

AUT-2024-2-002

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e) E 1338/2024 f) g) ECLI:AT:VFGH:2024:E1338.2024 h) Codices (German)

Keywords of the Systematic Thesaurus

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Family name, Change

Headnotes

As a component of identity, names are part of private and family life, which is protected by fundamental rights. However, the State may provide for legal restrictions on name changes for reasons of public interest provided that they are suitable and proportionate to achieve a legitimate objective. If the desired name is not commonly used to identify persons in Austria, a name change may only be ruled out if the name has not already become a part of the person's idea of his name-related identity protected by [Article 8 ECHR](#).

Summary

The applicant is an Austrian citizen and bears the family name "S". He has been using the family name "Teuer" in the context of his part-time artistic activity since around 2020. As part of his main profession as a photographer and videographer, the applicant occasionally uses this name. The applicant has no ancestors who had the family name "Teuer"; on his mother's side, the family name "Theurer" was used.

The surname "Teuer" is not traceable in Austria, whereas "Theurer" is widespread in Austria.

The applicant applied to the competent administrative authority for permission to change his family name from "S" to "Teuer". His application was dismissed pursuant to § 1 and § 3.1.2 of the Name Change Act [Namensänderungsgesetz – NÄG]. The Vienna Administrative Court upheld this decision.

The applicant filed a constitutional complaint with the Constitutional Court, claiming that the refusal to allow him to change his family name amounted to a breach of [Article 8 ECHR](#).

He argued that "Teuer" is merely a different spelling of the common surname "Theurer", which can be traced back to the original spelling of the word "teuer" ("theurer"). It is therefore not an original creation, but the correct spelling of a common name. By not taking into account the (customary) sound in Austria when weighing up the interests, § 3.1.2 NÄG had been applied in a way that had violated the applicant's rights protected by [Article 8 ECHR](#).

The Constitutional Court recalled that [Article 8 ECHR](#) protects the human personality in its identity, individuality and integrity and is also aimed at protecting the various forms of

expression of this human personality. Names are used for personal identification and allocation. As a component of identity, they are part of private and family life, which is protected by fundamental rights.

It is undisputed that the State may provide for legal restrictions on name changes for reasons of public interest. However, an interference with [Article 8 ECHR](#) is only permissible in accordance with its para. 2 insofar as the legal measure is suitable and proportionate to achieve a legitimate objective. [Article 8 ECHR](#) is not intended to protect private and family life in a purely theoretical or illusory manner, but to guarantee it practically and effectively.

The NÄG provides for a number of circumstances that constitute grounds for a change of surname. In addition to the circumstances set out in § 2.1 NÄG, an individual can also request a change of surname if he or she wishes to have a different surname “for other reasons”.

However, in any case a change of surname may only be allowed if there is no ground for refusal as set out in § 3 NÄG. Under § 3.1.2 NÄG a name change is ruled out if the surname requested is “not commonly used to identify persons in Austria”.

With this element of § 3.1.2 NÄG, the State requires in a constitutionally unobjectionable manner that surnames must in principle have a real point of reference in the social development of names in Austria and may not be freely invented. By focussing on whether a certain name has developed as a surname in society, the State is necessarily referring to developments in a society (for example, migration movements in particular lead to changes in the surnames “commonly used” in Austria). In this respect, surnames always have a historical dimension because they are generally derived from ancestors.

Given the special significance of the name for the personal identity of the individual, § 3.1.2 NÄG must be interpreted in accordance with [Article 8 ECHR](#). This means that when applying the NÄG, the “idea [of the individual] of their name-related identity” must be taken into account. In certain constellations, this can also mean that a person must be allowed to adopt a name which has no reference to a historical family tradition.

As the Constitutional Court has stated in its judgment of 14 March 2023, E 2363/2022, this is the case if, firstly, the desired name is not an uncommon creation of its own, such as a meaningless combination of letters (e.g. “ABC”) or numbers (e.g. “007”), which must be prevented in any case for reasons of public order. Secondly, a desired name shall be considered to be customary if it had been used for a long time in Austria in a professional and social context, thereby becoming a part of the individual’s idea of his name-related identity protected by [Article 8 ECHR](#). In the present case, the Constitutional Court shared the view that a merely occasional use of the requested name in professional and social contexts for around four years – alongside with his current surname – does not yet constitute the degree of identity protected by [Article 8 ECHR](#) which, for constitutional reasons, would translate into “customary use” of this name within the meaning of § 3.1.2 NÄG.

The Vienna Administrative Court is also not to be opposed when it assigns relevance to the orthographic spelling of a surname, because this can be important for the customary use of the surname. However, it must be taken into account that the spelling of surnames, like that of

words in general, can change in the course of their use in a linguistic community, which must be taken into account when assessing “customary use” within the meaning of § 3.1.2 NÄG. Whether the Vienna Administrative Court, while accepting this possibility, had correctly denied such a change in the spelling of the requested surname in linguistic usage in the present case, is not a constitutional issue but only a question of interpretation of the NÄG which does not fall within the jurisdiction of the Constitutional Court.

The Constitutional Court concluded that the Vienna Administrative Court had applied the law in a manner that is in conformity with [Article 8 ECHR](#). As a result, the constitutional complaint was dismissed as unfounded.

Cross-references

European Court of Human Rights:

- *Burghartz v. Switzerland*, 16213/90, 22.02.1994;
- *Goodwin v. The United Kingdom* (GC), 28957/95, 11.07.2002;
- *Guillot v. France*, 22500/93, 24.10.1993;
- *Henry Kismoun v. France*, 32.265/10, 05.12.2013;
- *Johansson v. Finland*, 10163/02, 06.09.2007;
- *Mikulić v. Croatia*, 53176/99, 07.02.2002;
- *Stjerna v. Finland*, 18131/91, 25.11.1994;
- *Van Kück v. Germany*, 35968/97, 12.06.2003.