

The Third Section of the European Court of Human Rights (ECHR), with a judgement of October 26th 2021, ruled against Spain for the violation of art. 14 in conjunction with art. 8 of the European Convention on Human Rights; the two provisions guarantee, respectively, the prohibition of discrimination and the right to respect for private and family life.

The applicant, on November 9th 2005, gave birth to a daughter registered with her two surnames. By judgement of February 14th 2007, the first instance judge recognized the former partner of the mother as the biological father of the child, establishing that she would bear, according to the legislation in force at the time, the surname of the father followed by that of the mother, having regard to the disagreement between the parents. The applicant's request to reverse the order of surnames was rejected by the national judicial authorities. For this reason, the woman turned to the European Court, complaining of a violation of art. 14 and 8 of the Convention and stating that the current legislation applied by national courts was discriminatory; in her opinion, the order of surnames should have been established based on the specific circumstances of her case. In order to ascertain the alleged violation of the two provisions in question, the European Court ruled, first of all, on the existence of a distinction of treatment between subjects placed in similar situations. The rule in force at the time provided that, in the event of a disagreement between the parents, the son/daughter was automatically assigned the surname of the father, followed by that of the mother. However, art. 194 of the Regulation for the application of the Civil Status Law was amended by Law 20/2011 which provided, in the event of disagreement between the parents, that the civil status judge decides the order in which the surnames must be assigned to children, taking into account their sole best interests. In any event, these provisions do not apply to the applicant's daughter as she is currently sixteen. Furthermore, the automatic application of this legislation did not allow the national judge to take into consideration the applicant's complaints about the concrete circumstances of her affair: the girl's father had initially and insistently asked the woman to terminate the pregnancy and the daughter bore the surnames of the mother since her birth, and for more than a year, since the man did not immediately want to recognize her as his daughter. In the light of the foregoing, Strasbourg judges found that two subjects placed in a similar situation - namely the applicant and the child's father - were treated differently on the basis of a distinction based solely on sex. Consequently, the Court specified that its task was not to determine whether or not the surname system used in Spain was compliant with the Convention but to assess whether the "distinction of treatment" based on sex it entailed the choice of the father's surname in case of disagreement between the parents, at the time of the facts, was contrary to art. 14 in conjunction with art. 8 of the Convention. The current Spanish social context does not correspond to that existing at the time of the adoption of the law in force applicable to the case in question. In fact, since the 1950s, there have been various social changes in the country that have made it possible to align the internal legislation with the international instruments in force and to abandon the patriarchal concept of family. The modification introduced by Law 20/2011 reflects a significant step forward considered by the legislator as a way to bring the legislation closer to the new social reality in Spain, favoring the achievement of equality over the maintenance of traditions that could hinder it. However, in the present case, the European Court could not fail to consider the impact that the change of surname decided by the Spanish judges had on the applicant's life and, above all, on the identity and personality of her daughter, who was forced to bear the surname of a father to whom she is only biologically linked. The automatic application of the law in question, which prevented the judges from taking into account the particular circumstances of the case, did not find valid justification in the light of the provisions of the Convention: although the rule that the father's name must be assigned first in case of disagreement between parents may be necessary in practice and does not necessarily conflict with the Convention, the impossibility of derogating from it is excessively rigid and discriminatory towards women. Therefore, the reasons put forward by the Spanish Government were not sufficiently objective and reasonable to justify the difference in treatment suffered by the applicant.

Riferimenti Normativi:

- art. 8 Convenzione Europea dei Diritti dell'Uomo
- art. 14 Convenzione Europea dei Diritti dell'Uomo



According to the ECHR, the automatic precedence of the father's surname over that of the mother violates the prohibition of discrimination and the right to respect for private and family life

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