



Transmission of the father's surname reflects discrimination based on the parents' sex

In today's Chamber judgment in the case of [Cusan and Fazzo v. Italy](#) (application no. 77/07), which is not final¹, the European Court of Human Rights held, by a majority, that there had been:

a violation of Article 14 (prohibition of discrimination) of the European Convention on Human Rights, taken together with Article 8 (right to respect for private and family) of the Convention.

The case concerned a challenge to transmission of the father's surname to his children.

The Court held that the decision to name a child based on transmission of the father's surname was based solely on discrimination on the ground of the parents' sex, and was incompatible with the principle of non-discrimination.

Principal facts

The applicants, Alessandra Cusan and Luigi Fazzo, are Italian nationals who were born in 1964 and 1958 respectively and live in Milan (Italy).

A married couple, the applicants had their first child, a girl, on 26 April 1999.

Mr Fazzo asked to enter his daughter on the civil register under her mother's family name, that is, Cusan. His request was dismissed and the child was registered under her father's surname, Fazzo.

The couple submitted an appeal against that decision, arguing that there was no provision in Italian law which prevented their daughter from bearing her mother's surname. The court dismissed this appeal, noting that although there was no provision of Italian law which obliged a child born to a married couple to be registered under the father's surname, this rule corresponded to a principle which was rooted in social consciousness and in Italian history. The court noted that all married women took their husbands' surnames and considered that the children could only be registered under this surname, which was shared by the spouses.

The court of appeal upheld that judgment. It noted that the Constitutional Court had on several occasions stated that the fact that it was impossible to transmit the mother's surname to legitimate children was not in breach either of the spouses' moral and legal equality nor of the equality of citizens as protected and guaranteed by the Constitution. The court of appeal further pointed out that the Constitutional Court had indicated that it was for Parliament to decide on the appropriateness of introducing a different system for conferring surnames. The applicants appealed on points of law. The Court of Cassation held that the rule governing the transmission of the father's surname to legitimate children raised an issue under the Constitution, suspended the proceedings and ordered that the case file be transmitted to the Constitutional Court.

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

By a judgment of 16 February 2006, the Constitutional Court ruled the question inadmissible. It held that the system in force derived from a patriarchal understanding of the family and of the husband's powers, which had its roots in Roman law and was no longer compatible with the constitutional principle of equality between men and women; however, it considered that only Parliament could decide on which of the various solutions available should be adopted.

On 29 May 2006 the Court of Cassation took note of the Constitutional Court's decision and dismissed the applicants' appeal.

On 31 March 2011 Alessandra Cusan and Luigi Fazzo asked the Minister of the Interior to allow them to add the mother's surname to the surnames of the children born from their marriage. By a decree of 14 December 2012 the Prefect of Milan authorised the spouses to change their children's surnames to "Fazzo Cusan".

Complaints, procedure and composition of the Court

Relying on Article 8 (right to respect for private and family life), alone or taken together with Article 14 (prohibition of discrimination), the applicants complained about the Italian authorities' refusal to grant their request to give their daughter her mother's surname, and about the fact that Italian legislation at the relevant time made it mandatory to give the father's surname to legitimate children. They considered that the law ought to have allowed parents to choose their children's family name.

Relying on Article 5 of Protocol No. 7 (equality between spouses), taken alone or read in conjunction with Article 14, the applicants considered that the legal provisions in force concerning the attribution of a family name to legitimate children did not guarantee equality between spouses and that Italy ought to have provided for the possibility of conferring the mother's surname where the parents were in agreement on this issue.

The application was lodged with the European Court of Human Rights on 13 December 2006.

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

Işıl Karakaş (Turkey), *President*,
Guido Raimondi (Italy),
Peer Lorenzen (Denmark),
Dragoljub Popović (Serbia),
András Sajó (Hungary),
Paulo Pinto de Albuquerque (Portugal),
Helen Keller (Switzerland),

and also Stanley Naismith, *Section Registrar*.

Decision of the Court

[Article 8 and Article 14](#)

The Court has found that discrimination exists where there is a difference in the treatment of persons in analogous situations, without an objective and reasonable justification. A difference in treatment is discriminatory under Article 14 if it has no objective and reasonable justification. The justification must be assessed in relation to the principles which normally prevail in democratic societies.

The rule by which legitimate children were given their father's surname at birth was implicit from a number of articles of the Italian Civil Code, taken together. The domestic legislation provided for no

exceptions to this rule. Admittedly, the Prefect of Milan had authorised the applicants to add the mother's surname to the child's name. However, this change was not equivalent to conferring the mother's surname alone, as the applicants had wished, but amounted merely to adding the mother's family name to that of the father.

The Court was therefore of the view that, in the context of handing down the family name, the child's father and mother were treated differently. Unlike the father, and in spite of an agreement between the spouses, the mother was unable to obtain authorisation to give her family name to the baby.

The Court had reiterated in its case-law the importance of moving towards gender equality and eradicating all discrimination on grounds of sex in the choice of surname. It had found that the tradition conferring the father's surname to all the members of a family could not justify discrimination against women.

In the present case, the choice of the child's surname was determined solely on the basis of the parents' sex, as the rule in question required that the surname given was to be that of the father, without exception and irrespective of the choice made by the spouses. The Italian Constitutional Court itself had recognised that the system in force had its roots in a patriarchal concept of the family which was not compatible with the constitutional principle of equality between men and women.

It was possible that the rule that the father's surname be handed down to legitimate children was necessary in practice, and was not necessarily incompatible with the Convention, but the fact that it was impossible to derogate from it had been excessively rigid and discriminatory towards women.

It followed that there had been a violation of Article 14, taken together with Article 8.

Having regard to its findings under Article 14, the Court considered that it was not necessary to determine whether there had been a breach of Article 8 taken alone, or a breach of Article 5 of Protocol No. 7, taken alone or in conjunction with Article 14.

The judgment is available only in French.

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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.