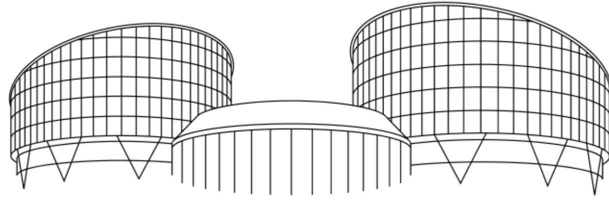

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

SECOND SECTION

CASE OF TUNCER GÜNEŞ v. TURKEY

(Application no. 26268/08)

JUDGMENT

STRASBOURG

3 September 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.

COUNCIL OF EUROPE CONSEIL DE L'EUROPE

In the case of Tuncer Güneş 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 9 July 2013,

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

PROCEDURE

1. The case originated in an application (no. 26268/08) 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 Gülizar Tuncer Güneş ("the applicant"), on 16 May 2008.

2. The applicant was represented by Ms K. Doğru, lawyer practising in Istanbul. 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 1966 and lives in Istanbul.

6. On 30 March 2005 the applicant, who is a lawyer, got married and took her husband’s surname pursuant to Article 187 of the Turkish Civil Code. She, however, kept her maiden name in front of her husband’s surname as provided for by the same provision.

7. On 9 May 2007 the applicant brought proceedings before the Şişli Court of First Instance for permission to use only her maiden name, “Tuncer”.

8. On 18 July 2007 the Şişli Court of First Instance dismissed the applicant’s request on the ground that, under Article 187 of the Turkish Civil Code, married women had to bear their husband’s name throughout their marriage and were not entitled to use their maiden name alone.

9. The applicant appealed. On 22 November 2007 the Court of Cassation upheld the judgment.

II. RELEVANT DOMESTIC LAW AND PRACTICE

10. The Civil Code:

Article 187 of the Civil Code

“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 deed, 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. (...)”

11. The Constitution:

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 duly put into effect bear the force of law. No appeal to the Constitutional Court shall be made with regard to these agreements, on the grounds that they are unconstitutional.

In the case of a conflict between international agreements in the area of fundamental rights and freedoms duly put into effect and the domestic laws due to differences in provisions on the same matter, the provisions of international agreements shall prevail.”

12. 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

13. The relevant international law are set out in the case *Ünal Tekeli v. Turkey*, no. 29865/96, §§ 17-31, ECHR 2004-X (extracts).

THE LAW

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

14. The applicant complained that the national authorities' refusal to allow her to bear only her maiden name after her marriage amounted to a breach of Article 8 of the Convention. She also contended that the fact that Turkish law allows married men to bear only their own surname after marriage and not married women constituted discrimination on grounds of sex and was incompatible with Article 14 of the Convention. The applicant further submitted that the Turkish domestic courts, by disregarding the *Ünal Tekeli v. Turkey* judgment (cited above) given by the Court and failing to make the necessary amendments to the domestic law, had breached her right to an effective remedy under Article 13 of the Convention.

15. 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

16. 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

17. The applicant complained that the authorities had refused to allow her to bear only her own surname after her marriage, whereas Turkish law allowed married men to bear their own surname. She submitted that this resulted in discrimination on grounds of sex and was incompatible with Article 8 taken together with Article 14 of the Convention.

18. 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 business 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.

19. 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 in breach of Article 14 taken in conjunction with Article 8 (ibid., §§ 55-69).

20. Having examined all the material submitted to it, the Court considers that the Government have not put forward any fact or argument 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.

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

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

22. 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."

A. Damage

23. The applicant claimed 25,000 euros (EUR) in respect of non-pecuniary damage.

24. The Government contested the claim.

25. The Court finds that the applicant must have suffered distress which cannot be compensated for solely by the Court's finding of a violation. Having regard to the nature of the violation found and ruling on an equitable basis, it awards the applicant EUR 1,500 in respect of non-pecuniary damage.

B. Costs and expenses

26. The applicant also claimed EUR 3,030 for the legal costs and EUR 169 for the expenses incurred before the domestic courts and before the Court. In support of her submissions, the applicant submitted a legal fee agreement signed by the applicant and her representatives and a timesheet to

the Court, showing that a total of thirty-five hours had been spent by her legal representative in the case.

27. The Government considered the sum claimed to be excessive and unsupported by any documentary evidence. They also invited the Court not to make an award in respect of the costs and expenses incurred at the national level.

28. In response to the Government's argument concerning the costs and expenses relating to the proceedings at the national level, the Court reiterates that, if it finds that there has been a violation of the Convention, it may award the applicant the costs and expenses incurred before the domestic courts for the prevention or redress of the violation (see *Société Colas Est and Others v. France*, no. 37971/97, § 56, ECHR 2002-III). In the present case the applicant brought the substance of her Convention rights to the attention of the national courts. The Court thus considers that the applicant has a valid claim in respect of part of the costs and expenses incurred at the national level.

29. The Court also observes that, contrary to the Government's assertion, the applicant did submit a legal fee agreement and a timesheet to the Court showing the hours spent by her lawyers on the case. It also observes that such time sheets have been accepted by the Court as supporting documents in a number of cases (see, *inter alia*, *Beker v. Turkey*, no. 27866/03, § 68, 24 March 2009)

30. According to the Court's case-law, an applicant is entitled to the reimbursement of costs and expenses only in so far as it has been shown that these have been actually and necessarily incurred and are reasonable as to quantum. As regards the lawyers' fees, in view of the documents in its possession and the above criteria, the Court considers it reasonable to award the applicant the sum of EUR 3,030 covering costs under all heads.

C. Default interest

31. The Court considers it appropriate that the default interest rate should be based on the marginal lending rate of the European Central Bank, to which should be added three percentage points.

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;

4. *Holds*
(a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, the following amounts, to be converted into the currency of the respondent State at the rate applicable at the date of settlement:
(i) EUR 1,500 (one thousand five hundred euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;
(ii) EUR 3,030 (three thousand and thirty euros), plus any tax that may be chargeable to the applicant, in respect of costs and expenses;
(b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

5. *Dismisses* the remainder of the applicant's claim for just satisfaction.

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

Stanley Naismith Registrar

Guido Raimondi President