



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

FOURTH SECTION

CASE OF OYA ATAMAN v. TURKEY

(Application no. 47738/99)

JUDGMENT
(Striking out)

STRASBOURG

22 May 2007

FINAL

22/08/2007

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 Oya Ataman v. Turkey,

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

Sir Nicolas BRATZA, *President*,

Mr J. CASADEVALL,

Mr G. BONELLO,

Mr R. TÜRMEŖ,

Mr K. TRAJA,

Mr S. PAVLOVSCHI,

Mr J. ŠIKUTA, *judges*,

and Mr T.L. EARLY, *Section Registrar*,

Having deliberated in private on 3 May 2007,

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

PROCEDURE

1. The case originated in an application (no. 47738/99) 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 Oya Ersoy [previously Ataman] (“the applicant”), on 26 November 1998.

2. The applicant was represented by Mrs Y. Yeşilyurt Karakoç, a lawyer practising in İstanbul. The Turkish Government (“the Government”) did not designate an Agent for the purpose of the proceedings before the Court.

3. The applicant alleged that the refusal of the national authorities to allow her and her husband to bear her maiden name as their family name amounted to a violation of Articles 8 and 14 of the Convention.

4. By a decision of 21 March 2006 the Court declared the application admissible.

5. The applicant and the Government each filed observations on the merits (Rule 59 § 1).

THE FACTS**I. THE CIRCUMSTANCES OF THE CASE**

6. The applicant was born in 1970 and lives in İstanbul.

7. The applicant is a lawyer practising in İstanbul.

8. Following her marriage to Hüseyin Ataman on 14 July 1995, the applicant, whose maiden name was “Ersoy” prior to her marriage, had to take her husband's last name pursuant to Article 153 § 1 of the Civil Code.

9. On 17 December 1996 the applicant filed an action for rectification of her name before the Ankara Civil Court. She asked to keep her maiden name and requested that her maiden name be adopted as the family name, as also agreed by her husband. The applicant claimed that Article 153 § 1 of the Civil Code contravened Articles 10 and 12 of the Turkish Constitution.

10. On 14 May 1997 Law no. 4248 amended Article 153 of the Civil Code and provided married women with the option of combining their maiden name with that of their husband's surname.

11. On 3 June 1997 the Ankara Civil Court held that Article 153 § 1 did not allow a married couple, even if they agreed, to bear the maiden name of the woman as the family name. It found that such a provision was contrary to Articles 12 and 17 of the Constitution. Accordingly, considering that the claims of the applicant were well-founded, the court decided to suspend the proceedings and transferred the case-file to the Constitutional Court for examination of the compatibility of Article 153 § 1 of the Civil Code with the relevant provisions of the Constitution.

12. On 21 October 1997 the Constitutional Court decided, unanimously, to limit the examination of constitutionality to the first sentence of Article 153 of the Civil Code which states: “Married women shall bear their husband's name”.

13. On 29 September 1998 the Constitutional Court held by eight votes to three that Article 153 of the Civil Code was compatible with Articles 10, 12 and 17 of the Constitution.

In its decision, the court held, *inter alia*, the following:

“The rule according to which married women bear their husband's name derives from certain social realities and is the result of the codification of certain customs that have formed over centuries in Turkish society. According to the reasoning behind family law, the purpose of the rule is to protect women, who are of a more delicate nature than men, to strengthen family bonds, to nurture the prosperity of the marriage, and to preclude bicephalous authority within the same family.

For the sake of protecting family unity, the legislature has recognised the primacy of the husband's name over the wife's. Considerations of public interest and policy have been decisive. Moreover, under the new provision women are now allowed to keep their maiden name in front of their surname (...).

Furthermore, the contention that this provision infringes Article 10 of the Constitution, which prohibits any discrimination on the ground of sex, is not well-founded either. The principle of equality, within the meaning of Article 10 of the Constitution, does not mean that everyone is subject to the same rules of law. The special characteristics of each person or each group of persons may reasonably justify the application of different rules of law (...)

14. The dissenting judges considered that Article 153 of the Civil Code interfered with the woman's right to protect and develop her material and spiritual entity and that it was incompatible with Article 17 of the Constitution.

15. On 16 March 1999 the Ankara Civil Court adhered to the Constitutional Court's judgment and dismissed the case brought by the applicant.

16. On 15 November 2002 the decision of the Constitutional Court was published in the *Official Gazette* of the Republic of Turkey.

17. In her post admissibility observations, the applicant informed the Court that she had divorced on 30 April 2003.

II. RELEVANT DOMESTIC LAW AND PRACTICE

18. The relevant domestic law and practice are set out in the case *Ünal Tekeli v. Turkey*, no. 29865/96, §§ 14-15, ECHR 2004-... (extracts).

THE LAW

19. The applicant complained that the refusal of the national authorities to allow her and her husband to bear her maiden name as their family name amounted to a violation of Articles 8 and 14 of the Convention.

Article 8 of the Convention provides:

“1. Everyone has the right to respect for his private and family life, his home and his correspondence.

2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.”

Article 14 of the Convention provides:

“The enjoyment of the rights and freedoms set forth in [the] Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.”

20. The Government submitted that the applicant has ceased to be a victim of a violation of the Convention on account of her divorce on 30 April 2003. Accordingly, the Government invited the Court to strike the case out of its list of cases in accordance with Article 37 § 1 (c) of the Convention.

21. The applicant asked the Court to rule on the merits claiming that she remained a victim of a violation of Articles 8 and 14 of the Convention. In this respect, she submitted, in particular, that she had to change her surname upon marriage and after divorce and that, taking into account her profession, this meant that she had to constantly reintroduce herself.

22. The Court observes that since the applicant gave a clear indication that she intended to pursue her application, sub-paragraph (a) of Article 37 § 1 is not applicable (see *Pisano v. Italy* [GC] (striking out), no. 36732/97, § 41, 24 October 2002). It further notes that the matter cannot be considered to have been resolved within the meaning of Article 37 § 1 (b) of the Convention, since, even if the circumstances directly complained of by the applicant no longer prevail, the effects of a possible violation of the Convention on account of the circumstances of the present case have not been redressed by the domestic authorities (see *Ohlen v. Denmark* (striking out), no. 63214/00, § 26, 24 February 2005).

23. In the circumstances of the present case therefore, the Court must ascertain whether the new fact brought to its attention following its decision on the admissibility of the application - namely the divorce of the applicant on 30 April 2003 - may lead it to conclude that it is no longer justified to continue the examination of the application, and that the application may consequently be struck out of its list of cases in accordance with Article 37 § 1 (c) of the Convention, which provides:

“The Court may at any stage of the proceedings decide to strike an application out of its list of cases where the circumstances lead to the conclusion that

(c) for any other reason established by the Court, it is no longer justified to continue the examination of the application.

However, the Court shall continue the examination of the application if respect for human rights as defined in the Convention and the Protocols thereto so requires.”

24. The Court reiterates that it enjoys a wide discretion in identifying grounds capable of being relied upon in striking out an application on this basis, it being understood, however, that such grounds must reside in the particular circumstances of each case (see *Association SOS Attentats and de Boery v. France* [GC], (dec.), no. 76642/01, § 37, ECHR 2006-... and the cases cited therein).

25. In the instant case, the applicant's complaint concerns her inability, due to domestic law, to use her maiden name as the family name of the couple. However, in the meantime, it appears that the applicant divorced on 30 April 2003-a fact which she failed to mention until her post-admissibility observations dated 24 May 2006 notwithstanding the terms of Rule 47 § 6 of the Rules of Court according to which applicants are required to keep the Court informed of developments relevant to their application. Having regard

to the applicant's divorce on 30 April 2003, the Court finds that the matter complained of no longer concerns a live issue.

26. In these circumstances, the Court concludes that it is no longer justified to continue the examination of the application within the meaning of Article 37 § 1 (c) of the Convention. Furthermore, the Court finds no reasons of a general character, as defined in Article 37 § 1 *in fine*, which would require the examination of the application by virtue of that Article.

27. Accordingly, the case should be struck out of the list.

FOR THESE REASONS, THE COURT UNANIMOUSLY

Decides to strike the case out of the list.

Done in English, and notified in writing on 22 May 2007, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

T.L. EARLY
Registrar

Nicolas BRATZA
President