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CHALLENGES OF LEGAL REGULATION OF DIFFERENT PARENTS AND THEIR CHILDREN'S SURNAMES IN THE PRACTICE OF LITHUANIAN COURTS

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Abstract

The relevance of this study. In today's society, a phenomenon like the different names of family members living together in a family is found quite often. Recently, there has even been an increase in such a phenomenon. This is influenced by the growing number of divorces, as well as the growing trend towards cohabitation relationships and the growing number of children born in such relationships. **The main problem.** Due to different surnames, there are more and more problems such as confusion in training, health and other institutions, as well as, inevitably, problems when traveling. Also, when experiencing difficulties in maintaining a relationship with the family, the child may not understand why his or her last name should be different from the parent's last name, resulting in feeling excluded, outside of the family, experiencing bullying, or other similar difficulties. **The aim of this study** is to reveal the problems of legal regulation of different parents' and their children's surnames in the practice of Lithuanian courts. **The following tasks** were set for the defined goal: To reveal the concept of the child's rights and legitimate interests in the surname, as well as to discuss the development of the regulation of the surname, the main functions of the surname in society; To analyse the peculiarities of the legal regulation in Lithuania related to the child's surname; To analyse the practice of Lithuanian courts in cases regarding the change of a child's surname. **The paper concluded** that Lithuanian courts do not avoid errors and misinterpretations related to the child's rights and legitimate interests in the surname. The most equitable option in cases of changing the surname of a minor child, which best safeguards the child's rights and legitimate interests, could be to change the child's surname to a double surname consisting of different parents' surnames, reflecting the relationship with both father and mother. **The novelty** In Lithuania, there are very few studies related to the possible violation of children's rights and / or legitimate interests due to the different names of parents and their children, therefore it was expedient to perform a deeper analysis of the problem and make suggestions that can help solve the problem. **As the result** the fairest solution is to give the child a surname that indicates both the mother's and father's relationship to the child. **The used methodology** is scientific literature analysis, descriptive, analytical, comparative, and logical methods.

Key words: different surnames of parents and their children, child's rights and legitimate interests, family law.

Introduction

Statement of the problem.

With the rapid increase in the number of divorces after which women take over their pre-marital surnames or remarriages, as well as in the case of unmarried children or family adoption and other

similar cases, it is often the case that children and other cohabitants (mother, father, brother, sister) are different. It is because of different surnames that problems such as confusion, training, health, and other institutions are increasingly encountered, as well as

problems that inevitably arise when traveling. It is estimated that in 2017, 600,000 parents were stopped and questioned at UK airports precisely because their children have a different surname. Such surveys are extremely stressful for both parents and children [1]. The stress experienced by parents and their children when traveling, as well as flight losses, indicate regulatory gaps. Also, when experiencing difficulties in maintaining a relationship with the family, the child may not understand why his or her last name should be different from the parent's last name, resulting in feeling excluded, outside of the family, experiencing bullying, or other similar difficulties.

Relevance of the topic. The topic is relevant because a phenomenon such as different surnames of parents and their children and inconveniences arising from different surnames is not new, but relevant (even a noticeable increase) in the current period and still causing problems in the family for both children, both to his parents. Also, due to the increasing number of divorces, the number of single mothers is also increasing, which often leads to differences in the surnames of the child and the parents, i. y. the problem is growing. According to the official statistics portal in 2019, divorces were registered by 8.7 thousand couples. Compared to 2018, 43 (0.5%) more couples divorced than in 2018. More than half (54 percent) in 2019, divorced couples had children under the age of 18 in common. After the divorce, 6.7 thousand people lived in families without one of the parents (usually without a father), children (6.6 thousand in 2018) [2]. Also, the problem of different parents' and their children's surnames is influenced by the increasing trend of creating cohabitation relationships and the growth of children born in such relationships. According to Eurostat, the European Union's statistical agency, in 2018, the share of children born out of wedlock in the EU was 42%. This is 17 percentage points more than in 2000 [3]. The relevance of the topic is also justified by the fact that in Lithuania, there are very few studies related to possible violation of children's rights and / or legitimate interests due to different parents' and their children's names, so it was expedient to perform a deeper analysis of the problem.

The aim of the research is to reveal the problems of legal regulation of different parents' and their children's surnames in the practice of Lithuanian courts.

Results

The child's right to have a name from birth the right of the child to a name is one of the fundamental human rights protected by both national and international

law. It should be noted that the right to a name must be guaranteed to the child from birth in order for him or her to acquire legal identity and to be protected in order to exercise his or her rights [4]. It is also very important that the child has the right to a name that is in his or her best interests. It should be noted that a newborn child cannot exercise his or her own rights, including the right to a name. In addition to state institutions, the child's parents are very important for the implementation of the law [5]. It is also important to keep in mind the role of the state in ensuring the rights of the child, as the state in which its citizens live and the most vulnerable group is children, must make every effort to ensure that the rights of this vulnerable group are upheld. the right to a name from the outset, and this right includes the fact that the child must acquire a name that does not conflict with his or her well-being [6]. Evolution of surname emergence and further regulation the emergence of surnames in public life was not a sudden but rather long-lasting event. At the same time, it is worth mentioning that the emergence of surnames is a relatively recent phenomenon [7]. In England, surnames were unknown until about the 10 th century and they were introduced or inherited only many years later [8]. However, some available data on personal surnames suggest that Lithuanian surnames began to form in the 15th century. [9] In ancient times, each person had only a name. [10] Identification and identification from others using only the name was possible because the communities were small at the time [11]. Later, as the population grew and communities expanded, the name alone became insufficient. As the number of people grew, people with the same names emerged, so there was a need to separate a person from his or her namesakes and not confuse them. This was the main reason for the introduction of certain adjectives next to the name: father's name, names of craft, origin or place of residence, all kinds of nicknames, which gradually became hereditary names [12]. Attention should be paid to the history of surnames, which indicates that the surnames expressed power [13]. For example, slave authorities renamed slaves in order to make their property visible to that slave [14].

With regard to some regulation of already formed surnames in the families of that time, it should be noted that the traditional concept of the legal family, arising from the development of the history of different legal traditions, is based on the institution of marriage [15]. Under common law, children were divided into legal and illegal. The place the child had in the family, if any, and which of the parents or

adults could control the child depended on whether the child was legal or illegal. What surname a child will be given depended on whether the child was born in wedlock or not [16]. It should be noted that for many years' women were obliged to accept a man's surname when they got married [17]. It should be noted that even now, despite the progress made in gender equality in recent decades, most women continue to change their surnames to husbands after marriage, and most parents choose to give their children a patronymic. This means that the tradition of the family surname continues to put strong pressure on romantic relationships. In Lithuania, there is also another important nuance that has shown a very important role of the father in the family and in the child's life. The Marriage and Family Code of the Socialist Republic of Lithuania, which entered into force on January 1, 1970, contains a provision that: "the child's name is determined by the agreement of the parents, the father's name is given according to the father's name" [18]. In transcribed personal documents written in Russian or in their Russian parts, where the patronymic section is filled in according to the three-person system of personal names, a transcribed form of the father's name was written next to the name and surname of the Lithuanian citizen, eg: Balaišytė Eglė, Vladtautas – Балайшите Эгле, Kazio – Пакальнис Владас, Казё [19]. Assessing such records, it can be seen that the patronymic indicated that the child had a certain dependence on the father. The meaning and function of the surname in society The question of the importance of a surname in society has been raised for a very long time. In re the Marriage of Gulsvig, 498 N.W.2d 725 (1993), Judge Snell of the Iowa Supreme Court, commenting on the change of the child's surname, mentioned in his dissenting opinion several features emphasizing the importance of the name: Eldson C. Smith noted in *The Story of Our Names* (1930) that, apart from his closest friends, a person's name is the most noticeable, most striking feature. This, too, is the most vulnerable thing. An old Roman sentence says, "Sine nomine homo non est" (without a name a man is nothing). A person's name is like a signboard to the world. It is one of the most enduring assets; it remains when everything else is lost; it belongs to those who have nothing more. The name is the only effective, efficient way to describe individuals now and future generations. When a person dies, the name is the only part of the person that continues to live in the world "[20]. It can be concluded that names and surnames are

undoubtedly important, essential elements in human life. Also, the surname and first name of a person in a public space are necessary for a person to establish and maintain social connections with other persons in the profession, business or personal life [21]. In addition, in Coeriel et al. The Netherlands has been told that surnames are used to identify a person for purposes such as social security, insurance, licenses, marriage, inheritance, voting and when you vote for you, passports, taxes and public records, making it an important part of your identity [22].

Legal aspects of giving a child a surname

The child's surname is given when the civil status record is made, and in particular the child's birth record. According to Item 34 of the Rules for Registration of Civil Status Acts approved by the Order of the Minister of Justice of the Republic of Lithuania, "the birth of a child must be declared within three months from the date of his or her birth". [23] It can be noted that parents have a duty to register the birth of a child. In the *Re T (A child)* case, the child was given a name and surname, but such an assignment was not officially registered because the child's father objected to it, guided by certain of his convictions. The court said that the father and / or mother is legally obliged to register the birth of a child and also mentioned that "it is clearly in the best interests of [the child] that the birth of a child be registered in order to be recognized as a citizen and entitled to the benefits of such citizenship" [24]. Legal aspects of giving a child a surname The child's surname is given when the civil status record is made, and in particular the child's birth record. According to Item 34 of the Rules for Registration of Civil Status Acts approved by the Order of the Minister of Justice of the Republic of Lithuania, "the birth of a child must be declared within three months from the date of his or her birth" [25]. It can be noted that parents have a duty to register the birth of a child. In the *Re T (A child)* case, the child was given a name, but such an assignment was not officially registered because the child's father objected to it, guided by certain of his convictions. The court said that the father and / or mother is legally obliged to register the birth of a child and also mentioned that "it is clearly in the best interests of [the child] that the birth of a child be registered in order to be recognized as a citizen and entitled to the benefits of such citizenship" [26]. Giving a child a surname when the child's mother is married Item 43.1 of the Rules for Registration of Civil Status Acts is intended for the provision of the name and surname of a child when the child's

mother and father are married, which provides that: “43.1. if the surnames and nationalities of the child’s parents are the same, the child shall be given the surname and nationality of the parents. If the surnames of the parents are different, the child is given the surname of the father or mother or a double surname consisting of different surnames of the father and mother by agreement of the parents” [27]. Under Swedish law, if the child’s parents have a common surname at birth, the child is automatically given the parent’s surname. If the parents have different surnames at the birth of the child, different rules apply depending on whether the parents previously had children together. If the newborn has older biological brothers or sisters who are in joint parental care, the newborn will be given the surname that the brother or sister has. In other cases, parents can choose the child’s last name from those held by one of the parents. They can also give the last name that one of the parents had just before the marriage. It should be noted that in Sweden the choice of a child’s surname must be notified in writing within three months of the child’s birth and, if no notification is given within this period, the child is considered to have acquired the mother’s surname at birth [28].

Giving a child a surname when the child’s mother is not married Further analysis of the rules of registration of Civil Status Acts, it can be observed that the regulation of the provision of a child’s surname when the child’s mother is not married to the child’s father depends on whether the child’s paternity is recognized or established or not. Also, it depends on what rules will apply in a particular situation. Item 43.3 of the Rules for Registration of Civil Status Acts states that: “43.3. if the child’s mother is not married to the child’s father and if paternity has not been recognized or established, the child shall be given the mother’s surname, nationality and the name indicated by her” [23]. Accordingly, if the child’s parents are not married, but a notarized joint statement of the child’s father and mother on the recognition of paternity is submitted, the man recognizing himself as the child’s father is entered as the child’s father [22]. In this case, the child’s surname is given based on Clause 43.1 of the Rules of Registration of Civil Status Acts, when the parents’ surnames differ – by mutual consent of the parents. Reasons for changing a child’s surname and legal mechanism the child’s surname may be changed or corrected only in certain exceptional cases. This may be when you want to give a child the surname of one of the parents, for example, after a divorce

a woman who has changed her surname to a pre-marital woman wants the child to have her surname in the cases specified in the Rules for Changing the Name and Surname of a Person approved by an order. It should be emphasized that the child’s name and surname are given from birth and indicate his or her individuality, therefore these personal data cannot be changed or corrected without justification [23]. It is also worth mentioning that a child’s surname can only be changed with the consent of both parents, i. y. by common consent of the parents [24]. It should be noted that a child’s surname cannot be changed unilaterally without the knowledge of the other parent (unless his or her parental authority is restricted), so the rules on changing a person’s name (or) surname, together with the documents referred to in Paragraph 19 of these Rules, the written consent of the other parent must be submitted to the civil registry office” [25], such a provision in order to protect the rights of the other parent from possible abuse. In addition, the rules stipulate that the written consent of the child, if he or she has reached the age of 10, must be submitted together with other documents [26]. The change of name and / or surname is registered by creating a record of the change or addition of the last entry in the civil status act of the person [27], i. y. without the presence of a judicial authority. However, there are cases when the parents do not agree on the change of the child’s surname, often disputes arise, which are resolved by the court in accordance with the procedure established by law.

Problems of implementation of children’s rights and (or) legitimate interests

These problems arising from different surnames of children in Lithuanian court practice Lithuanian case law clearly emphasizes that all issues related to children, including the issue of the child’s surname, are resolved by giving priority to the child’s interests, i. y. assessing whether the surname is in the best interests of the child [28]. The Constitutional Court ruling of the Republic of Lithuania of 8 November 2019 noted that the constitutional imperative of the best interests of the child presupposes the duty of the state to ensure that the child’s rights are considered both when adopting laws and other legal acts and applying and resolving other child-related issues. interests and there are no presumption of prejudice [29]. It can be noted, however, that there are cases where courts do not take into account the child’s rights and best interests, such as the interest of being a full member of the family, as well as the right to live and develop healthily, the right to preserve identity., the right

to know their origin. It is important to note that the Committee on the Rights of the Child has stated that "there is no hierarchy of rights in the Convention and all rights in it take into account the" best interests of the child ", so a negative interpretation of the best interests of the child cannot infringe any rights" [30]. It is worth distinguishing the child's right to his or her identity and its preservation, enshrined in Article 8 of the Convention on the Rights of the Child and Article 9 of the Law on the Protection of the Rights of the Child, which is a major consideration in the assessment process. In its ruling of 2 December 2020, the Supreme Court of Lithuania notes that: "Where the change of surname of a minor child under the age of 16 is initiated by one of the parents without the consent of the other parent, there must be a presumption that the child's surname as an element of his identity is stable and in the best interests of the child. The aforesaid presumption that the best interests of the child are best preserved by the preservation of the surname given to him could be rebutted only in exceptional cases. The court may decide to change the surname of a minor child under the age of 16 if it finds that there are grounds for changing the child's surname provided for in the Rules and concludes that such change of surname is in the best interests of the child in the circumstances of the case" [31].

Although, as stated in the judgment, the best interests of the child are maintained by the surname already in place, the courts are more inclined to uphold one of the parents' claim in the case and to change the child's surname, especially if the father ceases to communicate with the child. For example, in a case heard by the Tauragė District Court, it was stated that the biological father's non-participation in the child's upbringing since 2017 determines the need to change the girl's surname in the interests of a five-year-old child [32]. The Court stated that: For the biological father of the child from 2017. In June, without raising the child at all, without communicating with the child, a situation arose that the child still does not know his biological father, names his mother and little sister as his only and close people, calls his current mother M. L. The relationship between the child and biological father the defendant did not perform and does not perform any of her duties as a father to the minor daughter, did not bring her up, nurture her, did not participate in her daily life. The mere provision of court-ordered maintenance does not constitute participation in a child's life. The court rejected as unsubstantiated the defendant's

argument that he was not allowed to communicate with the child. The defendant, having a statutory duty of care for the child, did not himself take any active steps to change the communication procedure [33]. The case reached the Supreme Court of Lithuania, so in assessing the same issue, the Supreme Court of Lithuania stated somewhat differently: In the present case, the applicant's argument that the father's contact with his daughter was completely broken through the defendant's fault, with the girl having no contact with her biological father, is irrelevant for the purposes of changing the surname of a minor under 16 years of age. on the limitation of the power of the defendant's father. The grounds for changing a child's surname are not related to certain behavior of the child's parents, they are established only in the presence of certain objective facts. In the light of the foregoing, the panel concludes that there has been a breach of the father's duty to communicate and participate in the child's upbringing, which has led to a lack of emotional, social, and spiritual connection between the father and the daughter, regardless of the parent's fault, is not a circumstance that would justify changing the child's surname in the best interests of the child [34].

With regard to the child's right to identity and preservation, it is important to note that the legal framework in accordance with the principle of equality of parental authority and the provision obliging respect for the child's right to identity are interdependent [35]. Parental rights and responsibilities for children are the same (equal), so the surnames of the parents are equal [36], and the identity of the child consists of both the surnames of the mother and the father, he belongs to both the mother and the father's family. At the same time, this may in a sense mean that it would be fair for both children and parents if the parents' surnames are different, to give the child a double surname consisting of the father's and mother's surnames, except in exceptional cases. The Ombudsman for the Protection of the Rights of the Child has pointed out that, according to the case-law of the Court, a system which allows the transfer of both parents' surnames not only does not run the risk of erroneously establishing a family relationship but may facilitate recognition of that relationship with both parents [37]. One of the natural rights of the child enshrined in Article 6 (2) of the Convention on the Rights of the Child and Article 6 of the Law on the Framework for the Protection of the Rights of the Child is the right to live and develop healthily. A relevant comment from the Committee on the Rights of the Child is

that Member States are expected to interpret the term 'development' in a broad sense as a holistic concept that includes the child's physical, mental, spiritual, moral, psychological, and social development [38]. One of the potential problems arising from the different names of parents and their children encountered in case law is that this may lead to future bullying by the child, which has some impact on the child's healthy development. For example, the child's father, whose name is given to the child, is convicted of an intentional crime that may cause the child to experience bullying or other spiritual experiences. Also, it is quite common in cases that the change of a child's surname is intended to make the child feel a full member of the family, which is also important for the child's healthy development. Such situations could be treated as exceptional cases. For example, in the case of the Kaunas Regional Court, the issue of changing the surname of a minor child was resolved, when the father not only completely withdrew from the child's upbringing, communication, due to which the child does not know his biological father, but also from child support. In the present case, the court, having established all the facts, said that: "In this case, first of all, it is important for A.'s interests to have a surname like all her families, to be inseparable from those around her and caring for her. ... Accordingly, to psychologically prevent a girl, it is necessary to give her the surname of her parents. It is the parents who take care of her that raise her, not the biological father she doesn't know at all. the mere fact that the appellant's power over the girl is not limited is irrelevant to the situation in question. The change of the girl's surname aims to protect the interests of the child as a representative of a weak and sensitive social group. Only by changing the girl's surname to the identical name of her mother and husband (whom the girl calls her father) will the best interests of the child be fully protected from possible negative consequences (bullying, insults, lack of fullness, etc.)" [39].

The case of the Supreme Court of Lithuania also raised the issue of the child's need to feel a full member of the family, where it was said that: In deciding whether it would be in the best interests of the daughter of the parties to the dispute to change her surname to have the same surname as her mother and her husband, whom the girl loves and calls her father, the child's surname is not a key factor in determining the child's well-being. Family unity is strengthened when the relationship between

the spouses is based on the principles of solidarity and equality, and the child's well-being within and outside the family is ensured by devotion, support and commitment [40]. Also, violations of the child's right to live and develop healthily can be considered cases when the child experiences great stress when questioned by officials at airports. In the activity report of the Ombudsman for Children of the Republic of Lithuania, the ombudsman reacted to violations of children's rights related to the control of public transport passengers, when minors are not transported to the police station without identification negative emotions and stress [41]. A similar situation is observed in the activities of airport officials, where the child is asked certain questions in order to establish the relationship between the child and the parents.

Conclusions

1. The right of the child to a name is a fundamental human right protected by both national and international law. It is very important to emphasize that the name of children as the weakest citizens should not restrict their rights and legitimate interests, but, on the contrary, must comply with them. It should be noted that in the peculiarities of the formation of surnames and their previous regulation, the dominance of the father's surname is noticeable, which gradually changed, and the mother's surname became equally important and equal to the father's surname.
2. It is important to mention that the importance of a surname both in society and for the person himself can be described by the fact that the surname is one of the basic data for establishing a person's identity, and it is also an integral part of a person.
3. The obligation to register the birth of a child must be fulfilled by the parents responsibly, as well as by responsibly collecting his / her surname so that it is not changed in the future without good reason and irresponsible giving of the surname does not harm the child and his / her interests. If the parents, consider that the child's surname still needs to be changed – they must provide an important reason for this and such a change of name must be in the child's best interests.
4. In the case law of Lithuanian courts regarding the change of the surname of a minor child, it is possible to see certain cases of failure to ensure the rights and legitimate interests of the child. The courts violate the child's right to preserve his or her identity by not ensuring the permanence of the child's surname, with no exceptions. The child's family consists of both mother and father, and childhood is the basis of all further life, so it is imperative that every effort is made to ensure the child's rights

and interests in a surname that does not damage his identity and allow for healthy development. The fairest solution is to give the child a surname that indicates both the mother's and father's relationship to the child.

References

1. Wilson, P. *Passport surnames for kids – the airport delay for parents with different surnames*, (2018). Retrieved 26 September, 2020, from <<https://amicable.io/passport-surnames-kids-airport-delay-parents-different-surnames/>>.
2. Official Statistics Portal. Retrieved 18 December, 2020, from <<https://osp.stat.gov.lt/lietuvos-gyventojai-2020/santuokos-ir-istuokos/istuokos>>/.
3. Eurostat portal of the Statistical Office of the European Communities. Retrieved 26 October, 2020, from <<https://ec.europa.eu/eurostat/web/products-eurostat-news/-/DDN-20200717-1>>.
4. Monkevičiūtė, E. (2007). Regulation of the human right to a name in international human rights instruments, Vilnius: VU, p. 22.
5. Mizgaitienė, U. 2014. Can the parents' right to choose the child's name be restricted? Kaunas: VDU, p. 12.
6. Belvins, D.C. (1992). Harmonizing Filial and Parental Rights in Names: Progress, Pitfalls, and Constitutional Problems, *Howard Law Journal*, (1991-1992, 35 Howard L.J.), p. 228.
7. USA case: *Smith v. United States Casualty Co.*, 90 N.E. 947 (N.Y. 1910).
8. Maciejauskienė, V. 1991. Formation of Lithuanian surnames, Vilnius: Mokslas, p. 58.
9. Högman, H. (2020). *Swedish naming practices in earlier times, surnames*. Retrieved 26 September, 2020, from; <http://www.algonet.se/~hogman/Naming%20practice_eng.htm>.
10. Blake, P. *What's In a Name? Your Link to the Past* (2011 04 26). Retrieved 28 December 2020, from <http://www.bbc.co.uk/history/familyhistory/get_started/surnames_01.shtml#:~:text=Over%20time%20many%20names%20became,and%20to%20get%20passed%20on.>>.
11. Zinkevičius, Z. (2008). Lithuanian personal names, Vilnius: Lietuvių kalbos institutas, p. 31.
12. Herring, J. (2013). The Power of Naming: Surnames, Children, and Spouses, *Law and Language: Current Legal Issues*, (2013, Volume 15), p. 317.
13. Sagatys, G. (2010). The Concept of Family in Lithuanian Law, *Jurisprudencija*, 1(119), p. 182.
14. Kelley, L. (1996). Divining the Deep and Inscrutable: Toward a Gender-Neutral, Child-Centered Approach to Child Name Change Proceedings, *West Virginia Law Review*, (1996, Volume 99, No. 1), p. 18.
15. Emens, E. F. (2007). Changing name changing: Framing rules and the future of marital names. *The University of Chicago Law Review*, 74, 761–863.
16. Lockwood, P. Burton, C. Boersma, K. (2011). Tampering with Tradition: Rationales Concerning Women's Married Names and Children's Surnames, *Sex Roles*, 65, p. 827.
17. Pilcher, J. (2017). Names and “doing gender”: How forenames and surnames contribute to gender identities, difference, and inequalities. *Sex Roles*, 77, 812–822.
18. LSSR Marriage and Family Code, Žin. (1969, Nr. 21-186; not valid from 2001-07-01) 62 str.
19. Consultation Bank of the State Lithuanian Language Commission, How to form a Russian patronymic from a Lithuanian name? Retrieved 26 September, 2020, from <http://www.vlkk.lt/konsultacijos/11390-tevo-vardas-tevavardis>.
20. USA case: *In Re Marriage of Gulsvig*, 498 N.W.2d 725 (Iowa 1993).
21. Šindeikis, A. 2009. Constitutional problems of depersonalization of court procedural decisions, *Jurisprudencija*, 3(117), p. 51.
22. *Coeriel and Aurik v. Netherlands*, UN HRC, Comm. No. 453/1991 (1994), UN Doc. CCPR/C/52/D/453/1991.
23. Rules for registration of civil status acts, TAR (2016, Nr. 29705), 34 p.
24. Case *Re T (A child)*, [2019] EWHC 1572 (Fam) (12 June 2019).
25. Ministry of Justice, *Family Law. Information on the rules*, (2013), p. 33.
26. *M. P. v. Ž.V.*, Telšiai District Court, civil Case (2018, Nr. E2-317-187/2018).
27. Rules for changing a person's name and surname, TAR (2016, Nr. 29704), 12 p.
28. *N.L v. A. P.*, Supreme Court of Lithuania, Civil case (2020, Nr. e3K-3-327-378/2020).
29. The Supreme Administrative Court of Lithuania appealed against the compliance of the provisions with the Constitution, the Constitutional Court of the Republic of Lithuania, (2019, Nr. KT44-N13/2019).
30. General comments of the United Nations Committee on the Rights of the Child, (Vilnius: Spauda, 2018), p. 250.
31. *N.L v. A. P.*, Supreme Court of Lithuania, Civil case (2020, Nr. e3K-3-327-378/2020).
32. *N.L v. A. P.*, Supreme Court of Lithuania, Civil case (2020, Nr. e3K-3-327-378/2020).
33. *N.L v. A. P.*, Supreme Court of Lithuania, Civil case (2020, Nr. e3K-3-327-378/2020).
34. *N.L v. A. P.*, Supreme Court of Lithuania, Civil case (2020, Nr. e3K-3-327-378/2020).
35. *N.L v. A. P.*, Supreme Court of Lithuania, Civil case (2020, Nr. e3K-3-327-378/2020).
36. *E. A. B. v. J. A.*, Marijampolės District Court (2020, Nr. e2-203-399/2020).

37. Ombudsman for Children of the Republic of Lithuania, Activity Report of the Ombudsman for Children of the Republic of Lithuania for 2014, (2015), p. 28.
38. General comments of the United Nations Committee on the Rights of the Child, Vilnius: Spauda, 2018, p. 52.
39. *G. N v. A. R.*, Kaunas Regional Court, (2015, Nr. 2A-245-273/2015).
40. *N. L v. A. P.*, Supreme Court of Lithuania, Civil case (2020, Nr. e3K-3-327-378/2020).
41. Ombudsman for Children of the Republic of Lithuania, Activity Report of the Ombudsman for Children of the Republic of Lithuania for 2019, (2020), p. 74.

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ПРОБЛЕМИ ПРАВОВОГО РЕГУЛЮВАННЯ РІЗНИХ БАТЬКІВ ТА ЇХ ДІТЕЙ У СУДОВІЙ ПРАКТИЦІ ЛИТВИ

Анотація

Актуальність дослідження. У сучасному суспільстві таке явище, як різні імена членів родини, які живуть разом у сім'ї, зустрічається досить часто. Останнім часом таке явище навіть збільшилося. На це впливає зростаюча кількість розлучень, а також зростаюча тенденція до спільного проживання і зростаюча кількість дітей, народжених в таких відносинах. **Головна проблема.** Через різні прізвища виникає все більше і більше проблем, таких як плутанина у навчанні, здоров'я та інших установах, а також проблеми під час подорожей. Крім того, відчуваючи труднощі у підтримці відносин з родиною, дитина може не розуміти, чому його або її прізвище повинно відрізнитися від прізвища батьків, у результаті чого дитина відчуває себе виключеною з сім'ї, відчуває знущання або інші труднощі. Мета дослідження – виявити проблеми правового регулювання прізвища батьків і дітей у судовій практиці Литви. Для поставленої мети були поставлені наступні завдання: розкрити поняття прав і законних інтересів дитини в існування прізвища, а також обговорити розвиток регуляції прізвища, основних функцій прізвища у суспільстві; проаналізувати особливості правового регулювання у Литві щодо прізвища дитини; проаналізувати судову практику Литви у справах про зміну прізвища дитини. У статті зроблено висновок про те, що судова практика Литви не уникає помилок і невірних тлумачень, що стосуються прав і законних інтересів дитини в існуванні прізвища. В результаті найбільш справедливим рішенням буде те, щоб дати дитині прізвище, що вказує на спорідненість з дитиною як матері, так і батька. Використана методика – аналіз наукової літератури, описові, аналітичні, порівняльні та логічні методи.

Ключові слова: різні прізвища батьків та їх дітей, права і законні інтереси дитини, сімейне право.

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ПРОБЛЕМЫ ПРАВОВОГО РЕГУЛИРОВАНИЯ РАЗНЫХ РОДИТЕЛЕЙ И ИХ ДЕТЕЙ В СУДЕБНОЙ ПРАКТИКЕ ЛИТВЫ

Аннотация

Актуальность исследования. В современном обществе такое явление, как разные имена членов семьи, живущих вместе в семье, встречается довольно часто. В последнее время такое явление даже увеличилось. На это влияет растущее количество разводов, а также растущая тенденция к совместному проживанию и растущее количество детей, рожденных в таких отношениях. **Главная проблема.** Из-за разных фамилий все больше и больше проблем, таких как путаница в обучении, здоровье и других учреждениях, а также неизбежно проблемы во время путешествий. Кроме того, испытывая трудности в поддержании отношений с семьей, ребенок может не понимать, почему его или ее фамилия должна отличаться от фамилии родителя, в результате чего он чувствует себя исключенным вне семьи, испытывает издевательства или другие подобные трудности. **Цель исследования** – выявить проблемы правового регулирования фамилий родителей и детей в практике судов Литвы. Для поставленной цели были поставлены следующие задачи: раскрыть понятие прав и законных интересов ребенка в фамилии, а также обсудить развитие регуляции фамилии, основных функций фамилии в обществе; Проанализировать особенности правового регулирования в Литве в отношении фамилии ребенка; Проанализировать практику судов Литвы в делах об изменении фамилии ребенка. В документе сделан вывод о том, что суды Литвы не избегают ошибок и неверных толкований, касающихся прав и законных интересов ребенка в фамилии. **В результате** наиболее справедливым решением будет дать ребенку фамилию, указывающую на родство с ребенком как матери, так и отца. **Используемая методика** – анализ научной литературы, описательные, аналитические, сравнительные и логические методы.

Ключевые слова: разные фамилии родителей и их детей, права и законные интересы ребенка, семейное право.

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