

## **29.09.1998, E.1997/61, K.1998/59**

**Date** : 29.09.1998  
**Number** : E.1997/61, K.1998/59  
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**Subject** : General interest,  
Gender, Woman, married, family  
surname / Name, surname, taken from husband,  
obligatory / Family, protection / Tradition.

### Headnotes:

It is not contrary to the principle of equality for individuals to be bound by different rules on just grounds. Recognising the priority of one of the spouses in order to protect the family union and preferring the use of the surname of the husband over that of the wife is in compliance with the Constitution since the impugned provision allows the wife to use her surname in front of the family surname.

### Summary:

The Ankara Fourth Court of Peace applied to the Constitutional Court to have Article 153.1 of the Civil Code struck down for being contrary to Articles 12 and 17 of the Constitution.

Article 153.1 of the Civil Code provides "the wife shall take the surname of her husband when she gets married; however, she may use her previous surname in front of her husband's surname provided that she applies to the registry official or subsequently to the registry administration".

Articles 12.1 and 17 of the Constitution respectively state: "Everyone possesses inherent fundamental rights and freedoms which are inviolable and inalienable" and "Everyone has the right to life and the right to protection and development of his material and spiritual entity".

The provision that "the wife shall take the surname of her husband when she gets married" stems from the dictates of some social realities and the institutionalisation of long tradition by the legislation. There are some legal theories in Family Law putting forward that a woman should be protected against some social realities and dictates, family relations should be strengthened and family unity should be ordered and uniform.

When a family name (surname) is transferred from one generation to another, the family unity and entity is maintained. The lawmaker recognised the priority of one of the spouses in order to protect the family union. The public order, the public interest and some dictates have led to preference for husband's surname. The

impugned provision allows the woman to use her surname with her husband's surname upon application to the registry.

The objection that Article 153.1 of the Civil Code discriminates against women on the basis of sex is not valid. The principle of equality enshrined in Article 10 of the Constitution does not mean that all individuals shall be bound by the same rules.

It is not contrary to the principle of equality for individuals to be bound by different rules on just grounds. Since there are just grounds for that issue, it is not contrary to the principle of equality for the lawmaker to prefer the surname of the husband as the family surname.

Therefore, the application was rejected.

The judges Acargün, Bumin and Kantarcioglu had dissenting opinions.

Supplementary information:

Case no. E.1997/61, K.1998/59.