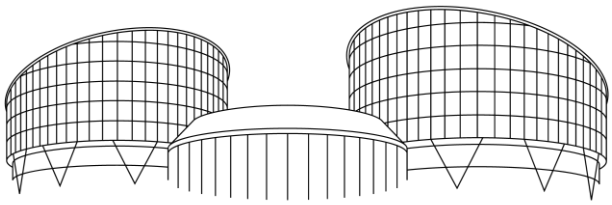

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

SECOND SECTION

CASE OF LEVENTOĞLU ABDULKADİROĞLU v. TURKEY

(Application no. 7971/07)

JUDGMENT

STRASBOURG

28 May 2013

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 Leventoğlu Abdulkadiroğlu v. Turkey,

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

Guido Raimondi, *President,*
Danutė Jočienė,
Dragoljub Popović,
András Sajó,
Işıl Karakaş,
Paulo Pinto de Albuquerque,
Helen Keller, *judges,*
and Stanley Naismith, *Section Registrar,*

Having deliberated in private on 30 April 2013,

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

PROCEDURE

1. The case originated in an application (no. 7971/07) against the Republic of Turkey lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by a Turkish national, Ms Bahar Leventoğlu Abdulkadiroğlu ("the applicant"), on 8 February 2007.

2. The applicant was represented by Mr B. Balpazarı, a lawyer practising in İzmir. The Turkish Government ("the Government") were represented by their Agent.

3. The applicant alleged, in particular, that the refusal by the domestic courts to allow her to bear only her maiden name unjustifiably interfered with her right to respect for her private life under Article 8 of the Convention. She claimed that the fact that Turkish law allowed married men but not married women to bear their own surname after marriage constituted discrimination on grounds of sex and was incompatible with Article 14 of the Convention.

4. On 22 October 2010 the application was communicated to the Government. It was also decided to rule on the admissibility and merits of the application at the same time (Article 29 § 1).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1972 and lives in İzmir.

6. Following her marriage to Atila Abdulkadiroğlu on 6 July 1996, the applicant, whose surname was "Leventoğlu" prior to her marriage, had to take her husband's surname pursuant to Article 153 of the Turkish Civil Code. As she was known by her maiden name in her academic and professional life, she continued to use it; however, she could not use it in any official documents.

7. An amendment to Article 153 of the Civil Code on 14 May 1997 meant that married women acquired the right to put their maiden name in front of their husband's surname. The applicant preferred not to make use of that option because, in her view, the amendment in question did not satisfy her request, which was to use her maiden name on its own.

8. Following the enactment of the new Civil Code on 22 November 2001, Article 187 was worded identically to the former Article 153 (see "Relevant domestic law and practice" below).

9. On 26 September 2005 the applicant brought proceedings before the İzmir Court of First Instance seeking permission to use only her maiden name, Leventoğlu.

10. On 6 December 2005 the court dismissed the applicant's request on the grounds that, pursuant to Article 187 of the Civil Code, married women had to bear their husband's name throughout their marriage and were not permitted to use their maiden name alone.

11. The applicant appealed against that judgment and on 21 March 2006 it was upheld by the Court of Cassation. A request by the applicant for the proceedings in her case to be reopened was further rejected by the same court on 14 July 2006. That decision was served on the applicant on 11 August 2006.

II. RELEVANT DOMESTIC LAW AND PRACTICE

12. The relevant provisions of the Civil Code read as follows:

Article 153 of the former Civil Code (as in force until 14 May 1997)

"Married women shall bear their husband's name. ... "

Article 153 of the former Civil Code (as amended by Law no. 4248 of 14 May 1997), now Article 187 of the new Civil Code enacted on 22 November 2001

"Married women shall bear their husband's name. However, they can make a written declaration to the Registrar of Births, Marriages and Deaths on signing the marriage certificate, or at the Registry of Births, Marriages and Deaths after the marriage, if they wish to keep their maiden name in front of their surname ..."

13. The Turkish Constitution, in so far as relevant, reads as follows:

Article 10

"All individuals shall be equal before the law without any distinction based on language, race, colour, sex, political opinion, philosophical belief, religion, membership of a religious sect or other similar grounds.

Women and men shall have equal rights. ...."

Article 90 (as amended by Law no. 5170 of 7 May 2004)

"... International agreements that are duly in force shall be legally binding. Their constitutionality cannot be challenged in the Constitutional Court.

In the case of a conflict between international agreements in the area of fundamental rights and freedoms that are duly in force and domestic laws on account of differences in provisions concerning the same matter, the provisions of international agreements shall prevail."

14. Following the enactment of Article 187 of the Civil Code, three family courts raised an objection with the Constitutional Court, arguing that the provision was unconstitutional. In a decision of 10 March 2011 (E. 2009/85, K. 2011/49), the Constitutional Court dismissed their objection.

III. RELEVANT INTERNATIONAL LAW

15. The relevant international law is set out in the Court's judgment in the case of *Ünal Tekeli v. Turkey* (no. 29865/96, §§ 17-31, ECHR 2004-X).

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 14 OF THE CONVENTION TAKEN IN CONJUNCTION WITH ARTICLE 8

16. The applicant complained that the national authorities' refusal to allow her to bear only her maiden name after her marriage, despite the fact that she had submitted the Court's judgment on the same topic (*Ünal Tekeli*, cited above) to the domestic courts in support of her request, had amounted to a breach of Articles 6, 8 and 13 of the Convention. She further claimed that the fact that Turkish law allowed married men but not married women to bear their own surname after marriage constituted sex discrimination and was incompatible with Article 14 of the Convention.

17. In view of the nature of the allegations made, the Court considers it appropriate to examine the case under Article 14 of the Convention taken together with Article 8.

A. Admissibility

18. The Court notes that the complaints are not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. It further notes that they are not inadmissible on any other grounds. They must therefore be declared admissible.

B. Merits

19. The applicant complained that the authorities had refused to allow her to bear only her maiden name after her marriage, whereas Turkish law allowed married men to bear their own surname. She argued that this amounted to sex discrimination and was incompatible with Article 8 taken together with Article 14 of the Convention.

20. The Government maintained that the domestic courts were bound by Article 187 of the Civil Code and that the applicant had not been discriminated against in her daily or professional life. They further added that consultations were taking place on draft legislation to bring Article 187 into line with the Convention and asked the Court to find that there had been no violation.

21. The Court notes that in the case of *Ünal Tekeli*, which raised issues similar to those in the present case, it observed that this difference in treatment on grounds of sex between persons in an analogous situation was a breach of Article 14 taken in conjunction with Article 8 (ibid., §§ 55-69).

22. Having examined all the material submitted to it, the Court considers that the Government have not put forward any facts or arguments capable of persuading it to reach a different conclusion in the present case. Having regard to its case-law on the subject, the Court considers that there has been a violation of Article 14 of the Convention in conjunction with Article 8.

23. Having regard to that conclusion, the Court does not consider it necessary to determine whether there has been a breach of Article 8 taken separately.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

24. 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."

25. The applicant did not submit a claim for just satisfaction. Accordingly, the Court considers that there is no call to award her any sum on that account.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Declares* the application admissible;

2. *Holds* that there has been a violation of Article 14 of the Convention in conjunction with Article 8;

3. *Holds* that it is unnecessary to consider the application under Article 8 of the Convention taken alone.

Done in English, and notified in writing on 28 May 2013, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Stanley Naismith	Guido Raimondi
Registrar	President