

November 2004

Ünal Tekeli v. Turkey - 29865/96

Judgment 16.11.2004 [Section IV]

Article 14

Discrimination

Impossibility for married woman to use only her maiden name in official documents: *violation*

Facts: After her marriage the applicant took her husband's surname in accordance with the Civil Code. She had been a trainee lawyer at the time of her marriage. As she had been known by her maiden name in her professional life, she decided to put it in front of her legal surname. However, she could not use both names together on official documents. She brought proceedings for permission to use only her maiden name, "Ünal". The applicant's request was dismissed on the ground that domestic law provided that married women had to bear their husband's surname throughout their married life. The Civil Code was then amended to allow married women to keep their maiden name in front of their family name (right confirmed by the recently enacted new Civil Code of 2001). The applicant preferred to keep her maiden name as her family name, however. She considered that she had been discriminated against because married men could keep their own surname.

The law: (a) *Preliminary objections:* The Government submitted that the obligation to change her name had not had an impact on the applicant's professional life since it was only during her traineeship that she had practised under her maiden name alone. The Court pointed out that the family name also played a role in a person's private and family life. The refusal to allow the applicant to use just her maiden name, by which she claimed to have been known in private circles and in her cultural or political activities, could have considerably affected her non-professional activities. The applicant was therefore a "victim" for the purposes of Article 8. Although, as the Government pointed out, the position complained of derived from the domestic legislation, the applicant's request had not been a futile one because the courts could have applied the Convention directly or applied the principle of non-discrimination enshrined in the Turkish Constitution.

(b) *Article 14 taken together with Article 8:* The impugned situation amounted to a difference of treatment on grounds of sex. In the Government's submission, it pursued a legitimate aim which was the need for couples to have a joint surname – reflected through the husband's surname – and thus to preserve public order. The Convention required that any measure designed to reflect family unity be applied even-handedly to both men and women unless compelling reasons were adduced. Texts adopted by the member States of the Council of Europe, and internationally, advocated the eradication of all discrimination on grounds of sex in the choice of surname. Furthermore, 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 was the only country which legally imposed the husband's name as the couple's surname. However, Turkey did not currently position itself outside the general trend towards placing men and

women on an equal footing in the family. Prior to the recent legislative amendments, particularly those of 2001, the reflection of family unity through the husband's surname had corresponded to the traditional conception of the family. The aim of the recent reforms of the Civil Code had been to place married women on an equal footing with their husband in representing the couple. However, the provisions concerning the family name after marriage had remained unchanged. Admittedly, the tradition of reflecting family unity through the husband's surname derived from the man's primordial role and the woman's secondary role in the family as established until the new Civil Code was passed in 2001. Nowadays, the advancement of the equality of the sexes in the member States of the Council of Europe, including Turkey, and in particular the importance attached to the principle of non-discrimination, prevented States from imposing that tradition on married women.

According to the practice of the Contracting States and the systems applicable in Europe, it was perfectly conceivable that family unity would be preserved and consolidated where a married couple chose not to bear a joint family name. The Government had not shown in the present case that concrete or substantial hardship for married partners and/or third parties or detriment to the public interest would be likely to flow from the lack of reflection of family unity through a joint family name. In those circumstances the Court considered that the obligation on married women, in the name 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. A transition from the above-mentioned traditional system to other systems allowing married partners either to keep their own surname or freely choose a joint family name, would have a considerable effect on keeping registers of births, marriages and deaths. However, society could reasonably be expected to tolerate a certain inconvenience to enable individuals to live in dignity and worth in accordance with the name they had chosen. In sum, the objective of reflecting family unity through a joint family name could not provide a justification for the difference in treatment on grounds of sex.

Conclusion: violation (unanimous).

Article 41 – The Court considered that it was for the Turkish State to implement in due course such measures as it considered appropriate to fulfil its obligations, in accordance with the present judgment, to secure to each married partner, including the applicant, the right to keep their own surname or to have an equal say in the choice of their family name.

The applicant was awarded the amount she had claimed for costs and expenses.