

1988 November 28

[STYLIANIDES, J.]

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

ANDREAS PETROU,

Applicant,

v.

1. THE MINISTER OF INTERIOR,
2. THE DISTRICT OFFICER OF PAPHOS, IN HIS CAPACITY AS INSPECTOR OF THE REGISTRATION OF BIRTHS AND DEATHS;

Respondents.

(Case No. 872/85).

Constitutional Law—Right to private life—Constitution, Art. 15—Encompasses use and change of surname to reflect true state of affairs of person's identity in society.

5 *The Convention for the Protection of Human Rights (Law 39/62) section 8—Private life—Encompasses use and change of surname to reflect true state of affairs of person's identity in society.*

The Convention for the Protection of Human Rights (Law 39/62)—Remedies—State enjoys wide margin of appreciation in providing remedies.

10 *The Births and Deaths Registration Law 85/73, section 33—Surname, change of—No power, save in case of error, clerical or substantial, to change the surname recorded in the register.*

15 *The applicant's surname was correctly registered in the Register of Births as "Stylianides". At some stage of his life the applicant changed the said surname to "Petrou". The Republic issued to him a passport in such a surname. His wife uses the surname "Petrou". The three children of the marriage use, also, such surname. The applicant is known in business and*

society as "Petrou".

By means of this recourse the applicant impugned the validity of the respondents' decision, whereby applicant's application that the surname "Petrou" be entered in the Register of Births and replace "Stylianides", was turned down on the ground that the relevant law does not give power of such a change. 5

The applicant complained, inter alia, of violation of his right to private life.

Held, dismissing the recourse:

(1) Section 33(1) of Law 85/73 provides that no alteration may be made except as provided in this Law or in any other Law. Sub-section (2) in unequivocal language refers to correction of clerical error (γραφικό λάθος) and sub-section (3) to an error as regards the facts or substance (λάθος περί τα γεγονότα ή την ουσία). In this case there has not been such an error. 10

(2) The right to private life is protected by Art. 15 of the Constitution and Art.8 of the Convention for the Protection of Human Rights. It has not as yet received an exhaustive definition. 15

It encompasses the use and change of a surname to reflect the true state of affairs of a person's identity in society.

(3) The State, however, enjoys a wide margin of appreciation in the provision of remedies. 20

In the present case no violation of the right of private life has been established, as the right of surname of the applicant in all respects and in all other official documents used reflects his correct identity, as the surname "Petrou" is used. 25

Recourse dismissed.

No order as to costs.

Cases referred to:

Malachtou v. Arnefti (1987) 1 C.L.R. 207;

Tyrer Cases, European Court Human Rights, Series A, No. 26; 30

X. v. Iceland (1976) 3 D and R 86;

Van Oosterwijck v. Belgium, European Court Human Rights, Series A, No. 4;

Abdulaziz Gabales and Balkandali, European Court Human Rights, Series A, No. 94.

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Recourse.

Recourse against the refusal of the respondents to amend the Births Register of Paphos town and insert therein applicant's surname "Petrou"

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Ph. Apostolides, for the applicant.

R. Gavrielides, Senior Counsel of the Republic, for the respondents.

Cur. adv. vult.

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STYLIANIDES J. read the following judgment. The applicant by this recourse seeks the annulment of the decision of Respondent No. 2, the District Officer of Paphos, by which he refused to amend the Births Register of Paphos town and insert therein the surname of the applicant "Petrou".

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The facts of the case over which there is no dispute are as follows:

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The applicant was born in Paphos town on 12th December, 1945, and the following particulars were entered in the Register of Births: His name - Andreas, date of birth, sex, name and maiden name of the mother - Maria Georghiou Tritta and name and surname of the father - Michael Stylianides.

The applicant in 1961 immigrated to Zair. There he adopted the surname "Petrou", that of the second husband of his mother, as

her first marriage with applicant's father had been dissolved. He carried on his business and occupation in the new surname and became known and identified as "Andreas Petrou". In 1971 he swore an affidavit before the Consul of the Republic of Cyprus in Kinsangani of Zair to the effect that his surname was no more "Stylianides" but "Petrou". The Consul accepted this, as a factual situation and issued to him a new passport of the Republic of Cyprus with the surname Petrou.

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Later he returned to his country and the Passport Authorities issued to him new passport A142999 with the name Andreas and surname Petrou. On 6th July, 1983, a new pasport was issued to him under No. B144707 again with the name Andreas and the surname Petrou. The applicant on 18th September, 1977, married his wife who assumed his surname Petrou; the three children of the marriage have the surname Petrou.

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There is no dispute that he is known, carries on his business and he is identified in society as Petrou and not Stylianides.

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On 14th July, 1984, he swore an affidavit and applied to the District Officer of Paphos, who is the appropriate officer under the Births and Deaths Registration Law, 1973 (Law No. 85/73), for the alteration of the Register and insertion therein of the surname "Petrou". The District Officer of Paphos rejected this application on the ground that under the only provision for alteration, section 33 of Law 85/73, the Birth Register could not be corrected as applied for and the District Officer had no power to accede to applicant's request.

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The applicant challenges the legality of this decision on the following grounds:

(a) Misconception of law.

(b) That, if there is no misconception of law, there is violation of his "private life" protected by Article 15 of the Constitution and Article 8 of the European Convention on Human Rights.

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Law 85/73 is an amending and consolidating Law. The first law governing registration of births and deaths was enacted in this country in 1895 (Law No. 16/1895). It continued in operation with slight amendments until it was repealed and replaced by the Births and Deaths Registration Law, 1947, (Law No. 8/47), which came into operation on 1st January, 1948. The latter was repealed and substituted by Law 85/73.

Section 33 provides for correction of errors in the Register.

Section 33(1) provides that no alteration may be made except as provided in this Law or in any other Law. Subsection (2) in unequivocal language refers to correction of clerical error (γραφικό λάθος) and sub-section (3) to an error as regards the facts or substance (λάθος περί τα γεγονότα ή την ουσία).

The Register has a number of columns as set out in the Regulations made under the Law by the Council of Ministers and published in the Official Gazette of the Republic dated 21st December, 1973, Supplement No. 3, Part I, Volume B, p. 1073, under Notification 306. The material columns for Births (see prescribed Form 3) are: Date and place of birth - name, if there is - sex - name and surname of father - name, surname and maiden name of mother - occupation of father.

The applicant does not complain that there was an error in any of the entries, which was not rectified.

The power conferred on the District Officer by the Law is limited and section 33 did not empower him to accept the applicant's request.

The second ground on which this recourse is based is that the sub judice decision infringed the right of private life.

Paragraph 1 of Article 15 in Part II of the Constitution reads:

"1. Every person has the right to respect for his private and

family life."

Part II of our Constitution - Fundamental Rights and Liberties - was greatly influenced by the European Convention on Human Rights, which was in turn influenced by the United Nations Universal Declaration of Human Rights 1948. These provisions call for a generous interpretation suitable to give to individuals the full measure of the fundamental rights and freedoms safeguarded therein. Any Decisions of the Supervisory Organs of the Convention, especially the Court, on the interpretation and application of the Convention, though not binding, serve as guidance for the interpretation and application of our corresponding constitutional provisions.

Article 15.1 is identical with the first part of Article 8 of the Convention for the Protection of Human Rights and Fundamental Freedoms.

The Convention is an integral part of our Legal System in which it has primacy over domestic legislation, whether earlier or subsequent - (*Malachtou v. Armafti* (1987) 1 C.L.R. 207).

The Convention, an international document, is a living instrument which must be interpreted in the light of present day conditions. (Eur. Court H.R., *Tyler* case, judgment of 25 April 1978, Series A No. 26).

The applicant complains that the application of the Law obliges him to use documents which do not reflect his real identity. A certificate, though properly prepared in the first place, no longer corresponds to the true state of affairs and this is an infringement of his right of private life.

Private life has not yet received an exhaustive definition.

The Civil Codes of a number of European countries recognize the name and surname as right of private life in the domain of Private Law.

In England one may change his surname by depositing a Deed Poll - (Halsbury's Laws of England, 4th Edition, Volume 35, paragraphs 1175, 1177 - 1180):

5 It is unnecessary to pronounce in this case whether this part of the English Law, in the absence of statutory provisions in our country, is applicable in the Republic.

In Greece the right of surname is recognized by the Civil Code and there is specific legislation for the change of the surname.

10 In Τούση, - Αστικό Δίκαιο 1978, edition B, at p. 227 we read:

"Εἰς τὴν κοινωνικὴ ἀτομικότητα περιλαμβάνεται καὶ ἡ τιμὴ, τὸ ὄνομα ὡς ἐξωτερικὸν διακριτικὸν γνῶρισμα τοῦ φορέως, τοῦτου ἀπὸ τὰ ἄλλα μέλη τῆς κοινωνίας."

15 In the sphere of the Public Law, the personality of a person and its development are included in private life - (see Manessi - Constitutional Rights Individual Liberties - δ' edition, 1982, at pp. 114-117):

20 Professor Velin in "The European Convention on Human Rights and the Right to Respect for Private Life, the Home and Communications" at p. 92 wrote:

"That it includes the use of his name, his identity or similar."

In the Conclusion reached by the Nordic Conference of Jurist, in May 1967, "the use of name, identity or likeness" was one of the rights included in the definition of the right to Privacy.

25 In Application No. 6825/75 - *X. v. Iceland* (1976) 5 D. & R. 86 at p. 89 the European Commission said that the concept of private life contained in Article 8 "comprises also to a certain degree the right to establish and to develop relationships with other hu-

man beings, ...for the development and fulfilment of one's own personality" - (see, also Van Oosterwijck v. Belgium, Series A, No. 40).

Private life encompasses the use and change of a surname to reflect the true state of affairs of a person's identity in society, a right protected by the Convention and our Constitution.. 5

Both Article 8 of the Convention and Article 15 of the Constitution are framed in particular precision and create an enforceable right which can only be interfered with as provided in paragraph 2 of these Articles. 10

The State, both under the Constitution and the Convention, has the obligation not to interfere with the right of private life. It has, further, undertook to secure to everyone within the jurisdiction the rights and freedoms defined in section 1 of the Convention. 15

Under Article 13, a Party to the Convention undertook to provide effective remedy before a National Authority for a violation of the Convention. Under Article 35 of the Constitution the legislative, executive and judicial authorities of the Republic are bound to secure, within the limits of their respective competence, the efficient application of the provisions of this Part of the Constitution - Fundamental Rights and Liberties. 20

The States, however, have a wide margin of appreciation in the provision of remedies - (see *Abdulaziz Gabales and Balkandalli*, Eur. Court H.R., judgment of 28 May 1985, Series A, No. 94, paragraphs 33-34 and *X and Y v. The Netherlands*, Eur. Court H.R., judgment of 26 March 1985, Series A, No. 91). 25

In the present case no violation of the right of private life has been established, as the right of surname of the applicant in all respects and in all other official documents used reflects his correct identity, as the surname "Petrou" is used. 30

The main documents which are used in Public and Private Life are: The Passports, Identity Cards and Driving Licences. His passport was issued to him as Petrou.

5 No material was placed before the Court and no complaint was made that the right to his surname was in any respect infringed. See in this respect *Rees* case, Eur. Court H.R., judgment of 17 October, 1986, Series A, No. 106.

For all the foregoing reasons, this recourse fails and is hereby dismissed.

10 Let there be no order as to costs.

Recourse dismissed.
No order as to costs.