous definition of assets. By doing so, we are able to define the legal nature of the surname used in transactions, both as a part of business designation and as a personality feature subject to marketing within a wider context of commercialisation processes. The chapter ends with the analysis of surnames used in transactions by persons of liberal professions; these cases point to links between the surnames of liberal professionals and their clientele.

The fourth chapter places the surname protection issues in the context of national and ethnic minorities rights in Europe. It delves into the regulations adopted by the Council of Europe, the European Union and the Organization for Security and Cooperation in Europe regarding the rights of individual members of such minority groups, including their linguistic and cultural rights. The analysis helps to pinpoint solutions which provide minority members with possibilities of using the surname in their native language, and to identify actual obstacles to the effective exercise of such rights.

Based on the reflections outlined in the dissertation, we are able to propound some conclusions regarding the nature of surname protection in the European human rights system.

Firstly, surname safeguards are deeply rooted in the idea of identity protection in the European human rights system. The concept of identity protection includes safeguards related to the establishment of objective identity features, and extends also to the reconstruction of identity elements which may emerge from personality development and individual self-perception. Hence, the idea in question ensures that both surname functions - individualisation and identification - may be achieved.

Secondly, surname protection in the European human rights system stems primarily from the right to respect for private and family life. However, it has been impossible to identify any particular good of the person which could underpin a human right to surname in

Europe. The scope of surname protection is shaped by the obligation of its accurate establishment and registration, on the one hand, and the right to shape one's surname in accordance with one's self-perceived multi-dimensional identity, including family and ethical identity and the identity of values, on the other hand. Furthermore, national authorities are allowed to significantly limit or interfere with the scope of surname protection in cases when this is required to maintain public order. This includes, among all, the State's activities of regulating the rules for surname acquisition and change, pursued in order to ensure that the social life is properly organized. In a similar vein, both the universal and non-European regional protection systems do not foresee any human right to surname, as there exists no separate "just thing" (*res iusta*) of the human being which could underlie such right. The aforementioned human rights protection systems posit that the obligation to establish and disclose the surname is but a secondary norm laid down to exercise the child's right to an immediate registration of his/her birth, done with a view of legal empowerment of the individual.

Thirdly, the protection under human economic activity covers the ideal and the material interests involved in using the surname in transactions. Hence, the breadth of protection includes the right to place one's or someone else's surname, and to grant the consent to placing one's name in designations used in transactions, and to reap benefits of such use. Yet, the strongest right in this context seems to be the right to use in transactions one's own surname - as an attribute of one's own personality - in line with good trade and industry practice, which in turn may have far-reaching legal effects for the registration of designations which bear a specific surname.

Fourthly, individual minority group members enjoy the right to self-identification and manifestation of their distinctiveness by means of using their surname in the native language. However, in practice, national regulations which implement the said right tend to cause the original surname spelling or pronunciation to be deformed, which the case-law of European Courts considers as justified in the light of historical and cultural context of a given country or the constitutional value of its official language. Hence, *de lege ferenda*, it should be suggested that this right be given a more specific definition, embracing the respect of the tradition and the language system of the specific minority language.

The conclusions in the dissertation indicate that the breadth of surname protection in the European human rights system differs significantly from the scope of safeguards provided under the universal and non-European systems of human rights protection. The latter highlight only partially the element of human identification by means of the surname as they mainly

focus on the official obligation to establish and disclose the surname to further lay foundations for the legal empowerment of the individual. Meanwhile, the scope of surname protection granted in the European human rights system is determined by the surname identity dimension, i.e. its differentiating features and its links with personal identity. Thereby, its safeguards are different and wider than those laid down in the universal and non-European, regional human rights systems which mainly tackle aspects of key importance for keeping accurate population registers.

These conclusions of the doctoral dissertation are contrasted with the history of the surname concept development in Europe and its understanding as an element of the multi-dimensional human identity, and this comparison allows us to specify the components of surname protection in the European human rights system. The discussion helps to demonstrate the links between these components and the human right to respect for private and family life as the main source of such protection, and to propose a construct for surname protection in Europe. Therefore, we are able to outline the structure of legal protection granted to the surname in Europe, based on the functional distinctions of its specific components. Finally, we put forward some forecasts regarding possible developments of the surname protection in the European human rights system and in other human rights systems.