



Refusal to change surname spelling did not breach right to respect for private life

In its decision in the case of [Macalin Moxamed Sed Dahir v. Switzerland](#) (application no. 12209/10) the European Court of Human Rights has unanimously declared the application inadmissible. The decision is final.

The case concerns the applicant's request to change her surname on the grounds that the Swiss pronunciation of the name produced words with an offensive meaning in her mother tongue, Somali.

The applicant had sought to have the possibility of using two different spellings of her name depending on the circumstances, but the Court found that such a situation would clearly run counter to the principle of uniformity in the recording of surnames.

The Court also found it to be of some importance, in assessing the possible breach of her right to respect for her private life, that the language in which the offensive meaning was produced was Somali. The applicant's situation was not therefore comparable to that of persons whose names took on a ridiculous or humiliating meaning in a more common language such as the national languages.

Principal facts

The applicant, Muna Macalin Moxamed Sed Dahir, is a Somali and Swiss national who was born in 1969 and lives in Zurich.

She arrived in Switzerland in 1997 and in 2003 married Mr Sed Dahir, a Somali national. She requested permission from the competent Swiss authorities to add her maiden name, Macalin Moxamed, to her husband's surname and her request was granted. However, when the applicant's maiden name is pronounced according to the rules of Western pronunciation, it takes on a disparaging meaning in her mother tongue ("rotten skin" and "toilets").

Mrs Macalin Moxamed Sed Dahir applied to the Zurich registry of births, marriages and deaths to have her surname changed. Having been told that her request was likely to be refused, she re-applied. On 20 March 2008 the registrar refused her request, stressing that the applicant herself had requested that her maiden name be added to her married name. Mrs Macalin Moxamed Sed Dahir reiterated her request, which was rejected by the Directorate of Justice and Internal Affairs of the Canton of Zurich. She appealed against that decision, which was confirmed by the Directorate of Justice and Internal Affairs and subsequently by the Higher Court of the Canton of Zurich.

In a judgment given on 16 November 2009 the Federal Court declared a private-law appeal lodged by the applicant to be inadmissible. The applicant subsequently acquired Swiss nationality.

Complaints, procedure and composition of the Court

The application was lodged with the European Court of Human Rights on 19 February 2010.

Relying on Articles 8 (right to respect for private and family life) and 14 (prohibition of discrimination) taken together with 8, the applicant complained about the refusal to change the spelling of her surname. She claimed to be the victim of discrimination on grounds of language since the reason for the refusal was that her name had no offensive meaning in any of the official

languages of Switzerland. She alleged that she had been discriminated against in relation to certain migrants of Polish origin whose name changes had been authorised.

The decision was given by a Chamber of seven, composed as follows:

Işıl **Karakaş** (Turkey), *President*,
 Paul **Lemmens** (Belgium),
 Nebojša **Vučinić** (Montenegro),
 Helen **Keller** (Switzerland),
 Ksenija **Turković** (Croatia),
 Robert **Spano** (Iceland),
 Jon Fridrik **Kjølbro** (Denmark), *Judges*,

and also Stanley **Naismith**, *Section Registrar*.

Decision of the Court

Article 8

The Court noted that the refusal of the authorities to authorise a person to adopt a new surname could not necessarily be considered an interference in the exercise of his or her right to respect for his or her private life, as would have been, for example, an obligation to change surname. As to the public interest, the Court reiterated that legal restrictions on the possibility of changing one's surname may be justified, 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.

The Government argued that the objective pursued by the application of the law was based on the principle of the immutability of surnames, this being an element of legal certainty with only limited exceptions. The Court acknowledged that it was in the public interest to guarantee the stability of a person's surname to ensure legal certainty in social relations. Names played a decisive role for the identification of individuals.

The Court noted that Mrs Macalin Moxamed Sed Dahir had not sought to replace the old spelling of her name by another but had wished to use either spelling depending on the circumstances. The Court found that such a situation would clearly run counter to the principle of uniformity in the recording of surnames. To avoid that problem the Swiss authorities had informed Mrs Macalin Moxamed Sed Dahir that she needed to have the spelling of her surname changed by the Somali authorities. The applicant had merely provided an official Somali document acknowledging that the two spellings of her name had equal value.

Moreover, the Court observed that the situation complained of by Mrs Macalin Moxamed Sed Dahir arose only when her name was pronounced according to Western rules of pronunciation in the presence of a Somali speaker. The Court referred to its previous finding, in similar circumstances, that the mere fact that a name could take on a pejorative connotation did not suffice to constitute a breach of the guarantees under Article 8 of the Convention¹.

Lastly, the Court noted that the request by Mrs Macalin Moxamed Sed Dahir had given rise to an in-depth examination, by both the administrative authorities and the various courts, leading to well-reasoned judgments.

Since the applicant's request would have resulted in the concurrent usage of two different spellings of her name, and given the room for manoeuvre ("margin of appreciation") given to the national

¹ [Siskina and Siskins v. Latvia](#) (dec.), no. 59727/00

authorities in such matters, the Court could not detect any appearance of a violation of Article 8 of the Convention.

Article 14 taken together with Article 8

The Court found it to be of some importance, in assessing the possible breach of the applicant's right to respect for her private life, that the language in which the offensive meaning was produced was Somali. Her situation was not therefore comparable to that of persons whose names took on a ridiculous or humiliating meaning in a more common language such as the national languages.

Moreover, the Court observed that the Polish migrants referred to by the applicant had been authorised to change their names because they could not be pronounced by Swiss people. Mrs Macalin Moxamed Sed Dahir had wished to change the spelling of her name on account of its meaning in Somali when it was pronounced in Switzerland. She had not argued that it was impossible to pronounce for people not familiar with Somali. She was therefore not in a comparable situation to that of persons with names of Polish origin.

The decision is available only in French.

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Press contacts

echrpess@echr.coe.int | tel: +33 3 90 21 42 08

Denis Lambert (tel: + 33 3 90 21 41 09)

Tracey Turner-Tretz (tel: + 33 3 88 41 35 30)

Nina Salomon (tel: + 33 3 90 21 49 79)

The European Court of Human Rights was set up in Strasbourg by the Council of Europe Member States in 1959 to deal with alleged violations of the 1950 European Convention on Human Rights.