

Recognition of Surnames in Greece - Where do we go from here? -

The recognition of surnames determined abroad by virtue of a judgment or an administrative act has never attracted the attention of academics in Greece. The frequency of appearance concerning reported judgments is also scarce. In practice however, applications are filed regularly, mostly related with non EU-Member States. Until recently, recognition was granted by courts of law, save some minor exceptions, where the public order clause was invoked to deny recognition. A ruling of the Thessaloniki Court of Appeal from 2017 brings however an unexpected problem to surface.

I. The legal status in Greece

Name and surname issues are regulated by a decree published in 1957, as amended. For a person to change her/his name, there are certain requirements and an administrative procedure to be followed. The applicant has to prove the existence of a reason, such as psychological problems due to cacophonous sound of the surname, its pronunciation difficulty or hilarious meaning, its bad reputation or connotation, the lack of any contact with the applicant's father, whose last name she/he uses, etc. In case of acceptance, the competent Mayor issues an act, granting the right of the petitioner to carry the new surname. If the application is dismissed, the applicant may file a recourse before the General Secretary of the territorially competent Decentralized Administration unit. The Council of State, i.e. the highest administrative court in Greece, serves as the last resort for the applicant.

II. The treatment of foreign judgments / administrative acts

The above decree does not regulate the situation where a person of double nationality (one of which is of course Greek) requests the registration of a foreign judgment or administrative act, whereupon a change of surname has been determined. Being confronted with relevant petitions, the Greek administration sought the assistance of the Legal Council of State, i.e. an advisory body at the service of state authorities. By virtue of a legal opinion issued in 1991, the Legal

Council stated that registration may not take place prior to court recognition of the foreign judgment, pursuant to standard procedures provided for by the Greek Code of Civil Procedure [= GCCP]. In this fashion, the ball was sent to the courts.

III. The practice of the courts

Until recently, Greek courts reacted in a rather formal and simplistic way: Reference to the applicable provisions of the GCCP, presentation of facts, brief scrutiny on the merits and the documents produced, and recognition was granted. There are two exceptions to the rule. The first one is a reported case from 1996 [Athens 1st Instance Court Nr. 4817/1996, published in: Hellenic Justice 1997, p. 452], where a court order by the Supreme Court of Queensland was denied recognition, because it was based on the applicant's wish to give up his surname and acquire a new one, without any examination by the Australian court. The Greek court invoked the public policy clause, stating that the issue goes beyond private autonomy, and is differently regulated in Greece. The same outcome appeared 32 years later in the course of an application for the recognition of an act issued by the Civil Registry of Suchoj Log, Sverdlovsk Oblast: In a ruling from last year, the Thessaloniki 1st Instance Court refused recognition on public policy grounds, because the procedure followed in Russia contravened mandatory rules of Greek law on the change of surnames [Thessaloniki 1st Instance Court Nr. 8636/2018, unreported].

A different stance was however opted by the Piraeus Court of Appeal with respect to an act issued by the Mayor of Vienna: After quashing the first instance decision, which dismissed the application as legally unfounded, the appellate court stayed proceedings, requesting a legal opinion on the procedure followed for the change of surnames pursuant to Austrian law. Upon submission of the legal opinion, the court proceeded to a brief analysis, whose outcome was the recognition of the Austrian act. In particular, the court confirmed that the procedure followed was in accordance with Austrian law [*Bundesgesetz vom 22. März 1988 über die Änderung von Familiennamen und Vornamen (Namensänderungsgesetz - NÄG)*]. Hence, no public policy reservations were in place [Piraeus Court of Appeal Nr. 141/2017, unreported].

IV. The Game Changer

The complacency era though seems to be over: In a judgment of the Thessaloniki CoA issued end 2017, things are turning upside-down. The application for the recognition of a registration made by the Civil Registry of Predgorny, District of Stavropol, was denied recognition, this time not on public order grounds, but on lack of civil courts' jurisdiction. The court stated that the recognition of a foreign administrative act may not be examined by a civil court, if the subject matter at stake (change of surname) is considered to be an administrative matter according to domestic law. Bearing in mind that the change of surname is a genuinely administrative procedure in Greece (see under I), civil courts have no jurisdiction to try such an application.

V. Repercussions and the way ahead

What would be the consequences of this ruling in regards to the overall landscape?

First of all, there could be a sheer confusion in practice: If the administration demands court recognition, and courts decline their jurisdiction, stagnation is at the gates. A ping pong game will start between them, and the ball will be the poor applicant, trapped in the middle. Needless to say, there is no other judicial path for recognition. The Code of Administrative Procedure does not contain any provisions on the matter.

Secondly, is it to be expected that the same stance will prevail with respect to judgments or administrative acts coming from EU Member States? A spillover effect is not to be excluded. Courts seem to be encapsulated in their national niche. It is remarkable that no reference is made to the case law of the CJEU, even in the case regarding the Austrian Mayor's act.

Therefore, an intervention by the legislator is urgently needed, otherwise we're heading for stormy weather.