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SÜHEYLÄ ZORLU

Selçuk Üniversity Law Faculty, Konya

SÜLEYMAN EMRE ZORLU

Selcuk University Law Faculty, Konya

IN TERMS OF GENDER EQUALITY PRINCIPLES, THE WOMAN'S LAST NAME IN THE TURKISH CIVIL LAW

Abstract:

Former Turkish Civil Code Article 153/1 was in the form: "Wife, carries her husband's family name". In this regard, according to the changes made in 1997 women last names, was granted the right to use her husband's surname with. Finally, in 2002, it entered into force, 4721 in New Turkish Civil Code Article 187. line within, It accepted that women use their maiden name with the surname of her husband. This provision, which respond to the needs, is treated in accordance with the principle of equality and are thought to end the discussion on this subject. However, the real debate should be initiated after the change of the legislator.

Keywords:

Turkish Civil Law; Gender Equality Principles; Woman Last Name in Turkish Civil Law

JEL Classification: K36, K19

1 National and International Basis of The Principle of Gender Equality

Before declaration of the Republic in Turkey, there was principle of equality in the Kanuni Esasi (1876) Constitution. Subsequent constitutions which are after declaration of the Republic (1924, 1961 and 1982 Constitutions) the principle of equality has taken place. However, control of constitutionality was introduced with the 1961 and 1982 constitution. There is no control of constitutionality in the previous constitutions, so real equality and assurance cannot be found in these constitutions¹.

Principle of gender equality is one of the fundamental nature of the state² and arranged by 10th Article of the 1982 Constitution which is in force. According to this provision carries the title of "Equality before the law":

"ARTICLE 10- Everyone is equal before the law without distinction as to language, race, colour, sex, political opinion, philosophical belief, religion and sect, or any such ground.

(Paragraph added on May 7, 2004; Act No. 5170) Men and women have equal right. The State has the obligation to ensure that this equality exists in practice. (Sentence added on September 12, 2010; Act No. 5982) Measures taken for this purpose shall not be interpreted as contrary to the principle of equality

(Paragraph added on September 12, 2010; Act No. 5982) Measures to be taken for children, the elderly, disabled people, widows and orphans of martyrs as well as for the invalid and veterans shall not be considered as violation of the principle of equality.

No privilege shall be granted to any individual, family, group or class.

State organs and administrative authorities are obliged to act in compliance with the principle of equality before the law in all their proceeding".

However, it should appear to "equality principle" even though not explicitly written in the Constitution, the validity of the democratic rule of in every legal system, which is a general principle of law current. Indeed, this matter was highlighted in the decision given by the Constitutional Court³. In fact, in a decision issued in 1970 the principle of equality has been recognized as a fundamental element of the rule of law⁴.

The principle of equality is also addressed in several international documents which are adopted by Turkey. *Universal Declaration of Human Rights* was adopted by the United Nations in 1948, is one of the cornerstones of human rights and was adopted by Turkey in 1949. At the beginning of the Declaration of Human Rights "Whereas the peoples of the United Nations have in the Charter reaffirmed their faith in fundamental human rights, in the dignity and worth of the human person and in the equal rights of men and women and have determined to promote social progress and better standards of life in larger freedom" expression is located. According to the Declaration of the said Article 2 "Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex,

¹ İNCEOĞLU, Sibel, Türk Anayasa Mahkemesi ve İnsan Hakları Avrupa Mahkemesi Kararlarında Eşitlik ve Ayrımcılık Yasağı, Çalışma ve Toplum, 2006/4, s.47.

² ATAR, Yavuz, Türk Anayasa Hukuku, 2. Baskı, Konya 2002, p.114.

³ ÖDEN, Merih, Türk Anayasa Hukukunda Eşitlik İlkesi, Ankara 2003, p.126; ÇAĞLAYAN, Ramazan, Anayasa Mahkemesi Kararlarında Hukuk Devleti İlkesi, AÜEHFD, Y. 1998, VOL.II, P.1, p.51; YÜKSEL, Sera Reyhani, Türk Medenî Kanunu Bakımından Kadın-Erkek Eşitliği, GÜHFD, Y. 2014, VOL.XVIII, P.2., p.177.

⁴ ÇAĞLAR, Selda, Anayasa Mahkemesi Kararlarında Eşitliğin Dar Yorumu, ABD, 2012/3, p.47-48.

language, religion, political or other opinion, national or social origin, property, birth or other status”.

Then European Convention on Human Rights which signed in 1950 also emphasizes equality. Indeed, according to Article 14 of the European Convention on Human Rights “The enjoyment of the rights and freedoms set forth in this 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”.

The Convention on the Elimination of all Forms of Discrimination Against Women (CEDAW) was accepted by the United Nations General Assembly in 1979 and that convention took into action in 1981. Fulfillment of this agreement, shows that discrimination against women is a problem on the global level, not only in Turkey⁵. Turkey confirmed that contract in 1985. The contract concerned Article 16, “States Parties shall take all appropriate measures to eliminate discrimination against women in all matters relating to marriage and family relations and in particular shall ensure, on a basis of equality of men and women

...

(1-g) The same personal rights as husband and wife, including the right to choose a family name, a profession and an occupation

...”

CEDAW has brought significant changes to improve our legal system's gender equality. These contributions are seen especially in Turkish Civil code's family law part⁶.

It's impossible to mentioned here with all international texts containing provisions relating to gender equality and discrimination against women; because it is beyond the scope of our work. Therefore in continuation of our work, regulations relating to equality between men and women in the Turkish Civil Code will be discussed.

2 Turkish Civil Code and Principle of Gender Equality

A) Major Regulations To Provide Principle of Gender Equality In Turkish Civil Code

Turkish Civil Code was changed in 2001 and new civil code came into force in 2002. One of the main purposes to change Civil Code in Turkish Law System is to be sure that spouses has equal rights in their family. Indeed in the New Civil Code's general ground it is stated that chances has been done "principle of man and woman equality is regarded as principle value by all of Today's modern Law Systems without exception, in order to place it to our legal system literally".

First regulation should be mentioned here is Turkish Civil Code's Article 8 which regulates "legal capacity". According to the said provision "Every person has the legal capacity.

According to this all people, within the limits of the law, are equal in means of rights and eligibility to debt. "

Regardless of differences such as religion, language, race, gender, color, social class, ideas, nationality law express that everyone has legal capacity. However, equality in law, should not

⁵ YÜKSEL, p.178.

⁶ ÖZDAMAR, Demet, CEDAW Sözleşmesi, Ankara 2009, p.57.

be regarded as absolute equality. When people's different characteristics (such as youth, gender, disease or elderly) and conditions such as their situation's nature are considered requirements may be different from each other⁷. So equality of equals is needed. If there is an attempt to provide equality among the unequals there would be unfair result.

Because of reasons that are coming from the creation, it is an obligation that there are inequalities between men and women. In Turkish civil code there are regulations which are about these inequalities. Turkish Civil Code's Article 132 is about foreseen standby time and it is an example of inequality between gender. According to the provision a woman whose marriage is over cannot get married within 300 days starting with marriage's end. Because this time is required if there is a pregnancy and if woman gets married before this time and also her pregnancy is revealed in this time there can be problems in terms of child's paternity. Therefore, this arrangement cannot be seen as limiting the right license⁸. This limitation cannot be characterized as a provision which disrupts woman-man equation because of mother character which is bestowed to woman.

Turkish civil code which came into force in 2002, has brought too many new regulations to provide man-woman equation. One of these regulations is modification of marriage age. Because according to old Civil Code marriage age for men is 17 and marriage age for women is 15. In the new Turkish Civil Code, usual age of marriage for both sexes is determined as 17; age of marriage under extraordinary conditions is determined as the completion of 16. (Article 124; 126).

In New Turkish Civil Code there is also a regulation to provide equality between the spouses during making of marriage contract. Former Civil Code indicate that marriage registration must be done to marriage official who is in the man's placement. With the New Turkish Civil Code's Article 134 such opportunity has been provided "men and women who is going to marry, can apply together to registration office in one of their placements". Also with new Turkish Civil Code, new provisions about marital union which is to provide gender equality in terms of personal and financial relations was established. So that woman can have a different an individual placement. Principle of choosing house that spouses will be live together is established so that husband alone cannot decide where the family will live⁹. Former Civil Code's Article 152/1 "husband is head of the union" statement is removed and spouses will manage together the marriage union is regulated.

According to child custody Turkish Civil Code regulations are aimed to ensure gender equality. Turkish Civil Code's Article 336 said that parents will use custody together. on the other hand previous civil code decide that spouses will use custody together but if there is a disagreement between spouses fathers decision will be accepted.

Another change in the Turkish Civil Code to provide gender equality is about expenditures of household. According to Old Civil Code's Article 152, husband is responsible of household and child care expense. But according to new civil code spouses will contribute household expenses in proportion of their labor and property. but here content and amount of participation is not decided by principle of absolute equality. Proportion should be determined according to

⁷ DURAL, Mustafa, *Türk Medeni Hukukunda Gerçek Kişiler*, 2. Bası, İstanbul 1984, p.42-43.

⁸ HATEMİ, Hüseyin, *Gerçek Kişiler Hukuku*, İstanbul 2005, p.7; AYAN, Mehmet/ AYAN, Nurşen, *Kişiler Hukuku*, 5. Baskı, Konya 2014, p.20.

⁹ ÖZDAMAR, p.57.

the fairness and gender equality¹⁰. New Turkish Civil Code's 4721 numbered regulation is about the representation of marriage and it is an regulation to provide gender equality¹¹.

Another regulation that is absolutely against the gender equality is husband's decision right about wife's occupation or job which is in the Former Civil Code (Article 159). This decision was cancelled on 29 November 1990 by Constitutional Court with 30/31 numbered decision because it is find against the gender equality. New Turkish Civil Code's Article 192 which is titled "spouses' occupations and jobs", is about either of the spouses do not have to get permission from other spouse. However spouses should consider marriage's peace and safety while choosing their occupations and these occupation's stability.

One of the most noticeable regulation about to provide gender equality in the new Turkish Civil Code is regulation about property regime. In the Former Civil Code legal property regime was separation of property. Because of this property regime, in the situation of divorce, wife's labor in the husband's house for years has no meaning and wives were forced to leave these houses penniless. During the phase of preparation of new Turkish Civil Code, woman's grievances are addressed by legislator. As a result, the "participation in acquired property regime" is adopted as the legal property regime.

When individual wants to terminate marriage by divorce, due to new Turkish Civil Code women can sue for a divorce in a court that is located around her placement. Right to demand alimony because of poverty is granted to both man and woman in terms of principle of equality. Whereas, according to Former Civil Code man's demand of alimony because of poverty was able only the condition of woman's welfare (Article 144).

B) WOMAN'S SURNAME IN MEANS OF GENDER EQUATION IN THE TURKISH LAW

i. REGULATION WHICH TAKES PLACE IN TURKISH CIVIL CODE

One of the most criticized and it's inequality expressed by women is surname provision. This provision is in the Turkish Civil Code and charge women to carry her husband's surname¹² (it is an obligation). Although many provisions based on the principle of equality between spouses, there is no compliance with the principle of equality according to "woman's surname"¹³.

Surname is one of the personal values which is under personality right¹⁴. As a rule, until marriage woman uses surname gained by birth. She conducts social and professional

¹⁰ ZEYTİN, Zafer, Türk Medeni Kanununda Kadın- Erkek Eşitliğine İlişkin Düzenlemeler, Prof. Dr. Hüseyin Hatemi'ye Armağan, İstanbul 2009, VOL.II, p.1662.

¹¹ The concept of representation is not used here in a technical sense. In family law "representation" concept is a unique institution (HAVUTÇU, Ayşe, Evlilik Birliğinin Temsili, Ankara 2006, p.25). The unity of marriage does not have legal personality. hence here "representation" to be expressed by the concept of desired during the continuation of the joint lives of a spouse, the family's ongoing needs for his debts (Turkish Civil Code Art. 188) to be jointly and severally liable means that the other partners (HATEMİ, Hüseyin/ KALKAN OĞUZTÜRK, Burcu, Aile Hukuku, 3. Bası, İstanbul 2014, p.86).

¹² KILIÇOĞLU, Ahmet, Medeni Kanun Açısından Kadın Erkek Eşitliği, ABD, 1991/I, p.12. However, according to an opinion, a married women may continue to carry her maiden surname before family surname, there is not a situation that leads to discrimination and inequality between sexes (HATEMİ/ KALKAN OĞUZTÜRK, p.85-86).

¹³ MOROĞLU, Nazan, Kadının Kimlik Sorunu, TBBD, Y. 2012, P.99, Mart – Nisan, p.263.

¹⁴ AYAN/ AYAN, p.62, 109 vd., ; AKİPEK, Jale/ AKINTÜRK, Turgut, Türk Medeni Hukuku Başlangıç Hükümleri Kişiler Hukuku, 6. Bası, İstanbul 2007, p.340.

relationships and makes her legal processes with this surname. Therefore before getting married a woman realize herself and gain a very important part of her identity with that surname. But with marriage by the law's mandatory provisions one of the woman's identities important part her surname is chanced¹⁵. But man both has right to carry his surname from birth to death, and don't have to change his surname in order to declare his marriage¹⁶.

According to The Turkish Civil Code's Women's surname title which is the Article 187 "A woman takes her husband's surname after marriage. But after marriage, with a written application to the census bureau or marriage official, she can use her maiden surname before her husband's surname. Woman who poses two surnames previously, can benefit from this right only for one of her surnames". This provision is essentially the same as Former Civil Code's replaced condition with Law No. 4248 in 1997. It is impossible with current Civil Code that wife and husband are free to choose a family surname between one of the their surnames¹⁷. Thus, only side that affects surname change is wife. Husband's surname is not changed so that husband's identity is not changed on the other hand one of the wife's identity's important part is changed by marriage which is her previous surname¹⁸.

ii. Decisions of European Court of Human Rights

An applicant to European Court of Human Rights Ayten Ünal Tekeli applied to Turkish Court. She demanded to use her own surname before marriage which is "Ünal". But Turkish Court suggested that woman are obliged to carry their husbands surname during the marriage. So that court rejected the case. The decision was sent to court of appeal and rejected again. So her domestic solutions are exhausted and she applied to European Court of Human Rights in 1995. As a result of judgment made by the European Court of Human Rights, it is decided that there has been a violation of the European Convention of Human Rights's article 8 which is about protection of privacy. Additionally it is indicated that, man's usage of their surnames after marriage is an discrimination and with article 8 article 14 is also violated¹⁹.

Turkish government in defense, Article 8 cannot be applied in the case, choice of surname is not an personal right and states has rights to decide in this area. Also government indicated that they are aware of this condition which creates discrepancies between sexeN. Government also state that it is not about individual's private life, it is about public order and public order is a priority here. As cited to constitutional court's decisions the government defended that when social realities in Turkey are regarded, it is declared that gender related different executions has valid reasonN. additionally it is announced that, on May 14, 1997 there is a amend in the civil code, and according to it woman from now on can use her surname before her husband's surname.

European Court of Human Rights stated that their decision is previously about gender equality policy which is one of the main purposes of members of European Council. They remind 2

¹⁵ ERGENE, Deniz, İnsan Hakları Hukukundaki Gelişmeler Işığında Türk Hukukunda Kadının ve Çocuğun Soyadı Meselesi ve Medeni Kanunda Değişiklik Önerisi, MHB 2011, Y. 31, P.2, p.129.

¹⁶ ABİK, Yıldız, Kadının Soyadı ve Buna Bağlı Olarak Çocuğun Soyadı, Ankara 2005, p.63..

¹⁷ ZEYTİN, p.1655; OĞUZMAN/ SELİÇİ/ ÖZDEMİR, Kişiler Hukuku (Gerçek ve Tüzel Kişiler), İstanbul 2013, p.110

¹⁸ ÇAKIRCA, Seda İrem, Evli Kadının Soyadına İlişkin Güncel Gelişmelerin Değerlendirilmesi, İÜHFD, Y. 2012, VOL.70, P.2, p.743.

¹⁹ ÜÇPINAR, Hülya, Ünal Tekeli Türkiye Kararının Uygulanması İzleme Raporu, Mart 2013, p.1-2.

published article about gender equality²⁰. They also indicate that among European Council member countries, There is a common application about equality of spouses surname choice. Even spouses decided differently, only in Turkey husband's surname is decided as family surname and wife lost her surname. Addition to this European Court of Human Rights stated that, Turkish Civil Code which is updated in 2001 aimed to equalize spouses within family but after marriage forcing wife to carry husband's surname as family surname has no right explanation. European Court of Human Rights decided that because of this stated discrimination, as applicant stated in her request, Violation of the European Convention of Human Rights's article 14 and considered together with that article, article 8 are violated.

European Court of Human Rights with its verdict, including applicant, married spouses can use their own surname. And these spouses has equal rights for determining their surname. To provide this Turkey is tasked by European Court of Human RightN.Turkey will take responsibilities to provide these conditions and will take necesseray precautionN.But did not award damages against Turkey

And then in 2013 European Court of Human Rights decided a similar verdict which is like previous one. Gülizar Tuncer who did not want to use her husband's surname applied to first instance court in Turkey . But court rejected the case. The decision was sent to court of appeal and rejected again. So her domestic solutions are exhausted and she applied to European Court of Human RightN.Turkey tried to solve problem in a friendly way but Tuncer insisted applying to European Court of Human RightN.On September 3, 2013 European Court of Human Rights decided that Husband's surname usage obligation is against the Article 8 (Private Lives Integrity) and Article 14 (Discrimination). It was also decided that Turkey will pay compensation of Tuncer a sum of 1500 euros and 3030 euros for court expenseN.Another applicant whose apply was accepted was Bahar Leventoğlu. Woman who cannot find domestic solution about their surnames, keeps applying to European Court of Human Rights.

Following the European Court of Human Right's decision, even the legislative proposals such as "spouses common surname choice right" and "woman's keeping solely their own surname after marriage right" are send to Grand National Assembly of Turkey there proposals are not discussed. But it should be stated that Turkey must make some domestic regulations about this topiVol.On the other hand Committee of Ministers of the Council of Europe may punish Turkey

iii. The Adventure of the Turkish Republic Constitutional Court About Woman's Surname

When Former Civil Code was in force,the provision about marrying the woman take her husband's surnamehas applied to the Constitutional Court and the cancellation was requested,on the grounds that it is contrary to the principle of equality.The Constitutional Court rejected the request with 20 September 1998 dated 61/59 numbered decisionon the grounds that no violation of the principle of equality²¹.

²⁰ The surname on the Elimination of gender discrimination in the choice of texts dated 1978 and 1985.

²¹ Reason of the decision after four years, was published on 15.11.2002 (Official Newspaper Number: 24937). According to the Reason "... It has arised contested rule caused necessity of social reality and institutionalizing a tradition rooted for years by the legilator. The family name with birth pass from generation to generation, family unity will be continued. Public interest, public order and imperatives suggest that the reason he chose passing through husband's surname. Moreover a married woman is able to continue to carry the maiden name before marriage surname, there is no a situation that leads to discrimination and inequality

Following the entry into force of the Turkish Civil Code, women's surname "which regulates, in Article 187 requested cancellation on the grounds that against 2, 10, 12, 17, 41 and 90, article of constitution. However, the provision of the Constitutional Court, which decided that article 187 of the civil code did not contrary to the Constitution and the objection was rejected by a majority vote²².

After a while of this rejection decision The Constitutional Court has taken a historical decision on 8/12/2011²³. An application made to the Siirt First Instance Court about divorced from her husband and a mother who has parental right of children, in this application she wanted to give her last name to her children instead of the child's father's surname. Court because the law does not allow this change of surname, said code: "In cases of marriage annulment or divorce even if the child has been delivered to the mother gets to choose or select the name of the father" wanted to decide the cancelling the first sentence of the second paragraph of Article 4 of the form. At the application, the court claim that this article is unconstitutional, it is contrary to 10th, 13th, 41th of constitution. And The Constitutional Court decided by consensus to cancel the article²⁴.

However, The Constitutional Court changed its case law in accordance with the decisions of the European Court of Human Rights. Constitutional Court has accepted individual applications to women who do not want to use her husband's surname²⁵. Mentioned in the decision: "Administration which does not allow the application to divorced women who want to use her husband's surname, one of the most important factors in determining the identity, The surname indispensability, unable to be transferred and be tightly bound rights are observed that affect the validity terms of women's surname the specified application constitution as defined in Article 17 for the right to protection of moral existence, also pose interference." In addition, the Constitutional Court has been contrary the new Turkish Civil Code "Article 187 to regulate the woman's surname to the principles contained in international instruments which Turkey is a party. Finally Applications which contain applicants wishing to use their surnames from previous marriages was accepted. Because of article 17 of the Constitution and the protection of the moral being guaranteed in this article and the violation of the right to development²⁶. Following these decision, the women attending only the first instance to use the previous name of marriage, it will need to accept these demands.

between the sexes. Equality in the Constitution (Article 10) does not mean that everyone will be subject to the same rules in every way. The special characteristics of positions may require different rules and practices for some people. The legislator gives precedence to husband's last name as family name. But this does not create a violation of equality in the face of this reasons ..." (MOROĞLU, Nazan, Kadının Kimlik Sorunu, TBBD, Y. 2012, P.99, Mart – Nisan, p.259).

²² 10.3.2011, B. 2009/ 85, D. 2011/ 49, Official Newspaper Date/ Number: 21.10.2011/ 28091.

²³ B. 2010/ 119; D. 2011/165; Official Newspaper Date/ Number: 14.02.2012; P.28204

²⁴ According to mentioned decision with reasons "... Spouses are in the same legal position during the continuation of the marriage and with regard to divorce. The right to choose the surname of the child recognized Male under the parental right, not give this right to Women, in terms of the use of parental right, it will result in discrimination based on sex. Therefore amount in dispute rule is contrary to Article 41 and 10 of the Constitution." expression is located.

²⁵ See Neşe Aslanbay Akbıyık text of decision and Sevim Akat Eşki text of decision .

²⁶ Neşe Aslanbay Akbıyık, Reference No: 2014/ 5836, Decision date:: 16.04.2015, Official Newspaper Date: 11.07.2015, P.29413; Sevim Akat Eşki, Reference No: 2013/2187, Decision date:: 19.12.2013, Official Newspaper Date: 2.1.2014, P.28875.

CONCLUSION AND SUGGESTIONS

In Turkish Law System regulations for woman's surname (Turkish Civil Code's Article 173, 187), are includes discrimination against women. International statements which are accepted by republic of turkey via The Constitution of the Republic of Turkey²⁷ and European Court of Human Right and Constitutional Court's last time decisions shows that it is an obligation to make new regulations for Turkish Civil Code's Article 173, 187. Because surname is one of the individual's value as a individual. when looked from woman's point of view it is a part about her identity's spiritual integrity. This situation was clearly indicated by Constitution Court's updated verdict which is described above.

Women, can use their before marriage surnames after marriage .Although Turkish Law System do not give them such a right there are lots of women who use their own surname (before marriage surname) in society, in their work life. On the other hand Turkish Civil Code's Article 187 which is about woman's surname, has handicaps when a husband wants to take his wife's surname. Because of the reasons that are mentioned above, it is an obligation to change Turkish Civil Code's Article 187. This regulations can be done by looking to German Legal System. Turkish Civil Code's Article 187's title can be changed as "Family Name". Addition to this, right of keeping their own surnames should be given to couple. But if they do not want to keep their surnames they should be able to choose one of their surnames as "family name". Although couples chose their family name, they should carry their surnames before their family name. If couples do not make a choice, wives surname should be considered as their husbands surname. Regulation will be done according to this advice, and it will strength gender equality. But after divorce conditions such as what will be the woman's surname or child's surname must be revised.

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²⁷ The provisions relating to the woman's last name, in the Constitution of the Republic of Turkey,

10th Article: Paragraph added on May 7, 2004; Act No. 5170) Men and women have equal right. The State has the obligation to ensure that this equality exists in practice. (Sentence added on September 12, 2010; Act No. 5982) Measures taken for this purpose shall not be interpreted as contrary to the principle of equality

12th Article: Everyone possesses inherent fundamental rights and freedoms, which are inviolable and inalienable.

17th Article: Everyone has the right to life and the right to protect and improve his/her corporeal and spiritual existence.

41th Article: (Paragraph added on October 3, 2001; Act No. 4709) Family is the foundation of the Turkish society and based on the equality between the spouse. The State shall take the necessary measures and establish the necessary organization to protect peace and welfare of the family, especially mother and children, and to ensure the instruction of family planning and its practice

90th Article: International agreements duly put into effect have 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. (Sentence added on May 7, 2004; Act No. 5170) In the case of a conflict between international agreements, duly put into effect, concerning fundamental rights and freedoms and the laws due to differences in provisions on the same matter, the provisions of international agreements shall prevail.

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