



Single-parent adoption: legal vacuum in Turkey regarding recognition of adoptive mother's forename

In today's **Chamber judgment**¹ in the case of [Gözüm v. Turkey](#) (application no. 4789/10) the European Court of Human Rights held, unanimously, that there had been:

a violation of Article 8 (right to respect for private and family life) of the European Convention on Human Rights.

The case concerned the refusal of Ms Gözüm's request, as a single adoptive mother, to have her own forename entered on the personal documents for her adopted son E. in place of the name of the child's biological mother.

The Court found in particular that there had been a vacuum in Turkish civil law in relation to single-parent adoption, since at the time Ms Gözüm had made her request, there had been no regulatory framework for recognition of the adoptive single parent's forename in place of that of the natural parent. This had left Ms Gözüm in a situation of distressing uncertainty regarding her private and family life with her son.

Principal facts

The applicant, Nigar Gözüm, is a Turkish national who was born in 1966 and lives in Istanbul (Turkey).

By a decision of 22 May 2007 the Üsküdar Family Court (Istanbul) authorised Ms Gözüm, who was then single, to adopt a young boy, E., born on 5 November 2003. In accordance with the relevant provisions of Turkish law, "Gözüm" was registered as E.'s family name in the civil-status registers and on his identity papers. However, on the identity documents, in the box marked "forename of the mother"², the authorities left the forename of the child's biological mother.

On 23 November 2007 Ms Gözüm applied to the Üsküdar District Court to have the biological mother's forename replaced by her own forename. She argued that the refusal by the Turkish authorities to comply with her request was discriminatory and unconstitutional treatment that interfered with their personal, family and social well-being. She also argued that there was a vacuum in Turkish law in relation to single-parent adoption, since there was no regulatory framework for recognition of the adoptive parent's forename, and that the court should either fill this vacuum itself in accordance with Article 1 of the Civil Code³ or refer a preliminary question to the Constitutional Court. After losing her case at first instance, she appealed on points of law on 14 April 2008.

On 15 March 2009, while her appeal was pending, a legislative reform was introduced, allowing adoptive single mothers to have their forename registered in place of that of the biological mother.

1. Under Articles 43 and 44 of the Convention, this Chamber judgment is not final. During the three-month period following its delivery, any party may request that the case be referred to the Grand Chamber of the Court. If such a request is made, a panel of five judges considers whether the case deserves further examination. In that event, the Grand Chamber will hear the case and deliver a final judgment. If the referral request is refused, the Chamber judgment will become final on that day.

Once a judgment becomes final, it is transmitted to the Committee of Ministers of the Council of Europe for supervision of its execution.

Further information about the execution process can be found here: www.coe.int/t/dghl/monitoring/execution.

² The following boxes appear on Turkish identity documents: "family name", "mother's forename", "father's forename".

³ In the event of a legal vacuum, the court must act after the fashion of the legislature and, in accordance with the provisions of Article 1 of the Civil Code, determine and apply the appropriate rule in the circumstances.

On 5 November 2009 the Court of Cassation nevertheless dismissed Ms Gözüml's appeal in a judgment which remained silent as to the legislative reform in question.

On 9 November 2010 Ms Gözüml requested the Civil Registry Office to officially register her forename as that of E.'s mother. Her request was successful and subsequently all the official documents relating to the child were amended accordingly, with immediate effect.

Complaints, procedure and composition of the Court

Ms Gözüml alleged that the rules of civil law, as applied to her at the relevant time, had infringed Article 8 (right to respect for private and family life), read separately and/or in conjunction with Article 14 (prohibition of discrimination). Relying on Article 6 § 1 (right to a fair hearing), she also alleged that the Turkish courts had refused to prevent the situation complained of by filling the legal vacuum in Turkish law in relation to single-parent adoption or by raising a preliminary question.

The application was lodged with the European Court of Human Rights on 12 January 2010.

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

Guido **Raimondi** (Italy), *President*,
Işıl **Karakaş** (Turkey),
András **Sajó** (Hungary),
Nebojša **Vučinić** (Montenegro),
Egidijus **Kūris** (Lithuania),
Robert **Spano** (Iceland),
Jon Fridrik **Kjølbro** (Denmark),

and also Stanley **Naismith**, *Section Registrar*.

Decision of the Court

Articles 8 and 14

The Court acknowledged that in this type of case, which concerned competing interests that were not easily reconciled (those of the biological parent, the child, the adoptive family, and the general interest), the State enjoyed some room for manoeuvre (margin of appreciation) in striking a balance between the interests at stake. It pointed out, however, that the child's best interests were in any event paramount.

The Court observed that in the present case neither the District Court nor the Court of Cassation had addressed the plea submitted by Ms Gözüml under Article 1 of the Civil Code requiring the courts to fill the vacuum in the law. Furthermore, nothing in the decisions in question indicated that the courts had endeavoured to assess the case on the basis of the particular circumstances involved and with the aim of preserving E.'s best interests. Accordingly, the assessment by the Turkish courts, which was incomplete and lacked reasons, could not be regarded as falling within an acceptable degree of room for manoeuvre.

The Court also found that there was no compelling reason to draw attention to the fact that E. was an adopted child by recording the forename of his biological mother on his personal documents and that Ms Gözüml had been left in a situation of distressing uncertainty regarding her private and family life with her son.

It observed that the situation had been shrouded in legal uncertainty at the relevant time as a result of the failure of Turkish law to specify with sufficient clarity the scope and conditions of exercise of the courts' discretionary power in the area of single-parent adoption.

Accordingly, the Court considered that in relation to single-parent adoption Turkish civil law contained a legal vacuum which affected persons in the situation of Ms Gözü, whose request fell within a legal sphere which the Turkish legislature had clearly failed to envisage and regulate in such a way as to strike a fair balance between the general interest and the competing interests of the individuals involved.

The Court concluded that civil-law protection, as envisaged at the relevant time, was inadequate in respect of Turkey's obligations under Article 8, which had accordingly been violated.

Having regard to the finding of a violation of Article 8 taken separately, the Court did not consider it necessary to examine the complaint based on Article 14 taken in conjunction with that provision.

Article 6 § 1

The Court observed that this complaint concerned, in substance, a part of the facts that had already been examined under Article 8, of which a violation had been found. It therefore considered that it did not have to rule on the admissibility and merits of this part of the application.

Just satisfaction (Article 41)

The Court held that Turkey was to pay the applicant 2,500 euros (EUR) in respect of non-pecuniary damage and EUR 220 in respect of costs and expenses.

The judgment is available only in French.

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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.