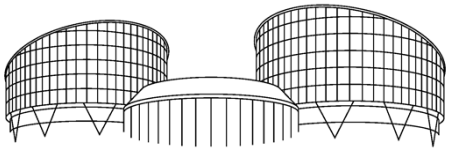

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FOURTH SECTION

CASE OF KÜNSBERG SARRE v. AUSTRIA

(Applications nos. 19475/20 and three others– see appended list)

JUDGMENT

Art 8 • Private and family life • Unjustified prohibition on prefix "von" in applicants' surnames, after long period of accepted use, on the basis of the 1919 Abolition of Nobility Act inconsistently applied • Fair balance between competing interests not struck

STRASBOURG

17 January 2023

This judgment will become final in the circumstances set out in Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of Künsberg Sarre v. Austria,

The European Court of Human Rights (Fourth Section), sitting as a Chamber composed of:

Tim Eicke*, President*,
Gabriele Kucsko-Stadlmayer,
Faris Vehabović,
Iulia Antoanella Motoc,
Branko Lubarda,
Armen Harutyunyan,
Anja Seibert-Fohr*, judges*,
and Ilse Freiwirth, *Deputy Section Registrar,*

Having regard to:

the applications (nos. 19475/20, 20149/20, 20153/20 and 20157/20) against the Republic of Austria lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by four Austrian nationals, Mr Maximilian Künsberg Sarre, Ms Michaela Künsberg Sarre, Mr Nikolaus Künsberg Sarre and Mr Thomas Martin Künsberg Sarre ("the applicants"), on 23 April and 7 May 2020;

the decision to give notice to the Austrian Government ("the Government") of the complaints concerning the applicants' right to bear their surname and their alleged discrimination in that respect under Article 8 of the Convention and Article 14 read in conjunction with Article 8 and to declare the remainder of the application no. 20153/20 inadmissible;

the parties' observations;

Having deliberated in private on 6 December 2022,

Delivers the following judgment, which was adopted on that date:

INTRODUCTION

1. The present case concerns the applicants' complaint of a violation of their right to respect for their private and family life under Article 8 of the Convention on account of the removal of a part of surnames of the applicants in applications nos. 19475/20, 20149/20 and 20157/20, namely the prefix "von", under the Abolition of Nobility Act (*Adelsaufhebungsgesetz*) of 1919 and on account of the refusal to issue a new identity card with that surname to the applicant in application no. 20153/20. Under Article 14 read in conjunction with Article 8 of the Convention, the applicants further complained of discriminatory treatment in so far as other prefixes in surnames such as "van", "de" and "von der" were excluded from the scope of application of that Act without objective justification.

THE FACTS

2. The applicants' years of birth and places of residence can be found in the appended table. They were represented by Mr W. Proksch, a lawyer practising in Vienna.

3. The Government were represented by their Agent, Ambassador H. Tichy, Head of the International Law Department at the Federal Ministry for European and International Affairs.

4. The facts of the case may be summarised as follows.

5. The applicants are all related to each other: the applicant in application no. 19475/20 (Mr Maximilian Künsberg Sarre, hereinafter "the first applicant") and the applicant in application no. 20157/20 (Mr Thomas Martin Künsberg Sarre, hereinafter "the fourth applicant") are brothers. The applicant in application no. 20149/20 (Ms Michaela Künsberg Sarre, hereinafter "the second applicant") is the wife of the fourth applicant and thus also the sister-in-law of the first applicant. The applicant in application no. 20153/20 (Mr Nikolaus Künsberg Sarre, hereinafter "the third applicant") is the son of the second and fourth applicants and thus also the nephew of the first applicant. The first applicant lives in Austria, while the other three applicants live in Germany. They all hold Austrian citizenship. The fourth applicant also holds United States citizenship.

6. The first and fourth applicants received their surname by descent from their father, who was originally known by the name of Ralph Sarre von Künsberg-Langenstadt and who changed his name to Ralph von Künsberg Sarre in 1961 when emigrating from Cuba to, and acquiring citizenship of, the United States of America. The first, third and fourth applicants have thus borne the surname of "von Künsberg Sarre" since they were born (in 1975, 2001 and 1969 respectively). The second applicant took the surname of the fourth applicant on their marriage in the year 2000. According to the applicants, they never belonged to the nobility, and they considered their surname "von Künsberg Sarre" to have been invented by their ancestor. This surname remained uncontested, despite the Abolition of Nobility Act of 1919 and the implementing provisions of that Act (see paragraphs 22-25 below). Several passports and identity cards were renewed with this surname.

I. CHANGE OF THE FIRST APPLICANT'S SURNAME

7. On 20 September 2018 the Municipality of Graz issued, of its own motion, a decision changing the surname of the first applicant from "von Künsberg Sarre" to "Künsberg Sarre" under section 42(1) of the Civil Status Act (*Personenstandsgesetz*; see paragraph 21 below) read in conjunction with sections 1 and 2 of the Abolition of Nobility Act of 1919 (see paragraphs 22-23 below) and with sections 1 and 2(1) of the implementing provisions of the Abolition of Nobility Act of 1919 ("the implementing

provisions") (*Vollzugsanweisung zum Adelsaufhebungsgesetz*; see paragraph 25 below). The Municipality's reasoning for its decision was that the surname had been wrongly registered as "von Künsberg Sarre" on the first applicant's marriage in 2004 and had therefore been incorrect at the time of that registration.

II. CHANGE OF THE SECOND AND FOURTH APPLICANTS' SURNAME

8. On 14 September 2018 the Municipality of Graz issued, again of its own motion, two decisions changing the surname of the second and fourth applicants from "von Künsberg Sarre" to "Künsberg Sarre". It referred to the same legal provisions as in its decision concerning the first applicant (see paragraph 7 above) and reasoned similarly that the applicants' surname had already been incorrect when it was registered at the time of their marriage in 2000 (see paragraph 6 above).

III. EVENTS CONCERNING THE THIRD APPLICANT

9. On 12 October 2017 the Austrian Consulate General in Munich dismissed an application by the third applicant, at the time still a minor and thus represented by his father, the fourth applicant, to be issued with an identity card (*Personalausweis*) in his registered surname "von Künsberg Sarre". It referred to, among other things, section 1 of the Abolition of Nobility Act (see paragraph 22 below) read in conjunction with section 2(1) of the implementing provisions of the Abolition of Nobility Act (see paragraph 25 below). The Consulate General also referred to the case-law of the Supreme Administrative Court (*Verwaltungsgerichtshof*), notably its judgment of 17 February 2010 (see paragraph 32 below); of the Court of Justice of the European Union (hereinafter, "the CJEU"), notably its judgment of 22 December 2010 in the case of *Sayn-Wittgenstein* (see paragraph 35 below); and of the Constitutional Court (*Verfassungsgerichtshof*), notably its decision of 26 June 2014 (see paragraph 27 below), which had departed from the previous case-law and according to which a rectification procedure should be carried out for entries after 22 December 2010 which contradicted the Abolition of Nobility Act because the original entry was incorrect.

IV. JUDICIAL PROCEEDINGS

A. Proceedings before the Regional Administrative Court

10. On 5 February 2019 the Styria Regional Administrative Court (*Landesverwaltungsgericht*) dismissed complaints by the first, second and fourth applicants against the decisions of the Municipality of Graz of 14 and

20 September 2018 (see paragraphs 7-8 above), referring in three separate judgments to section 42(1) of the Civil Status Act (see paragraph 21 below), sections 1 and 2 of the Abolition of Nobility Act (see paragraphs 22-23 below), and the implementing provisions of the Abolition of Nobility Act (see paragraph 25 below) read in conjunction with section 4 of that Act (see paragraph 24 below).

11. The Regional Administrative Court also referred to the decision of the Constitutional Court of 1 March 2018 (see paragraph 28 below), in which the latter, referring to two of its own decisions from 2003 and 2014 (see paragraphs 26-27 below) and the judgment of the CJEU of 22 December 2010 in *Sayn-Wittgenstein* (see paragraph 35 below), had held that what was relevant was the objective perception of those whom the prohibition of discrimination was designed to protect against unequal treatment based on privileges of birth or status. The Constitutional Court found that for that reason, names which were merely likely to give the impression of conferring privileges of birth or status on the persons bearing them were banned. As regards the prefix "von", the Constitutional Court had specifically considered that that word was generally likely to create the appearance of a noble origin and thus corresponding privileges (*Anschein einer adeligen Herkunft und damit entsprechender Vorrechte*), regardless of whether or not the specific name or family actually had historical ties to nobility.

12. The Regional Administrative Court further held that under section 1 of the implementing provisions of the Abolition of Nobility Act (see paragraph 25 below), it was also not relevant that the applicant might have acquired his name outside Austria as the abolition applied to all Austrian nationals, regardless of whether such privileges had been acquired in Austria or abroad. It again referred to the Constitutional Court, which, in its decision of 26 June 2014 (see paragraph 27 below), had held that even if a name had been acquired abroad by descent, the ban on using the particle "von" would take effect immediately even if Austrian nationality was acquired only subsequently. The Regional Administrative Court specifically found that this was not an interference with family life, and also referred to the case-law of the CJEU, notably its judgment of 22 December 2010 in *Sayn-Wittgenstein* (see paragraph 35 below).

13. On 6 February 2019 the Styria Regional Administrative Court also dismissed a complaint lodged by the third applicant against the decision of the Austrian Consulate General in Munich of 12 October 2017 refusing to order the issuing of a new identity card (see paragraph 9 above). Similarly to its reasoning in the judgments concerning the changes to the surnames of the first, second and fourth applicants (see paragraphs 10-12 above), it again relied essentially on sections 1 and 2 of the Abolition of Nobility Act (see paragraphs 22-23 below) and the implementing provisions of the Abolition of Nobility Act (see paragraph 25 below) read in conjunction with section 4

of that Act (see paragraph 24 below), as well as on the decision of the Constitutional Court of 1 March 2018 (see paragraph 28 below).

B. Proceedings before the Constitutional Court

14. On 11 June 2019 the Constitutional Court, in a joint decision concerning all four applicants, declined to deal with their complaints, for lack of prospects of success. As regards their claim under Article 8 of the Convention, the court referred to its findings in previous decisions of 27 November 2003, 26 June 2014 and 1 March 2018 (see paragraphs 26-28 below) and to the CJEU's judgment of 22 December 2010 in *Sayn-Wittgenstein* (see paragraph 35 below).

C. Proceedings before the Supreme Administrative Court

15. On 15 October 2019, in a joint decision concerning the first, second and fourth applicants, the Supreme Administrative Court rejected their applications for review (*Revision*) of the decision of the Regional Administrative Court of 5 February 2019 (see paragraphs 10-12 above). It referred to its own previous case-law, which in turn was linked to the case-law of the Constitutional Court, notably the latter's decision of 1 March 2018 (see paragraph 28 below), and reiterated that the Abolition of Nobility Act precluded the acquisition of parts of or additions to a surname which constituted titles of nobility within the meaning of that Act. The same applied to persons who had such a (former) title of nobility as a part of their surname under foreign legislation once they acquired Austrian citizenship. The Supreme Administrative Court referred to its decision of 13 August 2019 (see paragraph 33 below) as a recent example of its case-law. Furthermore, as regards the word "von" as a part of a surname, it referred to the Constitutional Court's above-mentioned decision according to which the use of the word "von", which was prohibited as a name component under the implementing provisions of the Abolition of Nobility Act (see paragraph 25 below), was seen as creating the appearance of a noble origin and thus corresponding privileges as a matter of principle, without reference to whether the name or family actually had a historical noble connection.

16. Shortly thereafter, on 14 November 2019, the Supreme Administrative Court also rejected an application by the third applicant for review of the decision of the Regional Administrative Court of 6 February 2019 (see paragraph 13 above). Referring to its decision of 15 October 2019 rejecting the applications of the first, second and fourth applicants (see paragraph 15 above), it held that since those applications had already been decided, it was to be assumed that they had the legally established surname of "Künsberg Sarre" (without "von"). There was no legal basis for a name change within the framework of the procedure relating to passports.

V. EVENTS RELATING TO OTHER RELATIVES OF THE APPLICANTS

17. On 12 July 2018 the Mödling District Administrative Authority (*Bezirkshauptmannschaft*) issued a passport for the first applicant's son, born in 2008, who is also the nephew of the second and fourth applicants and a cousin of the third applicant, with the surname "von Künsberg Sarre".

18. On 31 May 2019 the Mödling District Administrative Authority also issued a passport for the first applicant's daughter, born in 2006, who is also the niece of the second and fourth applicants and a cousin of the third applicant, with the surname "von Künsberg Sarre".

19. According to the second and fourth applicants, their other two children, daughters born in 2003 and 2004, who are thus the sisters of the third applicant and the nieces of the first applicant, continue to bear the surname "von Künsberg Sarre".

RELEVANT LEGAL FRAMEWORK AND PRACTICE

I. DOMESTIC LEGISLATION

20. Article 7 of the Federal Constitution Act (*Bundes-Verfassungsgesetz*) reads, in so far as relevant:

> "(1) All citizens are equal before the law. Privileges of birth [*Vorrechte der Geburt*], ... status [*des Standes*], ... are excluded ..."

21. Section 42(1) of the Civil Status Act (*Personenstandsgesetz*) prescribes that an entry in the Central Civil Status Register is to be corrected if it had already been incorrect at the time of registration.

22. The Act of 3 April 1919 on the Abolition of the Nobility, the Secular Orders of Knighthood and Ladies' Orders and Certain Titles and Dignities (Abolition of Nobility Act) (*Gesetz vom 3. April 1919 über die Aufhebung des Adels, der weltlichen Ritter- und Damenorden und gewisser Titel und Würden, Adelsaufhebungsgesetz*), which is a law of constitutional status, provides in section 1 as follows:

> "The nobility, its external privileges of honour, as well as titles and dignities conferred merely for the purpose of distinction and not connected with an official position, profession or scientific or artistic ability, and the associated privileges of Austrian citizens, shall be abolished."

23. Section 2 of the Abolition of Nobility Act reads as follows:

> "The use of these noble titles, titles and dignities is prohibited. Breaches shall be punished by the political authorities with a fine of up to 20,000 [Krone] or arrest for up to six months."

24. Section 4 of the Abolition of Nobility Act provides that the decision as to which titles and dignities are to be considered to have been abolished

under section 1 is to be made by the Secretary of State for the Interior and Education.

25. The implementing provisions issued by the Ministry of the Interior and Education and the Ministry of Justice in respect of the Abolition of Nobility Act (*Vollzugsanweisung zum Adelsaufhebungsgesetz*) of 18 April 1919 provide in section 1 that the abolition of the nobility concerns all Austrian nationals regardless of whether the privileges were acquired domestically or abroad, and in section 2(1), in so far as relevant, that the right to use the nobiliary particle "von" is abolished.

II. DOMESTIC PRACTICE

A. Case-law of the Constitutional Court

26. In a case concerning the adoption by a German national of an adult who had held Austrian citizenship since birth, the Constitutional Court held in a decision of 27 November 2003 (B 557/03) that it was not permissible to pass on a (former) nobiliary particle (*Adelsprädikat*) in a name to an Austrian citizen by way of adoption by a German citizen who permissibly bore the nobiliary particle as part of his or her name. Furthermore, in accordance with the Abolition of Nobility Act, a law of constitutional status, Austrian citizens were also not entitled to use titles of nobility of foreign origin.

27. In a decision of 26 June 2014 (B 212/2014-17, B 213-215/2014-14) concerning a change of surname initiated by the authorities after fifty-four years of previously accepted use by a person born a German national[1] who had in 1959 additionally acquired Austrian citizenship, and likewise the accepted use by his wife and their children of the same surname, the Constitutional Court referred to its previous decision of 27 November 2003 (see paragraph 26 above) and held that it maintained its position as expressed therein. It considered that the intention embodied in the Abolition of Nobility Act (see paragraphs 22-24 above), given the historical context in which it originated, was to realise the basic statement laid down in Article 7 of the Federal Constitution Act (see paragraph 20 above), according to which privileges of birth or status were excluded for all citizens, to the effect that the nobility and its external privileges were abolished for Austrian citizens without exception. No Austrian citizen should be able to use a name which "could give the impression" that the bearer of the name had any privilege of birth or status.

The Constitutional Court further specified that for Austrian citizens the Abolition of Nobility Act excluded both the acquisition of parts of or additions to names which constituted titles of nobility within the meaning of

[1] In Germany, the nobility was abolished in 1919 by Article 109 of the Weimar Constitution (*Weimarer Reichsverfassung*). Paragraph 2 of this Article provided that former nobiliary particles (such as the prefix "von") could be retained as part of a civil surname.

the Act and its implementing provisions (see paragraph 25 above) and also the continued use thereof after the acquisition of Austrian citizenship by a person for whom such a title of nobility was part of his or her name under a law other than Austrian law.

For these reasons, the authorities had rightly assumed that the "von" in the applicant's name had been automatically removed when he had acquired Austrian citizenship and had only been rectified (*berichtigt*) in 2013. This removal also did not violate Article 8 of the Convention because, in the interests of public order in a democratic society and as an expression of the equality of citizens, it was proportionate to prevent the use of names or parts of names indicating privileges of birth or status. In this context, the Constitutional Court made short references to the Court's judgment in *Bulgakov v. Ukraine* (no. 59894/00, § 43, 11 September 2007) and the judgment of the CJEU of 22 December 2010 in *Sayn-Wittgenstein* (see paragraph 35 below).

28. In another decision, adopted on 1 March 2018 (E 4354/2017-11) and concerning the change of surname initiated by the authorities of a person born a Swiss national[2] who had additionally acquired Austrian citizenship as a minor after legal recognition by her father, the Constitutional Court once again upheld its previous case-law, referring in particular to its decisions of 27 November 2003 (see paragraph 26 above) and 26 June 2014 (see paragraph 27 above). It further repeated that the objective of the Abolition of Nobility Act was precisely to prohibit a name (or part of a name or addition to a name) which could give the impression that its bearer had privileges of birth or status. It was therefore a question of whether the particular name (or the part of or addition to the name) was capable of suggesting the existence of such privileges in the relations between people. It was thus a matter of objective perception for those whom the prohibition of discrimination laid down in Article 7 of the Federal Constitution Act (see paragraph 20 above) sought to protect against unequal treatment on the basis of privileges of birth or status.

The Constitutional Court concluded that the word "von", which was prohibited under section 2(1) of the implementing provisions of the Abolition of Nobility Act (see paragraph 25 above) as a nobiliary particle, was – even if part of a civil surname – in principle capable of "evoking the appearance of a noble origin" and thus corresponding privileges, without it being relevant whether the specific name or family actually had a historical noble connection. In this context, it also referred to the judgment of the CJEU in the case of *Bogendorff von Wolffersdorff* of 2 June 2016 (see paragraph 36 below). With regard to Article 8 of the Convention, the Constitutional Court briefly referred to its decision of 26 June 2014 (see paragraph 27 above).

[2] In Switzerland, all surnames are registered as civil surnames, regardless of whether they indicate or suggest a noble origin.

29. Two subsequent cases concerned the initiation by the authorities of a change to the surname of two minor siblings deriving German citizenship from their mother and Austrian citizenship from their father and who had been given their mother's surname, which included the German name component "zu". In its decisions of 2 March 2020 (E 4590/2019-9) and 10 March 2020 (E 4591/2019-9), the Constitutional Court held that the implementing provisions of the Abolition of Nobility Act (see paragraph 25 above) did not expressly extend the prohibition of the use of the noble signifier "von" to comparable German-language name components. This did not mean, however, that German-language name components with a comparable meaning to "von" were in no way covered by the prohibition under the Abolition of Nobility Act (see paragraphs 22-24 above) and its implementing provisions. Given the objective of the legal provisions in question, name components such as "von und zu" might be covered in their entirety. Therefore, each individual case required an examination of whether a certain name component either actually had a historical connection to nobility or whether the German-language name component, even without a historical connection to actual nobility in the history of the name or the family, gave the impression that its bearer had privileges of birth or status. In such cases, the use of the name component was prohibited. The Constitutional Court reiterated these findings in its decision of 22 September 2021 (E 2110/2021) relating to an Austrian couple with the component "von der" in their surname.

30. In another decision, issued on 2 March 2020 (E 4050/2019-11) and concerning a name component of Portuguese origin ("Nobre de"), the Constitutional Court held that what was decisive in the context of name components of foreign origin was not the German translation but the foreign-language designation. In a subsequent decision of 17 June 2022 (E 4107/2021-10) concerning the same complainant, the Constitutional Court further specified that it was the foreign socio-cultural context which was decisive. The prohibition under the Abolition of Nobility Act was to be applied if there was at least a theoretical possibility that the foreign name element in question denoted an actual noble advantage.

B. Case-law of the Supreme Administrative Court

31. In a decision of 14 July 1954 (VwSlg 3476 A/1954), the Supreme Administrative Court held that if former nobiliary particles were now parts of a civil surname (as, under the Weimar Constitution, they were for people who obtained their name in Germany), those parts of a surname could not be considered "nobiliary particles" within the meaning of the implementing provisions of the Abolition of Nobility Act (see paragraph 25 above). Therefore, their use was legal. This line of reasoning was confirmed by decisions of 11 February 1957 (Zl 2261/56), 18 November 1957 (Zl 1645/57)

and 12 January 1959 (Zl 960/58). In the last-mentioned decision, the Supreme Administrative Court added that "it [was] not permissible to reinterpret parts of a civil surname as a nobiliary particle" and thereby to apply the above-mentioned implementing provisions.

32. In a decision of 17 February 2010 (2008/17/0114) concerning the change of surname of an adult Austrian national adopted by a Czech-German dual national with the name component of "Graf von", the Supreme Administrative Court concurred with the findings of the Constitutional Court of its decision of 27 November 2003 (see paragraph 26 above) and held that the use of former nobiliary particles, be they of Austrian or of foreign origin, was prohibited under the Abolition of Nobility Act (see paragraphs 22-24 above) and its implementing provisions (see paragraph 25 above). The context of the specific case at issue should not be overlooked. In that specific case, the context strongly indicated a reference to nobility.

33. In another decision, adopted on 13 August 2019 (Ra 2019/01/0216-0218) and concerning the change, initiated by the authorities, of the surname of an Austrian national and her two children who had taken the surname of their respective husband and father, a national of both Germany and Switzerland, the Supreme Administrative Court reiterated that it concurred with the new case-law of the Constitutional Court (see paragraphs 27-28 above).

III. EUROPEAN UNION LAW AND PRACTICE

34. Article 21 of the Treaty on the Functioning of the European Union (hereinafter, "the TFEU") provides, in so far as relevant, as follows:

> "Every citizen of the Union shall have the right to move and reside freely within the territory of the Member States, subject to the limitations and conditions laid down in the Treaties and by the measures adopted to give them effect."

35. Interpreting this provision, the CJEU held in *Sayn-Wittgenstein* (C-208/09, judgment of 22 December 2010, EU:C:2010:806, § 95):

> "... Article 21 TFEU must be interpreted as not precluding the authorities of a Member State, in circumstances such as those in the main proceedings, from refusing to recognise all the elements of the surname of a national of that State, as determined in another Member State – in which that national resides – at the time of his or her adoption as an adult by a national of that other Member State, where that surname includes a title of nobility which is not permitted in the first Member State under its constitutional law, provided that the measures adopted by those authorities in that context are justified on public policy grounds, that is to say, they are necessary for the protection of the interests which they are intended to secure and are proportionate to the legitimate aim pursued."

This was a preliminary ruling under Article 267 of the TFEU (former Article 234 of the Treaty establishing the European Community), given on a referral by the Austrian Supreme Administrative Court in the case of an Austrian adult national resident in Germany who had, through adoption by a

German national, acquired the civil surname "Fürstin von Sayn-Wittgenstein". The Head of Government of the Province of Vienna (*Landeshauptmann von Wien*) had decided to rectify the surname, which had been entered in the Austrian register of civil status, to "Sayn-Wittgenstein".

36. In the subsequent case of *Bogendorff von Wolffersdorff* (C-438/14, judgment of 2 June 2016, EU:C:2016:401, § 84), the CJEU further held that:

> "... Article 21 TFEU must be interpreted as meaning that the authorities of a Member State are not bound to recognise the name of a citizen of that Member State when he also holds the nationality of another Member State in which he has acquired that name which he has chosen freely and which contains a number of tokens of nobility, which are not accepted by the law of the first Member State, provided that it is established, which it is for the referring court to ascertain, that a refusal of recognition is, in that context, justified on public policy grounds, in that it is appropriate and necessary to ensure compliance with the principle that all citizens of that Member State are equal before the law."

THE LAW

I. JOINDER OF THE APPLICATIONS

37. Having regard to the similar subject matter of the applications, the Court finds it appropriate to examine them jointly in a single judgment (Rule 42 § 1 of the Rules of Court).

II. ALLEGED VIOLATION OF ARTICLE 8 OF THE CONVENTION

38. The applicants complained that the automatic removal by the authorities of a part of the first, second and fourth applicants' surnames, namely the prefix "von", under the Abolition of Nobility Act and the refusal under the same Act to issue a new identity card with that surname to the third applicant violated their right to respect for their private and family life as provided in Article 8 of the Convention, which, in so far as relevant, reads as follows:

> "1. Everyone has the right to respect for his private and family life ...
>
> 2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others."

A. Admissibility

39. The Court notes at the outset that issues concerning an individual's first name and surname fall under the right to private life and family life (see, among many other authorities, *Henry Kismoun v. France*, no. 32265/10, § 25,

5 December 2013, and *Mentzen v. Latvia* (dec.), no. 71074/01, ECHR 2004-XII, both with further references). The Court has held that as a means of personal identification and of linking to a family, a person's name concerns his or her private and family life. The fact that society and the State have an interest in regulating the use of names does not preclude this, since these public-law aspects are compatible with private life conceived of as including the right to establish and develop relationships with other human beings, in professional or business contexts as in others (see *Burghartz v. Switzerland*, 22 February 1994, § 24, Series A no. 280-B, and *Cusan and Fazzo v. Italy*, no. 77/07, § 55, 7 January 2014, with further references). Furthermore, the Court has found that the application in specific cases of some laws relating to the registration of names struck a proper balance (see, for example, *Guillot v. France*, 24 October 1996, *Reports of Judgments and Decisions* 1996-V), while the application in other cases did not (see, for example, *Johansson v. Finland*, no. 10163/02, 6 September 2007).

40. Turning to the circumstances of the present case, it is not disputed by the parties (see paragraph 46 below), and the Court sees no reason to hold otherwise, that Article 8 of the Convention is applicable, given that the facts in question concern a dispute surrounding the applicants' surnames, an issue which the Court has already held falls under the notions of private life and family life (see paragraph 39 above).

41. The Court further notes that this complaint is neither manifestly ill-founded nor inadmissible on any other grounds listed in Article 35 of the Convention. It must therefore be declared admissible.

B. Merits

1. Submissions by the parties

(a) The applicants

42. The applicants claimed that the "rectification" and automatic removal of a part of the first, second and fourth applicants' surnames and the refusal to issue a new identity card to the third applicant with his original surname constituted an interference with their right to respect for their private and family life which could not be justified under Article 8 § 2 of the Convention as it had not been proportionate. Their surname had existed for some fifty years and had not been of noble origin, and its change had not served the purpose of maintaining public order – quite the contrary – or of protecting the rights of others.

43. In particular, the applicants insisted that they were not of noble origin and that their surname was a fantasy name which had come about as a result of the turmoil of the Second World War and the Cuban Revolution (see paragraph 6 above). The prefix "von" in their surname was therefore not a title, or particle, of nobility. Consequently, the Abolition of Nobility Act (see

paragraphs 22-24 above) and its implementing provisions (see paragraph 25 above) could not be applicable to the applicants. The change of their surname as initiated by the authorities and the refusal to issue a new identity card with the original name had therefore lacked a legal basis, and for that reason alone constituted a breach of Article 8 § 2 of the Convention. In the applicants' view, the domestic authorities and courts had deliberately discounted the true bourgeois, that is, non-noble origin of their surname and declared it irrelevant, although a different interpretation of the relevant legal provisions, which they had called for from the beginning, could have easily been achieved by distinguishing between the prefix "von" as a simple name component and "von" as an indicator of nobility.

44. Furthermore, similarly to the situation in the case of *Daróczy v. Hungary* (no. 44378/05, 1 July 2008), the first and fourth applicants had borne their surname since their birth, that is, for more than forty years, in all aspects of public life, having been issued with several official documents with that surname which had previously never been called into question. If their surname had indeed been contrary to domestic legislation, the authorities could have refused to enter it in the Central Civil Status Register. Similar considerations applied to the second and third applicants, whose use of the surname had been accepted for eighteen and sixteen years respectively.

45. The applicants also pointed out that should they continue to use their original surname with the prefix "von", they could be subjected to sanctions pursuant to section 2 of the Abolition of Nobility Act (see paragraph 23 above). They had therefore been forced to change their entire professional and social environments, to have documents reissued and, in the case of the fourth applicant, who held dual citizenship (see paragraph 5 *in fine* above), to bear two different surnames. Moreover, some members of the same family now had different surnames, like the first applicant's children, who had been issued with passports bearing their original surname with the prefix "von" (see paragraphs 17-18 above) and the second and fourth applicants' daughters, whose surname had not been changed (see paragraph 19 above). In conclusion, the applicants distinguished their case, which concerned a surname not of noble origin, from that examined by the CJEU concerning the originally noble family of Sayn-Wittgenstein (see paragraph 35 above) and emphasised that their name had presented no actual threat to the public interest.

(b) The Government

46. The Government did not dispute the applicability of Article 8 of the Convention to the present case and argued that it was not relevant whether the change of the applicants' surname initiated by the authorities and the refusal to issue a new identity card, respectively, constituted an interference, as any such interference would in any event have been in accordance with the

law, pursuing legitimate aims for the purposes of Article 8 § 2 of the Convention and being necessary and proportionate.

47. In that context, the Government referred to the Abolition of Nobility Act (see paragraphs 22-24 above) and its implementing provisions (see paragraph 25 above), as well as to the case-law of the Constitutional and Supreme Administrative Courts (see paragraphs 26-33 above), as constituting a sound legal basis for the purposes of the Convention. They further stressed the equal treatment of all as a legitimate aim, as also laid down in Article 7 of the Federal Constitution Act (see paragraph 20 above), and the importance of the Abolition of Nobility Act for the establishment of democratic equality, since it had served public safety in a democratic society by banning parts of names which expressed privileges of birth or status and/or their transfer. Furthermore, the contested measure had been necessary in the interest of public safety in a democratic society, as well as an expedient and proportionate means of achieving the above-mentioned aim. The Government were of the opinion that the view of the highest domestic courts had also been confirmed by the CJEU and referred to the judgments in *Sayn-Wittgenstein* of 22 December 2010 and *Bogendorff von Wolffersdorff* of 2 June 2016 (see paragraphs 35-36 above).

48. The Government concluded that the domestic authorities and courts had acted within the margin of appreciation which they enjoyed in the sphere under review when rectifying the first, second and fourth applicants' surname from "von Künsberg Sarre" to "Künsberg Sarre" and when refusing to issue a new identity card to the third applicant with the surname "von Künsberg Sarre", given that the use of the prefix "von" was likely to give the impression of a noble origin, especially in view of the linguistic and historical context in Austria. The applicants' arguments in respect of the origin of their surname (see paragraph 43 above) had been reviewed. The fact that the applicants had been using it for many years could not change the outcome. Lastly, the Government contended that the facts in the present case differed substantially from those underlying the Court's judgment in *Daróczy* (cited above), which concerned the rectification of a (non-noble) surname, but not the rectification of a name component likely to give the impression of a title of nobility or to suggest that its holder had privileges of birth or status.

2. The Court's assessment

(a) General principles established in the Court's case-law

49. The essential object of Article 8 of the Convention is to protect the individual against arbitrary interference by public authorities. Any interference under the first paragraph of this provision must be justified in terms of the second paragraph, namely as being "in accordance with the law" and "necessary in a democratic society" in relation to one or more of the legitimate aims listed therein. According to settled case-law, the notion of

necessity implies that the interference corresponds to a pressing social need and, in particular, that it is proportionate to one of the legitimate aims pursued by the authorities (see, for example, *Tysiąc v. Poland*, no. 5410/03, § 109, ECHR 2007-I, and *Olsson v. Sweden (no. 1)*, 24 March 1988, § 67, Series A no. 130).

50. Furthermore, Article 8 does not merely compel the State to abstain from such interference: in addition to this primarily negative undertaking, there may be positive obligations inherent in effective respect for private and family life (see *Lozovyye v. Russia*, no. 4587/09, § 36, 24 April 2018, and *Kroon and Others v. the Netherlands*, 27 October 1994, § 31, Series A no. 297-C). These positive obligations may involve the adoption of measures designed to secure respect for private life even in the sphere of relations between individuals, including both the provision of a regulatory framework of adjudicatory and enforcement machinery protecting individuals' rights and the implementation, where appropriate, of specific measures (see, among other authorities, *Tysiąc*, cited above, § 110, and *X and Y v. the Netherlands*, 26 March 1985, § 23, Series A no. 91).

51. However, the boundaries between the State's positive and negative obligations under Article 8 of the Convention do not lend themselves to precise definition (see *Kroon and Others*, cited above, § 31). The applicable principles are nonetheless similar. In both the negative and positive contexts, regard must be had to the fair balance that has to be struck between the competing interests of the individual and of the community as a whole; and in both contexts, the State enjoys a certain margin of appreciation (see, among other authorities, *Keegan v. Ireland*, 26 May 1994, § 49, Series A no. 290, and *Różański v. Poland*, no. 55339/00, § 61, 18 May 2006).

52. The Court further reiterates that names retain a crucial role in a person's identification. However, even if there may exist genuine reasons prompting an individual to wish to change his or her name, the Court has accepted that legal restrictions on such a possibility may be justified in the public interest; for example, in order to ensure accurate population registration or to safeguard the means of personal identification and of linking the bearers of a given name to a family (see *Daróczy*, cited above, § 26, with further references; *Johansson*, cited above, § 35; and *Stjerna v. Finland*, 25 November 1994, § 39, Series A no. 299-B).

53. The Court has also already held that in the particular sphere under consideration the Contracting States enjoy a wide margin of appreciation. The Court's task is not to substitute itself for the competent authorities in determining the most appropriate policy for regulating changes of names, but rather to review under the Convention the decisions that those authorities have taken in the exercise of their power of appreciation (see *Daróczy*, cited above, § 27, with further references).

54. Previous cases decided upon by the Court relating to changes in surnames and forenames can be roughly grouped into four categories. The

first category of such cases concerns refusals to accept a surname chosen on marriage or at birth (see *Losonci Rose and Rose v. Switzerland*, no. 664/06, 9 November 2010, concerning a refusal to accept a surname chosen on marriage of a binational couple; *Heidecker-Tiemann v. Germany* (dec.), no. 31745/02, 6 May 2008, and *Freifrau von Rehlingen and Others v. Germany* (dec.), no. 33572/02, 6 May 2008, both concerning a refusal to accept a chosen compound surname for children; *Ünal Tekeli v. Turkey*, no. 29865/96, ECHR 2004-X (extracts), concerning a refusal to accept a maiden name as a surname after marriage; *G.M.B. and K.M. v. Switzerland* (dec.), no. 36797/97, 27 September 2001, and *Cusan and Fazzo*, cited above, concerning a refusal to accept the mother's surname as the surname for the child; and *Burghartz*, cited above, concerning a refusal to accept a surname chosen on marriage) or a forename chosen at birth (see *Johansson*, cited above, concerning a refusal on the grounds that the spelling did not comply with domestic naming practice, and *Guillot*, cited above, concerning a refusal to register a forename chosen at birth).

55. The second category of cases concerns refusals to accept a requested name change (see *Aktaş and Aslaniskender v. Turkey*, nos. 18684/07 and 21101/07, 25 June 2019, concerning a refusal to accept a change to a surname on the grounds that it was not part of the Turkish language; *Henry Kismoun*, cited above; *Garnaga v. Ukraine*, no. 20390/07, 16 May 2013, concerning a refusal to accept the change of patronymic name; *Güzel Erdagöz v. Turkey*, no. 37483/02, 21 October 2008, concerning a refusal to allow a change of forename from the Turkish to the Kurdish version because the latter did not exist in the Turkish dictionary; and *Stjerna*, cited above).

56. The third category concerns a change of surname initiated by the authorities (see *Daróczy*, cited above, where the authorities changed a surname on their own initiative after fifty-four years of previously accepted use).

57. The fourth category of cases concerns the spelling of names (see *Bulgakov v. Ukraine*, no. 59894/00, 11 September 2007, concerning the spelling of the forename and patronymic in official documents; *Mentzen*, cited above, concerning the spelling of a new surname on marriage to a foreigner; and *Siskina and Siskins v. Latvia* (dec.), no. 59727/00, 8 November 2001, concerning the spelling of a surname in a passport).

(b) Application of the above principles to the present case

58. The present case falls into the third category of cases, as it concerns the change of a surname initiated by the authorities after long periods of accepted use.

59. Turning to the circumstances of this case, the Court notes that it was on the initiative of the authorities that the surnames of the first, second and fourth applicants were changed after long periods of accepted use. The first and fourth applicants received their surname from their parents at birth and

used it for more than forty years. The second applicant received it through marriage with the first applicant and carried it for some eighteen years (see paragraph 6 above). The use of this surname had never been contested before the decisions of the Municipality of Graz of 14 and 20 September 2018 and was always considered legal, despite the Abolition of Nobility Act of 1919 (see paragraphs 7-8 and 44 above).

60. As regards the third applicant, it is somewhat unclear whether his surname was legally changed. The applicant contended that no name change procedure had been initiated in respect of him and that therefore the finding of the Supreme Administrative Court in its decision of 14 November 2019 that his appeal had already been decided, referring to its decision of 15 October 2019 (see paragraph 16 above), had been wrong because the decision of 15 October 2019 only concerned the first, second and fourth applicants. While the Government provided no comments on this aspect, it is clear that, at the very least, the authorities refused to issue the third applicant with a new identity card with the surname he had carried since his birth – that is, for some sixteen years (see paragraph 9 above).

61. As indicated in paragraph 58 above, the present case belongs to the third category of name cases described in paragraphs 54-57 above. The Court thus considers it appropriate to approach the case in the context of the State's negative obligations (see paragraphs 50-51 above). It must therefore examine whether the measure complained of amounted to an interference and if so, whether it was "in accordance with the law" and "necessary in a democratic society": that is, whether it corresponded to a pressing social need and was proportionate to one of the legitimate aims pursued by the authorities (see *Vavřička and Others v. the Czech Republic* [GC], nos. 47621/13 and 5 others, §§ 265 and 273, 8 April 2021).

(i) Whether there was an interference

62. The Court notes at the outset that the applicants were not allowed to bear the surnames they wished, which they had used for many years. It therefore accepts that this amounted to an interference with their right to respect for their private and family life (compare *Daróczy*, cited above, § 28).

(ii) Whether the interference was "in accordance with the law"

63. As regards the legal basis for the interference, the applicants contended that the forced change of their surnames, or the refusal to issue a new identity card in the case of the third applicant, had not been lawful, as their surname was not of noble origin and therefore the Abolition of Nobility Act and its implementing provisions were not applicable to them (see paragraph 43 above). The Government disagreed, referring to specific provisions of the Abolition of Nobility Act and its implementing provisions,

as well as the case-law of the Constitutional and Supreme Administrative Courts (see paragraph 47 above).

64. The Court reiterates that an impugned interference must have some basis in domestic law, which law must be adequately accessible and be formulated with sufficient precision to enable those to whom it applies to regulate their conduct and, if need be with appropriate advice, to foresee, to a degree that is reasonable in the circumstances, the consequences which a given action may entail (see *Vavřička and Others*, cited above, § 266, with further references). The term "law" as it appears in the phrases "in accordance with the law" and "prescribed by law" in Articles 8 to 11 of the Convention, is to be understood in its "substantive" sense, not its "formal" one. It thus includes, *inter alia*, "written law", not limited to primary legislation but including also legal acts and instruments of lesser rank. In sum, the "law" is the provision in force as the competent courts have interpreted it (ibid., § 269, with further references).

65. As regards the present case, the Court observes that the domestic authorities and courts relied on the Abolition of Nobility Act and its implementing provisions (see paragraphs 7-10, 13 and 15-16 above). On the one hand, the Abolition of Nobility Act prohibits the use of noble titles (*Adelsbezeichnungen, Titel*) and dignities (*Würden*) (see paragraphs 22-23 above), while, on the other hand, its implementing provisions prohibit the use of the nobiliary particle "von" (*Adelszeichen "von")* (see paragraph 25 above). While these provisions might at first sight appear sufficiently precise, a question nonetheless remains as regards the relationship between them, in particular in view of the changes which occurred in domestic case-law from 2014 onwards (see paragraphs 27-33 above) and which seems to have led to a lack of clarity. This, in turn, seems to have had the effect that the application of the provisions in question was not coherent and not foreseeable in practice, as also demonstrated by the present case (see also paragraphs 68-71 below). While the Court has certain doubts whether the legislation as interpreted by the domestic courts fulfilled the requirements of "quality of law" within the meaning of the Convention (see paragraph 64 above), it considers that it can leave this question open, as the disputed interference was in any event not "necessary in a democratic society" – that is, it was not proportionate to the aim pursued – for the below reasons.

(iii) Whether the interference pursued a legitimate aim

66. The Court accepts the Government's argument that, in regulating certain aspects of names, the Abolition of Nobility Act and its implementing provisions (see paragraphs 22-25 above) serve the purpose of ensuring equal treatment of all (see paragraph 47 above). The interference with the applicants' Article 8 rights thus pursued the legitimate aim of protection of the rights and freedoms of others.

(iv) Whether the interference was "necessary in a democratic society"

67. In weighing up the different interests at stake, consideration should be given, on the one hand, to the applicants' right to bear a name, and, on the other hand, to the public interest in regulating the choice of names (see *Daróczy*, cited above, § 28). In this respect, the Court emphasises the (very) long periods during which the applicants were allowed to bear their original surname, namely forty-three, eighteen, sixteen and forty-nine years. They undoubtedly identified themselves personally with that surname, having derived it from their parents, having borne it for their entire lives until September 2018 (in the case of the first, third and fourth applicants) or at least, in the second applicant's case, for a substantial part of her adult life, and having established and developed relationships with others in their private and, at least for the adult applicants, professional contexts (see the case-law quoted in paragraph 39 above).

68. It was only in 2017 and 2018 that the authorities began to contest the applicants' surnames (see paragraphs 7-9 above). In other words, no concerns or doubts appear to have been expressed by the authorities during, for example, occasions requiring entries in the Civil Status Register such as marriage and the birth of children, or the issuing of previous official documents (compare *Daróczy*, cited above, § 30). In this context, the Court stresses that the Abolition of Nobility Act dates from 1919, long before the applicants were even born, and that despite this, the authorities did not deem the provisions of that Act to be applicable to them during (very) long periods of time. Indeed, according to long-standing case-law of the Supreme Administrative Court originating in the 1950s until 2014, former nobiliary particles which had become parts of a civil surname abroad were not considered "nobiliary particles" within the meaning of the implementing provisions of the Abolition of Nobility Act, nor was it permissible to reinterpret parts of a civil surname as a "nobiliary particle" and thereby to apply these implementing provisions (see paragraph 31 above).

69. It appears that the change in the administrative practice and, consequently, in the authorities' attitude towards the applicants' surnames, occurred only after the Constitutional Court departed from its previous case-law, starting with its decision of 26 June 2014 (see paragraph 27 above). This change seems in turn to have been prompted by the judgment of the CJEU of 22 December 2010 in *Sayn-Wittgenstein* (see paragraph 35 above). It should be stressed, however, that the latter judgment considered the question at issue only from the perspective of Article 21 of the Treaty on the Functioning of the European Union (freedom of movement within the European Union – see paragraph 34 above), but not from the perspective of Article 8 of the Convention. The fundamental rights issue of "private and family life", which includes a proportionality test under the Convention standards relating to Article 8, was not addressed. Consequently, that CJEU judgment does not

appear pertinent to the present context, which concerns questions relating to Article 8 of the Convention.

70. Furthermore, the Court also notes the applicants' argument that the title of nobility "von" should be distinguished from the prefix "von" as a name component (see paragraph 43 above). This also seems to have been the position of the Supreme Administrative Court when giving the first domestic decisions in respect of this issue in the 1950s (see paragraph 31 above). The Government referred to the new case-law of the Constitutional Court and argued that the applicants' allegedly incorrect use during (very) long periods of time of the disputed surname had prejudiced the democratic equality and public safety of the Austrian State (see the Government's argument summarised in paragraph 47 above). The domestic courts did not explain why the prohibition of the use of that surname was necessary to maintain democratic equality and public safety. The failure to engage in this argument is all the more problematic after such long periods of time during which such a prohibition was not deemed necessary in a democratic society (compare *Daróczy*, cited above, § 30). The Court has already held that formal reference to a legitimate aim cannot, in the absence of any actual prejudice to the rights of others, justify a restriction of a person's right to bear or change a name (ibid., § 32).

71. Lastly, the Court cannot but note with concern that, according to the applicants (see paragraph 45 above), not all family members now carry the same surname, thereby disrupting their joint, or common, self-identification with that surname. It appears that neither the two daughters of the second and fourth applicants, who are also the sisters of the third applicant, nor the children of the first applicant have had their surnames changed (see paragraphs 17-19 above). This further undermines the Government's argument that the change in surname was necessary for democratic equality and public safety (see paragraph 70 above). It is also indicative of an inconsistent application of the somewhat ambiguous underlying domestic legislation (see paragraph 65 above) by the relevant authorities, given that the daughter of the first applicant nevertheless received a passport with the original surname eight months after the surname of her father, the first applicant, had been rectified by the authorities (see paragraph 18 above). Similarly, the third applicant had his request to be issued with an identity card refused because of his "wrong" surname in 2017 (see paragraph 9 above), while his cousins subsequently received their passports with exactly that surname in 2018 and 2019 (see paragraphs 17 and 18 above). In this context, the Court is also mindful of the fact that the continued use of the original surname renders the applicants, at least theoretically, liable to prosecution and punishment by arrest for up to six months (see paragraph 23 above).

72. The Court reiterates that while it is true that States enjoy a wide margin of appreciation concerning the regulation of names (see the case-law quoted in paragraph 53 above), they cannot disregard its importance in the

lives of private individuals: names are central elements of self-identification and self-definition. Imposing a restriction on one's right to bear or change a name without justified and relevant reasons is not compatible with the purpose of Article 8 of the Convention, which is to protect individuals' self-determination and personal development (see *Daróczy*, cited above, § 32).

73. The foregoing considerations are sufficient to enable the Court to conclude that, firstly, the change initiated by the authorities of the applicants' original surnames after long periods of previously accepted use and, secondly, the refusal to issue an identity card with that surname were not proportionate to the aim pursued by the authorities. Therefore, by discounting the applicants' interest in keeping a surname with which they identified themselves and which they had borne for (very) long periods of time, the domestic authorities and courts failed to strike a fair balance with the applicants' right to respect for their private and family life.

74. There has accordingly been a violation of Article 8 of the Convention.

III. ALLEGED VIOLATION OF ARTICLE 14 OF THE CONVENTION

75. The applicants complained of discriminatory treatment on account of the changes to their surnames imposed upon them by the authorities, given that other prefixes such as "van", "de" and "von der" were allegedly excluded from the scope of application of the Abolition of Nobility Act without objective justification, in breach of Article 14 read in conjunction with Article 8 of the Convention.

Article 14 reads as follows:

> "The enjoyment of the rights and freedoms set forth in [the] Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status."

76. Having regard to the facts of the case, the submissions of the parties, and its findings under Article 8 of the Convention (see in particular paragraphs 61-74 above), the Court considers that it has examined the main legal questions raised in the present application, and that there is no need to give a separate ruling on the admissibility and merits of the complaint under Article 14 read in conjunction with Article 8 of the Convention (see *Centre for Legal Resources on behalf of Valentin Câmpeanu v. Romania* [GC], no. 47848/08, § 156, ECHR 2014, with further references).

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

77. Article 41 of the Convention provides:

> "If the Court finds that there has been a violation of the Convention or the Protocols thereto, and if the internal law of the High Contracting Party concerned allows only

partial reparation to be made, the Court shall, if necessary, afford just satisfaction to the injured party."

78. The applicants claimed various amounts in respect of pecuniary and non-pecuniary damage, as well as for the costs and expenses incurred before the domestic courts.

79. The Government asserted that the claims had been submitted out of time.

80. The Court notes that the applicants did not submit their claims for just satisfaction within the time allowed for that purpose (Rule 60 § 2 of the Rules of Court). Given that the present case does not disclose exceptional circumstances which call for a just-satisfaction award, notwithstanding the absence of a properly made "claim" (see, *a contrario* and *mutatis mutandis*, *Nagmetov v. Russia* [GC], no. 35589/08, §§ 56-92, 30 March 2017), the Court is not called upon to make any award under Article 41 of the Convention.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Decides* to join the applications;

2. *Declares* the complaint under Article 8 of the Convention admissible;

3. *Holds* that there has been a violation of Article 8 of the Convention;

4. *Holds* that there is no need to examine the admissibility and merits of the complaint under Article 14 read in conjunction with Article 8 of the Convention.

Done in English, and notified in writing on 17 January 2023, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Ilse Freiwirth	Tim Eicke
Deputy Registrar	President

APPENDIX

List of cases:

No.	Application no.	Case name	Lodged on	Applicant Year of Birth Place of Residence
1.	19475/20	Künsberg Sarre v. Austria	23/04/2020	**Maximilian KÜNSBERG SARRE** **1975** **Perchtoldsdorf, Austria**
2.	20149/20	Künsberg Sarre v. Austria	07/05/2020	**Michaela KÜNSBERG SARRE** **1969** **Fellbach, Germany**
3.	20153/20	Künsberg Sarre v. Austria	07/05/2020	**Nikolaus KÜNSBERG SARRE** **2001** **Fellbach, Germany**
4.	20157/20	Künsberg Sarre v. Austria	07/05/2020	**Thomas Martin KÜNSBERG SARRE** **1969** **Fellbach, Germany**