

EUROPEAN COURT OF HUMAN RIGHTS

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Press release issued by the Registrar

CHAMBER JUDGMENT IN THE CASE OF UNAL TEKELI v. TURKEY

The European Court of Human Rights has today notified in writing a judgment¹ in the case of *Ünal Tekeli v. Turkey* (application no. 29865/96). The Court held unanimously that there had been a **violation of Article 14** (prohibition of discrimination) **taken together with Article 8** (right to respect for private and family life) of the European Convention on Human Rights.

The Court considered that the finding of a violation amounted to adequate just satisfaction for the non-pecuniary damage sustained by the applicant, and awarded her 1,750 euros (EUR) for costs and expenses.

(The judgment is available in English and in French.)

1. Principal facts

The applicant, Ayten Ünal Tekeli, is a Turkish national who was born in 1965 and lives in Izmir.

Following her marriage in 1990 the applicant, who was then a trainee lawyer, took her husband's surname. As she was known by her maiden name in her professional life she continued using it in front of her legal surname, which was that of her husband. She could not use both names together on official documents however.

In 1995 the applicant brought proceedings in the Karşıyaka Court of First Instance for permission to bear only her maiden name, "Ünal". On 4 April 1995 the Court of First Instance dismissed the applicant's request on the ground that, under the Turkish Civil Code, married women had to bear their husband's name throughout their married life. She unsuccessfully appealed to the Court of Cassation.

Turkish law was reformed in 1997 to allow married women to put their maiden name in front of their husband's name. However, the applicant sought to bear her maiden name alone as her surname.

¹ Under Article 43 of the European Convention on Human Rights, within three months from the date of a Chamber judgment, any party to the case may, in exceptional cases, request that the case be referred to the 17-member Grand Chamber of the Court. In that event, a panel of five judges considers whether the case raises a serious question affecting the interpretation or application of the Convention or its protocols, or a serious issue of general importance, in which case the Grand Chamber will deliver a final judgment. If no such question or issue arises, the panel will reject the request, at which point the judgment becomes final. Otherwise Chamber judgments become final on the expiry of the three-month period or earlier if the parties declare that they do not intend to make a request to refer.

2. Procedure and composition of the Court

The application was lodged with the European Commission of Human Rights on 20 December 1995 and transmitted to the Court on 1 November 1998. It was declared admissible on 1 July 2003. A hearing was held on 13 January 2004.

Judgment was given by a Chamber of 7 judges, composed as follows:

Nicolas **Bratza** (British), *President*,
Matti **Pellonpää** (Finnish),
Riza **Türmen** (Turkish),
Viera **Strážnická** (Slovakian),
Josep **Casadevall** (Andorran),
Stanislav **Pavlovschi** (Moldovan),
Javier **Borrego Borrego** (Spanish), *judges*,

and also Michael **O'Boyle**, *Section Registrar*.

3. Summary of the judgment¹

Complaints

The applicant alleged, under Article 8 of the Convention, that the refusal by the domestic courts to allow her to bear only her maiden name had unjustifiably interfered with her right to protection of her private life. She also complained that she had been discriminated against in that married men could continue to bear their own family name after they married. In that connection she relied on Article 14, taken together with Article 8 of the Convention.

Decision of the Court

The fact that married women could not bear their maiden name alone after they married, whereas married men kept their surname, undoubtedly amounted to a “difference in treatment” on grounds of sex between persons in an analogous situation.

As to whether that difference in treatment could be justified, the Court reiterated first of all that the advancement of the equality of the sexes was today a major goal in the member States of the Council of Europe. Two texts of the Committee of Ministers, dated 1978 and 1985, called on the States to eradicate all discrimination on grounds of sex in the choice of surname. That objective could also be seen in the work of the Parliamentary Assembly, the European Committee on Legal Co-operation and also developments at the United Nations regarding equality of the sexes.

Moreover, a consensus had emerged among the Contracting States of the Council of Europe in favour of choosing the spouses' family name on an equal footing. Turkey appeared to be the only Member State which legally imposed the husband's surname as the couple's surname – and thus the automatic loss of the woman's own surname on her marriage – even if the couple had decided otherwise.

¹ This summary by the Registry does not bind the Court.

Admittedly, reforms carried out in Turkey in November 2001 had aimed to place married women on an equal footing with their husband as regards representing the couple, economic activities and decisions to be taken affecting the family and children. However, the provisions concerning the family name after marriage, including those obliging married women to take their husband's surname, had remained unchanged.

The Court considered that the Turkish Government's argument that the fact of giving the husband's surname to the family stemmed from a tradition designed to reflect family unity by having the same name was not a decisive factor. Family unity could result from the choice of the wife's surname or a joint name chosen by the married couple.

Moreover, family unity could also be preserved and consolidated where a married couple chose not to bear a joint family name, as was confirmed by the solution adopted in other European legal systems. Accordingly, the obligation imposed on married women, in the interests of family unity, to bear their husband's surname – even if they could put their maiden name in front of it – had no objective and reasonable justification.

Consequently, the Court held that the difference in treatment in question contravened Article 14 taken in conjunction with Article 8 and considered, having regard to that conclusion, that it was not necessary to determine whether there had also been a breach of Article 8 taken alone.

The Court's judgments are accessible on its Internet site (<http://www.echr.coe.int>).

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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. Since 1 November 1998 it has sat as a full-time Court composed of an equal number of judges to that of the States party to the Convention. The Court examines the admissibility and merits of applications submitted to it. It sits in Chambers of 7 judges or, in exceptional cases, as a Grand Chamber of 17 judges. The Committee of Ministers of the Council of Europe supervises the execution of the Court's judgments. More detailed information about the Court and its activities can be found on its Internet site.