



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

SECOND SECTION

CASE OF DARÓCZY v. HUNGARY

(Application no. 44378/05)

JUDGMENT

STRASBOURG

1 July 2008

FINAL

01/10/2008

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 Daróczy v. Hungary,

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

Françoise Tulkens, *President*,

Ireneu Cabral Barreto,

Vladimiro Zagrebelsky,

Danutė Jočienė,

András Sajó,

Nona Tsotsoria,

Işıl Karakaş, *judges*,

and Sally Dollé, *Section Registrar*,

Having deliberated in private on 10 June 2008,

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

PROCEDURE

1. The case originated in an application (no. 44378/05) against the Republic of Hungary lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by a Hungarian national, Ms Tibor Ipolyné Daróczy (“the applicant”), on 5 December 2005.

2. The applicant was represented by Mr A. Kádár, a lawyer practising in Budapest. The Hungarian Government (“the Government”) were represented by Mr L. Höltzl, Agent, Ministry of Justice and Law Enforcement.

3. The applicant alleged that her right to respect for private life within the meaning of Article 8 of the Convention was breached by the statutory change of her married name.

4. On 9 July 2007 the Court decided to give notice of the application to the Government. Under the provisions of Article 29 § 3 of the Convention, it decided to examine the merits of the application at the same time as its admissibility.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant, Ms Tibor Ipolyné Daróczy, is a Hungarian national who was born in 1933 and lives in Budapest.

A. The circumstances of the case

6. The facts of the case, as submitted by the parties, may be summarised as follows.

7. In 1950 the applicant married Mr Tibor Ipoly Daróczy. According to birth certificate no. 1786/1927 Mr Daróczy was entitled to bear the two above-mentioned forenames from the very moment of his birth.¹ Her husband signed the marriage certificate as “Tibor Daróczy”. The applicant chose to bear her husband’s name by putting the suffix “-né” referring to the marriage (*házasságra utaló toldás*) after the first given name (Tibor) of her husband. In accordance with the widespread custom in Hungary, the latter only used his first given name even in official contexts. The applicant’s married name was registered as Tiborné Daróczy on the marriage certificate.

8. The official before whom the marriage took place did not observe that the name chosen was against the law since, at the material time, a woman could only choose to bear the whole name of her husband, including all the given names. In the present case, the applicant’s correct married name should have been Tibor Ipolyné Daróczy.

9. The mistake was not revealed in 1954 when identity cards were introduced in Hungary. The applicant’s renewed identity card issued in 1974 also contained the name Tiborné Daróczy. The applicant used this name in all official and private business. In particular, her social security card and tax identification certificate were issued in the name Tiborné Daróczy.

10. In 1984 Hungary introduced electronic data recording. In the new State Registry (*Állami Népszerűnylvántartó*) the applicant’s name was automatically entered in the manner prescribed by law, as Tibor Ipolyné Daróczy. However, she did not receive any official notification of this fact. In 1994 she and her husband were entered on the electoral register (*választói névjegyzék*) under the names Tibor Daróczy and Tiborné Daróczy. This database relied on the general State Registry.

11. In 1996 the applicant’s husband died. The applicant then used the name Tiborné Daróczy with the prefix “özv.” indicating that she was a widow.

12. In 2004 the applicant lost her identity card. Based on the State Registry, the Registry Office issued a new card which indicated her name as the widow of Tibor Ipoly Daróczy (*özv. Tibor Ipolyné Daróczy*). On 13 January 2005 the applicant obtained an official certificate containing this name. The certificate’s only function was to enable her to access her bank account since her new identity card contained a name that was different

¹ However, the late Mr Daróczy had four given names according to the certificate of baptism. His baptised name was Daróczy Tibor Ipoly Károly Antal.

from the one she had used when opening the account. The text of the certificate expressly stated that it had been issued for one-time use.

13. The applicant lodged a complaint with the Ministry of the Interior, seeking permission to bear the name Tiborné Daróczy. In November 2004 the Ministry informed her that, since her husband's official name was Tibor Ipoly Daróczy, she was entitled and obliged to bear that name in its entirety as a widow, and that it was not possible to change it to another form. Her name is at present registered as Tibor Ipolyné Daróczy.

B. Relevant domestic law

1. Decree of the Minister of Internal Affairs no. 80.000 of 1906 – Order on Administering the State Registries (as in force at the time of the applicant's marriage)

Section 55

“(3) As a general rule, women should be entered in the registry under their family name (birth name) and forename. Exceptions, having to bear their husbands' as well as their own family name and forename:

(a) married women, widows...”

2. Act no. 4 of 1952 on Marriage, Family and Guardianship

Section 25

“(1) After the marriage, the wife shall bear

a) her whole maiden name, or

b) the whole name of her husband with the suffix referring to the marriage, to which she may attach her whole maiden name, or

c) her husband's family name with the suffix referring to the marriage, to which she attaches her whole name, or

d) her husband's family name to which she attaches her first name. ...”

3. Law-Decree no. 17 of 1982 on Registers, Marriage Procedure and Bearing a Name

Section 27/B

“(6) A person bearing his/her spouse’s name cannot alter it by way of a name-change (*névváltoztatás*).”

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 8 OF THE CONVENTION

14. The applicant complained that she had been obliged to change the name she had borne for more than 50 years, in breach of Article 8 of the Convention, which provides:

“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

15. The Government argued that the final decision in the case was the administrative certificate issued on 13 January 2005. Since the applicant had only lodged her application on 5 December 2005, she had failed to observe the six-month time-limit. They did not deny, however, the existence of the mandatory provisions of the domestic law governing the question.

16. The applicant maintained that the violation of her right to private life had been continuous. She was of the view that the issue of the administrative certificate could not be seen as an administrative decision since it only certified her official name as it stemmed from the legal provisions. Consequently, it was not the issue of the certificate that constituted the violation of her right to private life but the law regulating the question itself. Therefore, the issue of the certificate cannot be regarded as the starting date of the six-month period.

17. The Court reiterates that the six-month rule, in reflecting the wish of the Contracting Parties to prevent past decisions being called into question after an indefinite lapse of time, serves the interests not only of the

respondent Government but also of legal certainty as a value in itself. It marks out the temporal limits of supervision carried out by the organs of the Convention and signals to both individuals and State authorities the period beyond which such supervision is no longer possible (see, for example, *Walker v. the United Kingdom* (dec), no. 34979/97, ECHR 2000-I).

18. However, the Court also observes that, as long as a continuing situation exists, the six-month period does not commence, since it serves to make acts and decisions from the past unassailable after a given period (see *Malama v. Greece*, no. 43622/98, § 35, ECHR 2001-II).

19. The Court notes that the formulation of the applicant's name is governed by the mandatory provisions of Act no. 4 of 1952 on Marriage, Family and Guardianship. It finds unconvincing the Government's assertion that the final decision in the case was the certificate issued on 13 January 2005. The Court draws attention to the fact that the impugned certificate did not affect the applicant's name in any way. It was not a formal, administrative decision, but only served as a declaration concerning the legally correct form of the applicant's name in order to allow her to access a bank account. The change of the applicant's name therefore arose from the law itself rather than from the issue of this document. Consequently, the obligation imposed on the applicant to change her name has existed since 1952 and still exists *ipso iure*. Those circumstances indicate a continuing situation in relation to her complaints concerning her right to private life.

20. It follows that the Government's preliminary objection must be dismissed. Furthermore, the Court notes that the complaint is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention, and that it is not inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

1. The Government's arguments

21. The Government submitted that it could be established from the birth certificate and the marriage certificate (although the late Mr Tibor Ipoly Daróczy signed the latter as "Tibor Daróczy") that the applicant's late husband had had two forenames since birth. He had never initiated a change of his name. They also pointed out that, flowing from the provisions of the Decree, married women were allowed to bear one form of name: the husband's full name with the suffix "*-né*", indicating married status. Concerning the prohibition on changing the name, the Government submitted that its aim was to protect the husband's interests, namely to prevent a wife from changing her married name without her husband's consent.

22. Lastly, the Government maintained that names could be changed by instituting proper proceedings rather than by entering short or simplified versions in registers. However, the applicant and her husband had failed to initiate such proceedings, therefore, the situation complained of had been caused by their own conduct. This injurious practice went against the legal provisions aimed at ensuring the authenticity of State registers and the protection of other persons' rights. Therefore, the interference that this regulation constituted could not be regarded as unnecessary or disproportionate in a democratic society.

2. The applicant's arguments

23. The applicant submitted that the Decree of the Minister of Internal Affairs no. 80.000 of 1906 – Order on Administering the State Registries (“the Decree”) did not contain any specific rules on the use of names in respect of married women and that, therefore, the irregular constitution of the name she had used was not unlawful at the time. Without knowing the exact practice of the relevant period, from the wording of the Decree three possibilities flow: bearing the husband's full name as entered in the State Registry, applying the baptised name of Mr Daróczy or using the version she used in everyday life. She also noted in that connection that, according to the Government's argument, her married name should have been Daróczy Tibor Ipolyné Lósy Éva (the last two being her own family and forename) which was not what the State authorities had required. This showed the arbitrary nature of their interpretation.

24. However, in her view, it is likely that she and her husband were never entered in the State Registry under the names suggested by the Government. In 1994 they were entered on the electoral register as Tibor Daróczy and Tiborné Daróczy. This database is founded on the State Registry, and, therefore, the applicant was of the view that at that time she had been officially registered under the “old” version of her name. The applicant also submitted that until 2004, whenever an authority issued an official document for her, the use of her name was not questioned in any way. In sum, the applicant maintained that she could not be held responsible for failing to submit an official request to change her name, since she had a well-grounded reason to believe that Tiborné Daróczy was her official name.

25. As to the need for a restriction on her right to bear a name, the applicant acknowledged the State's margin of appreciation when regulating the issue. However, she noted that the length of time during which the mistake had remained unnoticed – and, therefore, she had participated in all aspects of public and private life under the name Tiborné Daróczy – was due to an omission by the authorities. This discredited the Government's reasoning as regards ensuring the authenticity of the State Registry and the protection of the rights of others. Lastly, the applicant pointed out that her

name represents a very strong personal identification for her and a link to her late husband. To deprive her of the possibility of continuing to use a name she has borne for such a long time without any pressing social need may not be regarded as necessary or proportionate in a democratic society.

3. *The Court's assessment*

26. The Court 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 *Stjerna v. Finland*, judgment of 25 November 1994, Series A no. 299-B, p. 61, § 39, and *Johansson v. Finland*, no. 10163/02, §§ 35, 37 ECHR 2007-...).

27. The Court notes 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, for instance, *Hokkanen v. Finland* judgment of 23 September 1994, Series A no. 299-A, p. 20, § 55; *mutatis mutandis*, *Handyside v. the United Kingdom*, judgment of 7 December 1976, Series A no. 24, p. 23, § 49).

28. In the particular circumstances, the Court considers that the Respondent State's reluctance to allow the applicant to bear the name she wishes amounts to an interference with her private life. Since it has not been in dispute between the parties that the restriction on the applicant's right was prescribed by law and pursued a legitimate aim, the Court will focus on the question of necessity and proportionality. In weighing up the different interests at stake, consideration should be given, on the one hand, to the applicant's right to bear a name, and on the other hand the public interest in regulating the choice of names.

29. The Government argued that the legitimate aim pursued was to protect the authenticity of the State Registry and the rights of others. The Court accepts that due regard has to be given to the accuracy of the official registers and their protection is a core public interest. However, it is hard for the Court to see how the applicant's use of her name had endangered the above-mentioned aims, for the following reasons.

30. The applicant started to use the name Tiborné Daróczy in 1950 when she married. It is disputed between the parties whether at the time it was the correct way to use her married name. However, the Court considers that, even accepting the Government's opinion – i.e. that the applicant bore her name erroneously – this cannot be decisive. The Court draws attention to

the fact that the applicant used this version of her name in all aspects of her official life. State authorities issued her with several official documents, including her identity card, she was entered on the electoral register and she opened a bank account using that name. The Government did not put forward any convincing argument to show that the allegedly incorrect use of the applicant's name had in any way prejudiced the Hungarian system of State registries in 54 years.

31. It is also difficult for the Court to accept that the restriction was necessary for the protection of the rights of others, namely the applicant's husband. There is nothing in the case file to indicate that the late Mr Tibor Daróczy used his name in another form and, therefore, it is implausible that the applicant's intention to continue using her name could infringe his rights, still less after his death.

32. The Court underlines that, while it is true that States enjoy a wide margin of appreciation concerning the regulation of names, 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, *inter alia*, *Pretty v. the United Kingdom*, no. 2346/02, § 61, ECHR 2002-III). Formal reference to a legitimate aim – like, in this case, ensuring the authenticity of the State Registry – in the absence of any actual prejudice to the rights of others cannot justify a restriction of that right.

33. In the present case, the Government did not put forward any convincing argument showing that the genuineness of the system of the State registries or the rights of the applicant's late husband were at real risk. The restriction imposed on the applicant was therefore unacceptably rigid and completely disregarded her interests, in that she has been forced to alter a name which she has used for more than 50 years and which, beyond its relevance in self-identification and self-determination as mentioned above, also gave her a strong personal link to her husband.

34. Having regard to the above arguments, the considerations relied on by the Government cannot be said to outweigh the interests claimed by the applicant under Article 8 of the Convention in requesting to continue using the name she has borne for more than 50 years. A fair balance has therefore not been struck.

35. Accordingly, there has been a violation of Article 8 of the Convention.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

36. 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.”

A. Damage

37. The applicant claimed 3,500 euros (EUR) in respect of non-pecuniary damage.

38. The Government found the applicant's claim excessive.

39. The Court finds that the applicant can reasonably be considered to have suffered some non-pecuniary damage in the circumstances. Making its assessment on an equitable basis, the Court awards her the sum claimed in its entirety under this head.

40. Moreover, in view of the fact that the violation established in the present case is of a continuing nature (see paragraph 19 above), the Court is of the view that the Government should take steps to rectify the applicant's personal situation and recognise in some official manner that she may retain her longstanding name of Tiborné Daróczy.

B. Costs and expenses

41. The applicant also claimed EUR 1,800 for the costs and expenses incurred in the proceedings before the Court. She submitted that her claim is based on an agreement concluded with her lawyer, according to which she would only be billed if the case was closed successfully. She filed an itemised statement of the hours billable by her lawyer, corresponding to 15 hours of work (one hour of client consultations; six hours for studying the file and 8 hours for the preparation of submissions) spent by her lawyer on the case, charged at an hourly rate of EUR 120.

42. The Government found the applicant's claim excessive.

43. According to the Court's case-law, an applicant is entitled to reimbursement of costs and expenses only in so far as it has been shown that these have been actually and necessarily incurred and are reasonable as to quantum. In the present case, regard being had to the information in its possession and the above criteria, the Court finds it reasonable to award the sum claimed in its entirety.

C. Default interest

44. The Court considers it appropriate that the default interest should be based on the marginal lending rate of the European Central Bank, to which should be added three percentage points.

FOR THESE REASONS, THE COURT

1. *Declares* the application admissible by a majority;
2. *Holds* unanimously that there has been a violation of Article 8 of the Convention;
3. *Holds* unanimously

(a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final according to Article 44 § 2 of the Convention, the following amounts, to be converted into Hungarian forints at the rate applicable at the date of settlement:

(i) EUR 3,500 (three thousand five hundred euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;

(ii) EUR 1,800 (one thousand eight hundred euros) in respect of costs and expenses;

(b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points.

Done in English, and notified in writing on 1 July 2008, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Sally Dollé
Registrar

Françoise Tulkens
President