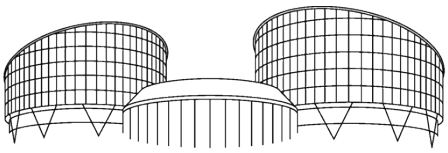

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

SECOND SECTION

CASE OF TANBAY TÜTEN v. TURKEY

(Application no. 38249/09)

JUDGMENT

STRASBOURG

10 December 2013

FINAL

10/03/2014

This judgment has become final under Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of Tanbay Tüten v. Turkey,

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

Guido Raimondi, *President,*
Işıl Karakaş,
Peer Lorenzen,
András Sajó,
Nebojša Vučinić,
Paulo Pinto de Albuquerque,
Egidijus Kūris, *judges,*
and Stanley Naismith, *Section Registrar,*

Having deliberated in private on 19 November 2013,

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

PROCEDURE

1. The case originated in an application (no. 38249/09) 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 Betül Tanbay Tüten ("the applicant"), on 3 July 2009.

2. The applicant was represented by Ms A. Becerik, 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 protection of her private life under Article 8 in conjunction 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 1960 and lives in Istanbul.

6. On 30 October 1992 the applicant, who is a university professor, got married and took 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 using it. However, she could not use it in official documents.

7. Following the amendment made to Article 153 of the Civil Code on 14 May 1997 that entitled married women the right to put their maiden name in front of their husband's surname, the applicant started to avail herself of this possibility in official documents.

8. Following the adoption of new Civil Code on 22 November 2001, Article 187 was worded identically to the former Article 153.

9. On 5 December 2007 the applicant brought proceedings before the Beyoğlu Court of First Instance for permission to use only her maiden name, "Tanbay".

10. On 31 January 2008 the Beyoğlu 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.

11. The applicant appealed. On 14 July 2008 the Court of Cassation upheld the judgment.

12. On 4 December 2008 the applicant's rectification request was further rejected by the Court of Cassation on the ground that it failed to meet the requirements foreseen in the law and the applicant was fined the equivalent of EUR 80 (euros) as a result. The latter decision was delivered to the applicant on 9 January 2009.

II. RELEVANT DOMESTIC LAW AND PRACTICE

13. 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."

14. The Civil Code:

Article 153 of the former Civil Code
(as in force at the material time)

"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 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 ..."

15. Code of Civil Procedure:

Article 440
(as in force at the material time)

"Rectification of a Court of Cassation decision may be requested for the following reasons, within fifteen days after the notification of the impugned decision:

1. If in the appeal proceedings, the Court of Cassation failed to respond to the parties' appeal requests;

2. If the Court of Cassation decision contains contradictory paragraphs;

3. If it is established that some of the documents examined during the appeal proceedings were fraudulent or false;

4. If the Court of Cassation decision is against domestic procedure or domestic law."

Article 442
(as in force at the material time)

"If the request for rectification is not based on one of the conditions (set forth by Article 440 of this Code), it shall be rejected and a fine shall be imposed on the applicant."

16. 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 the objection.

III. RELEVANT INTERNATIONAL LAW

17. 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 THE RIGHT TO ACCESS TO COURT

18. Relying on Article 13 of the Convention, the applicant claimed that the imposition of a fine on her as a result of her unsuccessful request for rectification constituted a barrier on the right to appeal. In view of the nature of the allegation made, the Court considers it appropriate to examine the complaint under Article 6 of the Convention.

19. The Court observes that the Court of Cassation rejected the applicant's request and on the basis of Article 442 of the Code of Civil Procedure, imposed a minor fine on her.

20. The Court notes that the applicant's rectification request was not based on the conditions set out in Article 440 of the Code of Civil Procedure, as it was solely complaining about the outcome of the appeal proceedings. It observes that the fine imposed on her merely constituted a penalty for having occupied the higher courts in a vexatious manner. Moreover, the applicant does not complain that she was unable to have her case heard due to the relevant fine. The applicant's right of access to court was not impaired in any way as she had had the opportunity to have her case examined thoroughly before two levels of jurisdiction prior to her request for rectification. The Court reiterates that the imposition of a fine in order to prevent a build-up of cases before the courts and to ensure the proper administration of justice is not, as such, in conflict with the right of access to court (see *G.L. v. Italy*, no. 15384/89, Commission decision of 9 May 1994, Decisions and Reports (DR) 77-B, p. 5). Furthermore, based on the case file, there is nothing to prove that the amount of the fine imposed on the applicant constituted a substantial economic burden on her.

21. In the light of the foregoing considerations and the specific circumstances of the case, the Court concludes that the imposition of the relevant fine on the applicant for her unsuccessful request for rectification does not constitute a violation of the right of access to court (see *Toyaksi and Others v. Turkey* (dec.), nos. 43569/08, 5801/09, 19732/09 and 20119/09, 20 October 2010). The complaint concerning the above-mentioned right must therefore be rejected as being manifestly ill-founded.

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

22. The applicant complains that the national authorities' refusal to allow her to bear only her maiden name after her marriage amounted to a breach of Articles 6, 8 and 46 of the Convention. She also contends that the fact that Turkish law allows married men to bear their own surname after marriage and not married women constitutes discrimination on grounds of sex and is incompatible with Article 14 of the Convention. The applicant further refers to the Court's *Ünal Tekeli v. Turkey* judgment (cited above) and submits that the Turkish domestic authorities should have complied with this judgment.

23. 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

24. 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

25. 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 14 taken together with Article 8 of the Convention.

26. 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.

27. 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).

28. 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.

29. 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.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

30. 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

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

32. The Government contested the claim.

33. 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

34. The applicant also claimed EUR 3,773 for the legal costs and EUR 140 for the expenses incurred before the domestic courts and before the Court. In support of her submissions, the applicant submitted a timesheet to the Court, showing the hours spent by her legal representative in her case before the Court and a receipt for a total amount of 750 Turkish liras (TRY) (approximately EUR 435) for the legal fee agreement paid. The applicant also submitted four receipts for a total amount of TRY 230.30 (approximately EUR 135) for the legal fees incurred before the domestic courts.

35. 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.

36. 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.

37. The Court also observes that, contrary to the Government's assertion, the applicant did submit five receipts 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).

38. 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. 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 570 covering costs under all heads.

C. Default interest

39. 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 complaint concerning the national authorities' refusal to allow the applicant to bear only her maiden name after her marriage admissible and the remainder of the application inadmissible;

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 570 (five hundred and seventy 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 10 December 2013, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Stanley Naismith Registrar	Guido Raimondi President