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COUR EUROPÉENNE DES DROITS DE L'HOMME

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Discriminatory treatment of a binational couple in the spouses' choice of family name

In today's Chamber judgment in the case of Losonci Rose and Rose v. Switzerland (application no. 664/06), which is not final,[1] the European Court of Human Rights held, unanimously, that there had been:

A violation of Article 14 (prohibition of discrimination) read in conjunction with Article 8 (right to respect for private and family life) of the European Convention on Human Rights.

The case concerns the inability of a husband and wife to keep their own surnames after marriage.

Principal facts

The applicants are Laszlo Losonci Rose, a Hungarian national, and Iris Rose, his wife, who has joint Swiss and French nationality. They were born in 1949 and 1955 respectively and live in Uetendorf (Canton of Berne, Switzerland).

The applicants, who were intending to get married, asked to keep their own surnames rather than choose a double-barrelled surname for one of them. They cited the difficulties in changing name in Hungarian and French law and the fact that the second applicant, who held an important post in the federal administration, was well known under her maiden name. They also pointed out that they intended to live together in Switzerland following their marriage. The first applicant accordingly expressed the wish for his surname to be governed by Hungarian law – as his national law – which entitled him to use his surname on its own.[2]

After their request and their subsequent appeal were rejected, the applicants decided that, in order to be able to marry, they would take the wife's surname as the "family name" for the purposes of Swiss law. They were married on 23 July 2004 and their surnames were entered in the register of births, deaths and marriages as "Rose" for the second applicant and "Losonci Rose, né Losonci" for the first applicant, who requested after the marriage that the double-barrelled surname he had "provisionally" chosen be replaced in the register by the single surname "Losonci", as permitted under Hungarian law, without any change to his wife's surname.

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[1] Under Articles 43 and 44 of the Convention, Chamber judgments are not final. During the three-month period following a judgment's delivery, any party may request that the case be referred to the Grand Chamber of the Court. If such a request is made, a panel of five judges considers whether the case deserves further examination. In that event, the Grand Chamber will hear the case and deliver a final judgment. If the referral request is refused, the Chamber judgment will become final on that day. Under Article 28 of the Convention, judgments delivered by a Committee are final.

Once a judgment becomes final, it is transmitted to the Committee of Ministers of the Council of Europe for supervision of its execution. Further information about the execution process can be found here: www.coe.int/t/dghl/monitoring/execution

[2] Under section 37 of the Federal Private International Law Act of 18 December 1987, the name of a person residing principally in Switzerland is governed by Swiss law, but persons with their principal residence abroad may request that their name be governed by their national law.

On 24 May 2005 the Federal Court held that the first applicant's request to use his wife's surname as his family name had rendered obsolete the option of having his name governed by Hungarian law. Furthermore, as to the applicants' argument that the refusal of their choice of name was unconstitutional, the Federal Court, while acknowledging that the legal provisions in question, taken as a whole, contravened the principle of equal treatment of the sexes, held that it was unable to introduce amendments that had already been rejected by the legislature to the law governing names. An amendment aimed at bringing the law in this area into line with the Constitution had been rejected on 22 June 2001 by the Federal Parliament.

Complaints, procedure and composition of the Court

Relying on Articles 8 and 14, the applicants complained that they had been discriminated against on grounds of sex in the enjoyment of their right to respect for their private and family life. They argued that, if their sexes had been reversed, the husband's surname would automatically have become the family name and the wife would have been able to have her choice of name governed by her national law.

The application was lodged with the European Court of Human Rights on 16 December 2005.

Judgment was given by a Chamber of seven judges, composed as follows:

Nina **Vajić** (Croatia), *President*,
Anatoly **Kovler** (Russia),
Elisabeth **Steiner** (Austria),
Khanlar **Hajiyev** (Azerbaijan),
Dean **Spielmann** (Luxembourg),
Giorgio **Malinverni** (Switzerland),
George **Nicolaou** (Cyprus)*, Judges*,

and also André **Wampach**, *Deputy Section Registrar.*

Decision of the Court

Article 14 read in conjunction with Article 8

The Swiss courts had held that the first applicant could not have his choice of name governed by his national law, which would have enabled him to keep his own surname after marriage. The applicants could claim to be the victims of a difference in treatment between people in similar situations since, in the case of a Swiss man and a woman of foreign origin, Swiss law allowed the woman's surname to be governed by her national law.

The Swiss authorities claimed to have pursued the legitimate aim of reflecting family unity by means of a single "family name". Although the Court emphasised the discretion enjoyed by the States which had ratified the Convention in taking measures to reflect family unity, it reiterated that only compelling reasons could justify a difference in treatment on the ground of sex alone.

A consensus was emerging within the Council of Europe's member States as regards equality between spouses in the choice of family name, and the activities of the United Nations were heading towards recognition of the right of each married partner to keep his or her own surname or to have an equal say in the choice of a new family name.

However, the first applicant had been prevented from keeping his own surname after marriage, which he could have done had the applicants' sexes been reversed. The Court considered that the Federal Court's finding that it was unable to introduce amendments that had previously been rejected by Parliament could not have any bearing on Switzerland's international responsibility under the Convention. Nor did the Court share the Government's view that the first applicant had not suffered any serious disadvantage. It reiterated that a person's name, as the main means of personal identification within society, was one of the core aspects to be taken into consideration in relation to the right to respect for private and family life.

Accordingly, since the justification put forward by the Government did not appear reasonable and the difference in treatment had been discriminatory, the Court concluded that the rules in force in Switzerland gave rise to discrimination between binational couples according to whether the man or the woman had Swiss nationality, and that there had therefore been a violation of Article 14 read in conjunction with Article 8.

Article 41

By way of just satisfaction, the Court held that Switzerland was to pay the applicants 10,000 euros (EUR) in respect of non-pecuniary damage and EUR 4,515 for costs and expenses.

The judgment is available only in French.

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