Information Note on the Court's case-law No. 135

November 2010

Losonci Rose and Rose v. Switzerland - 664/06

Judgment 9.11.2010 [Section I]

Article 14

Discrimination

Discrimination with regard to binational couple's choice of surname: *violation*

Facts – The law governing surnames in Switzerland is based on the principle that married couples share a single family name, which is automatically the husband's surname unless the couple make a joint application to use the wife's surname. Married persons of foreign origin may request to have their surname governed by their national law.

The applicants are a Hungarian national and his wife, a Swiss national. Before getting married, they notified the registry of births, deaths and marriages that they intended to keep their own surnames rather than choose a double-barrelled surname for one of them. After their request was refused by the authorities, they decided that, in order to be able to marry, they would take the wife's surname as the family name. Following the marriage the first applicant requested, in accordance with his national law, that the double-barrelled surname he had provisionally chosen be replaced in the register by his original surname alone, without any change to his wife's surname. The Federal Court rejected the request, holding that the first applicant's previous decision to take his wife's surname as his family name meant that his wish to have his name governed by Hungarian law was now invalid. In the applicants' submission, such a situation could not have arisen if their sexes had been reversed, since the husband's surname would automatically have become the family name and the wife would have been free to have her choice of surname governed by her national law.

Law – Article 14 in conjunction with Article 8: Although in the case of a Swiss man and a woman of foreign origin, the woman could choose to have her surname governed by her national law, such a choice was not possible in the case of a Swiss woman marrying a man of foreign origin where the couple chose the woman's surname as their family name, as the applicants had done. They could therefore claim to be the victims of a difference in treatment between people in similar situations. According to the national authorities, the interference in question had pursued the legitimate aim of reflecting family unity by means of a single family name. However, as regards the measures that could be taken in this sphere, only compelling reasons could justify a difference in treatment on the ground of sex. A consensus was emerging within the Council of Europe's member States regarding 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, although he could have done so had the applicants' sexes been reversed. Moreover, it could not be said that the first applicant had suffered no serious disadvantage, since 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, the justification put forward by the Government did not appear reasonable and the difference in treatment had been discriminatory. It followed that the rules in force in the respondent State gave rise to discrimination between binational couples according to whether the man or the woman was a national of that State.

Conclusion: violation (unanimously).

Article 41: EUR 10,000 to the two applicants jointly in respect of non-pecuniary damage.
