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

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ECHR 320 (2021)
26.10.2021

# Automatic imposition of surname order, paternal followed by maternal, when parents disagree, is discriminatory

In today's **Chamber** judgment[1] in the case of León Madrid v. Spain (application no. 30306/13) the European Court of Human Rights held, unanimously, that there had been:

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

The case concerned the applicant's request to reverse the order of the surnames under which her minor daughter (born in 2005) was registered. At the relevant time Spanish law provided that in the event of disagreement between the parents, the child would bear the father's surname followed by that of the mother. The applicant argued that this regulation was discriminatory.

The automatic nature of the application of the law at the relevant time – which had prevented the domestic courts from taking account of the particular circumstances of the case at hand – could not, in the Court's view, be validly justified under the Convention. While the rule that the paternal surname should come first, in cases where the parents disagreed, could prove necessary in practice and was not necessarily incompatible with the Convention, the inability to obtain a derogation had been excessively stringent and discriminatory against women. In addition, while placing the paternal surname first could serve the purpose of legal certainty, the same purpose could be served by having the maternal surname in that position. The reasons given by the Government had not therefore been sufficiently objective and reasonable in order to justify the difference in treatment imposed on the applicant.

## Principal facts

The applicant, Josefa León Madrid, is a Spanish national who was born in 1969 and lives in Palma de Mallorca (Spain).

Between 2004 and 2005 the applicant had a relationship with J.S.T.S. and became pregnant. According to the applicant, J.S.T.S. insisted that she terminate the pregnancy, which led her to cut off all contact with him as she wished to keep the baby. In 2005 she gave birth to a daughter, who was entered in the register of births with the two surnames (paternal and maternal) used by her mother.

In 2006 J.S.T.S. brought a non-marital paternity suit, which was opposed by the applicant. At the end of these proceedings, in which the child's biological paternity was established, the judge decided that the child would bear the surname of the father followed by that of the mother. The applicant unsuccessfully challenged this decision before the higher courts. The domestic proceedings ended in 2012.

At the relevant time Spanish law (Article 194 of the Regulation implementing the Law on the registration of births, marriages and deaths) provided that in the event of disagreement between the parents, the child would bear the father's surname followed by that of the mother. Before the

1. Under Articles 43 and 44 of the Convention, this Chamber judgment is not final. During the three-month period following its 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.
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.

European Court of Human Rights the applicant argued that this regulation was discriminatory and that the order of surnames should take into account the particular circumstances of each case.

## Complaints, procedure and composition of the Court

The applicant relied in particular on Article 14 (prohibition of discrimination) in conjunction with Article 8 (right to respect for private and family life) of the Convention.

The application was lodged with the European Court of Human Rights on 24 April 2013.

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

Georges **Ravarani** (Luxembourg), *President*,
Georgios A. **Serghides** (Cyprus),
María **Elósegui** (Spain),
Darian **Pavli** (Albania),
Anja **Seibert-Fohr** (Germany),
Peeter **Roosma** (Estonia),
Andreas **Zünd** (Switzerland),

and also Milan **Blaško**, *Section Registrar.*

## Decision of the Court

### Article 14 (prohibition of discrimination) in conjunction with Article 8

The Court noted that Article 194 of the Regulation implementing the Law on the registration of births, marriages and deaths had been amended by Law no. 20/2011, which provided that in the event of disagreement between the parents it would be for the "civil status judge" to decide on the order of the child's surnames, taking account of the child's best interests as the primary consideration. However, those new provisions were not applicable to the applicant's daughter, who was now 16 years old. The automatic application of the previous legislation had not allowed the judge to take into consideration the applicant's complaints based on the concrete circumstances of the case; for example, J.S.T.S.'s initial insistence that she terminate the pregnancy, or the fact that the child had borne the mother's two surnames from the time of her birth and for more than a year, not having been recognised immediately by the father.

The Court noted that two individuals in a similar situation – the applicant and the child's father – had been treated differently and that the distinction was based exclusively on grounds of sex.

It stated that its task was to determine whether the gender-based "difference in treatment", which at the relevant time entailed putting the father's surname first in the event of disagreement between the parents, was contrary to Article 14 in conjunction with Article 8 of the Convention. In that connection, it was for the national authorities to strike a fair balance in the present case between the various interests at stake, namely, on the one hand, the applicant's private interest in reversing her daughter's surnames and, on the other, the public interest in regulating the choice of names.

The Court observed that the current social context in Spain did not correspond to that which had existed at the time of the adoption of the legislation which had been applicable to the case in question. A number of social changes had taken place in the country since the 1950s with the effect of bringing domestic law into line with international instruments and abandoning the patriarchal concept of the family that had been predominant in the past. Spain, a member of the Council of Europe since 24 November 1977, had fulfilled its commitments in this respect and had adopted

numerous measures aimed at gender equality in Spanish society, in accordance with the resolutions and recommendations adopted within that Organisation.

It took note of the recent development, but observed that it was Article 194 of the Regulation implementing the Law on the registration of births, marriages and deaths that had been applicable in the present case, and reiterated that references to presumed general traditions or majority social attitudes prevailing in a given country were not sufficient to justify a difference in treatment on grounds of sex.

The Government denied the existence of discrimination, arguing that the applicant's daughter would be able, if she so wished, to change the order of her surnames once she reached the age of 18. Apart from the unquestionable impact that a measure of such duration could have on the personality rights and identity of a minor, who would be obliged to give precedence to the surname of a father with whom she was only biologically related, the Court could not overlook the repercussions on the applicant's life too: as her legal representative who had shared her daughter's life since her birth, the applicant suffered on a daily basis from the consequences of the discrimination caused by the inability to change her child's name. A distinction had to be made between the effects of determining a name at birth and the possibility of changing one's name later.

The automatic nature of the application of the law in question, which had prevented the courts from taking account of the particular circumstances of the case, had not, in the Court's view, been justified under the Convention. While the rule that the father's name should be placed first in the event of disagreement between the parents might be necessary in practice and was not necessarily incompatible with the Convention, the inability to derogate from it was excessively stringent and discriminated against women. In addition, while placing the paternal surname first could serve the purpose of legal certainty, the same purpose could be served by having the maternal surname in that position.

The reasons given by the Government had not therefore been sufficiently objective and reasonable in order to justify the difference in treatment imposed on the applicant. **There had thus been a violation of Article 14 in conjunction with Article 8 of the Convention.**

## Just satisfaction (Article 41)

The Court held that Spain was to pay the applicant 10,000 euros (EUR) in respect of non-pecuniary damage and EUR 23,853.22 in respect of costs and expenses.

*The judgment is available only in French.*

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