



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

SECOND SECTION

CASE OF KURAL v. TÜRKİYE

(Application no. 84388/17)

JUDGMENT

Art 6 § 1 (civil) • Access to court • Domestic authorities' non-compliance with a decision staying the execution of the transfer of a chief of police to a police academy in another city

Prepared by the Registry. Does not bind the Court.

STRASBOURG

19 March 2024

FINAL

23/09/2024

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

In the case of Kural v. Türkiye,

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

Arnfinn Bårdsen, *President*,

Jovan Ilievski,

Egidijus Kūris,

Saadet Yüksel,

Lorraine Schembri Orland,

Diana Sârcu,

Davor Derenčinović, *judges*,

and Hasan Bakırcı, *Section Registrar*,

Having regard to:

the application (no. 84388/17) against the Republic of Türkiye 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, Mr Suat Kural (“the applicant”), on 2 December 2017;

the decision to give notice of the application to the Turkish Government (“the Government”);

the parties’ observations;

Having deliberated in private on 13 February 2024,

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

INTRODUCTION

1. The present case concerns the administrative proceedings brought by the applicant, who was a deputy chief of police at the time of the events in question, for the annulment of a decision to transfer him to the police academy in another city. Relying on Articles 6 and 13 of the Convention, the applicant complained that the national authorities had failed to comply with the stay-of-execution decision taken in his favour in those proceedings.

THE FACTS

2. The applicant was born in 1965 and lives in Bolu. He was represented by Mr Ö.F. Ürnez, a lawyer practising in Ankara.

3. The Government were represented by their Agent, Mr Hacı Ali Açıkgül, Head of the Department of Human Rights of the Ministry of Justice of the Republic of Türkiye.

4. The facts of the case may be summarised as follows.

5. At the material time the applicant was a deputy chief of police in Eskişehir and held the rank of “chief of police of the second grade” (*ikinci sınıf emniyet müdürü*). It appears from the case file that on 20 January 2014 he was temporarily assigned to the Eskişehir Police Academy.

I. THE APPLICANT'S TRANSFER TO THE PROVINCE OF SAMSUN, SUBSEQUENT DEVELOPMENTS AND THE RELEVANT JUDICIAL PROCEEDINGS

6. On 3 February 2014 the General Security Directorate of the Ministry of the Interior ("the General Security Directorate") decided to transfer the applicant to the position of "lecturer chief of police" (that is, he was to serve as a lecturer while retaining his rank as chief of police) at the Samsun Police Academy owing to the "needs of the service" (*hizmet gereği*). The applicant's rank, grade and step remained unchanged, and he took up his new duties on an unspecified date.

7. The applicant brought in the Eskişehir Administrative Court ("the Administrative Court") an action for the annulment of the decision of 3 February 2014 and sought a stay of its execution. He argued, among other things, that the impugned decision had been taken unlawfully, and without proper consideration for the public interest and the needs of the service.

8. On 10 April 2014 the Administrative Court stayed the execution of the impugned decision pending the determination of the applicant's claims. It found that under the domestic law, the authorities could exercise discretion when transferring a member of the security forces to another position. However, that discretion had to be exercised in accordance with the public interest, the needs of the service, and the principles and procedures established in the Regulation on Appointments and Transfers of Members of the Security Forces (*Emniyet Hizmetleri Sınıfı Mensupları Atama ve Yer Değiştirme Yönetmeliği* – "the Regulation"). The Administrative Court held that although the authorities had relied on the provisions of the Regulation and of Law no. 657 on Civil Servants, they had failed to cite specific circumstances and reasons demonstrating that they had exercised their discretion in accordance with law. It also noted that the authorities had made no mention of any work-related negative remarks about the applicant. Accordingly, it found that the impugned transfer had been unlawful. The Administrative Court further noted that the impugned transfer had not been carried out within the period specified in the Regulation for collective appointments. While the Regulation allowed for appointments outside of that period in cases of necessity, the authorities had failed – in breach of the Regulation – to establish the existence of such necessity. The Administrative Court lastly noted that, since the applicant's family resided in Eskişehir and the impugned decision had concerned an inter-provincial transfer, its implementation could have caused damage that would have been difficult or impossible to remedy. It therefore concluded that the conditions set out in section 27 of the Administrative Procedure Act (Law no. 2577) had been met.

9. On 13 May 2014 the Eskişehir Regional Administrative Court dismissed an objection lodged by the General Security Directorate against the stay-of-execution decision.

10. On 23 May 2014 the General Security Directorate decided to appoint the applicant once again to the position of “lecturer chief of police” at the Samsun Police Academy, citing section 28 of Law no. 2577 and the absence of a vacant position.

11. On 1 July 2014 the General Security Directorate decided to transfer the applicant to the position of “lecturer chief of police” at the Erzurum Police Academy, on the grounds that his turn to serve in the second region of the country, as defined by the Regulation, had come (see also paragraph 14 below).

12. On 20 November 2014 the Administrative Court annulled the decision of 3 February 2014, reiterating its previous conclusions regarding the unlawfulness of the impugned transfer (see paragraph 8 above).

13. On 7 January 2015 the General Security Directorate decided to temporarily assign the applicant to the post of deputy chief of police at the Eskişehir Security Directorate. On 27 March 2015 the General Security Directorate decided to appoint him to that post on a permanent basis. The applicant submitted, in the application form that he lodged with the Court, that he had been forced to retire in May 2015, while he had been still working in Erzurum. He further submitted, in his observations before the Court, that despite the decisions of 7 January and 27 March 2015, he had not actually been able to start to work in Eskişehir again.

14. On 17 June 2015 the Supreme Administrative Court, ruling on an appeal that had been lodged by the General Security Directorate, quashed the judgment of 20 November 2014. It found that under the relevant domestic law, the authorities could reassign their personnel to positions that were of a grade equal to or higher than their original positions, without having to ensure that their titles or duties remained unchanged. Referring to the Regulation, it further noted that for the purposes of appointments and transfers of members of the police force, the country was categorised into two distinct service regions, each comprising different provinces and districts. It held that with the exceptions specified in the Regulation, the authorities had the discretion to transfer their personnel to any province within the same region, noting also that that discretion could not be exercised in a manner contrary to the public interest and the needs of the service. The Supreme Administrative Court noted that the applicant had been transferred from Eskişehir to Samsun and that both cities were within the boundaries of the first region. It further held that there had been nothing to indicate that the authorities’ discretion in changing the applicant’s duty station had been exercised on subjective grounds that had been contrary to the public interest and the needs of the service. It accordingly concluded that the impugned decision had been in accordance with the law.

15. On 22 December 2015 the Administrative Court, complying with the decision of the Supreme Administrative Court, dismissed the applicant’s action.

16. On 18 February 2016 that decision became final in the absence of an appeal.

II. THE PROCEEDINGS BEFORE THE CONSTITUTIONAL COURT

17. On 12 June 2014 the applicant lodged an individual application with the Constitutional Court, alleging, *inter alia*, a violation of Article 6 of the Convention and Article 36 of the Constitution on account of the non-enforcement of the stay-of-execution decision of the Administrative Court (see paragraph 8 above).

18. On 2 June 2017 the Constitutional Court dismissed the applicant's individual application as manifestly ill-founded. It held, *inter alia*, that while the right to a fair trial concerned the enforcement of judicial decisions that were final for the purposes a legal dispute, stay-of-execution decisions were simply not of such a character. It further noted that the issue of non-enforcement of stay-of-execution decisions should be assessed from the perspective of the right of access to a court, and that that assessment should include an analysis of whether the proceedings as a whole had been fair. Therefore, in cases involving complaints concerning the non-enforcement of stay-of-execution decisions, the issue to be considered in terms of the right to a fair trial was whether the non-enforcement of the decision in question would render it impossible or excessively difficult to implement a potential final decision in favour of the applicant. The Constitutional Court observed that the stay-of-execution decision at issue had related to the transfer of the applicant to another province, but that the applicant had retained those of his statutory rights that pertained to his employment. Furthermore, the applicant had not raised any complaints concerning a violation of his other rights, and the Constitutional Court had not identified any connections between his application and other fundamental rights. Moreover, the alleged non-compliance with the stay-of-execution decision had not been of such a nature as to render it impossible or excessively difficult to implement the final decision delivered in the proceedings at issue. Accordingly, the Constitutional Court concluded that there had been no violation of the applicant's right of access to a court.

RELEVANT LEGAL FRAMEWORK AND PRACTICE

19. The provisions of the Constitution relevant to the present case provide:

Article 36

“Everyone has the right [to engage in] litigation as either a plaintiff or a defendant and the right to a fair trial before the courts ...”

Article 125

“All actions or decisions taken by the authorities are amenable to judicial review ...

If the implementation of an administrative measure would result in damage that would be difficult or impossible to compensate and the measure is also clearly unlawful, a stay of execution may be granted, [with the decision thereon detailing] the reasons therefor ...”

Article 138 § 4

“The bodies of executive and legislative power and the authorities must comply with court decisions; they cannot in any circumstances modify court decisions or defer the enforcement thereof.”

20. Section 27(1) of Law no. 2577 provides that the implementation of an administrative decision will not automatically be suspended following bringing of any kind of action in the administrative courts. Under section 27(2), the administrative courts may order a stay of execution if the administrative decision in question is manifestly unlawful and if its implementation would cause damage that would be difficult or impossible to remedy. Under section 27(7), decisions delivered in respect of an objection lodged against a stay-of-execution decision shall be final.

21. Section 28(1) of Law no. 2577 – before it was amended by Law no. 6526 of 21 February 2014 (which entered into force on 6 March 2014) – provided:

“The authorities shall be obliged to adopt decisions without delay or to take action in accordance with decisions on the merits and stay-of-execution decisions that have been delivered by the Supreme Administrative Court, the ordinary or regional administrative courts, or the courts dealing with tax disputes. Under no circumstances may the time taken to act exceed thirty days following the serving of the decision [in question] on the authorities.”

22. The amendments introduced by Law no. 6526 (which were inserted into section 28(1) of Law no. 2577 without amending its first two sentences – see paragraph 21 above) provided that annulment or stay-of-execution decisions delivered by the administrative courts concerning, *inter alia*, appointments and transfers of civil servants shall be implemented either by means of reinstating plaintiffs in their previous positions (in the event that those positions were still vacant) or (if those positions were not still vacant) by appointing them to another position within the same institution, without prejudice to their previously acquired salary-scale status. The provisions introduced by Law no. 6526 were further amended by Law no. 6552 of 10 September 2014.

23. In a judgment of 25 November 2015 (E.2014/86-K.2015/109), the Constitutional Court declared unconstitutional the amendments noted in paragraph 22 above (those introduced by Law no. 6526), while noting that they were no longer in force. It deemed, in particular, that by conditioning the enforcement of judicial decisions on the availability of relevant positions,

those amendments had breached the rule of law and Articles 36 and 138 of the Constitution.

24. Under section 28(3) and (4) of Law no. 2577, as amended by Law no. 6526, an action for compensation may be brought against the authorities for the non-enforcement of judicial decisions delivered by the administrative or tax courts.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 6 OF THE CONVENTION

25. The applicant complained under Article 6 of the Convention that the national authorities had failed to comply with the Administrative Court's stay-of-execution decision of 10 April 2014. He further claimed that the authorities had also failed to enforce the Administrative Court's judgment of 20 November 2014 and that he had been forced to retire in May 2015 while the authorities' appeal was pending before the Supreme Administrative Court. He also complained of a breach of Article 13 of the Convention, relying on the same facts.

26. The Court reiterates that the safeguards of Article 6 § 1 are stricter than those of Article 13 (see *Fu Quan, s.r.o. v. the Czech Republic* [GC], no. 24827/14, § 85, 1 June 2023). Having regard to the nature of the applicant's complaints, which essentially concern the alleged non-enforcement of the judicial decisions of the Administrative Court, the Court considers that these complaints fall to be examined solely under Article 6 § 1 of the Convention, which is also *lex specialis* in relation to Article 13 (see *Baka v. Hungary* [GC], no. 20261/12, § 181, 23 June 2016).

The relevant part of Article 6 § 1 reads:

“In the determination of his civil rights and obligations ... everyone is entitled to a fair ... hearing ... by [a] ... tribunal ...”

A. Alleged non-enforcement of the Administrative Court's judgment of 20 November 2014

27. In so far as the applicant complained that the domestic authorities had failed to comply with the Administrative Court's judgment of 20 November 2014, the Court notes that no question was put by it to the parties in that regard. It further reiterates that Article 6 § 1 of the Convention protects the enforcement of final and binding judicial judgments – not judgments that may be subject to review by a higher court and, eventually, quashed (see *Ouzounis and Others v. Greece*, no. 49144/99, § 21, 18 April 2002, and *Gjyli v. Albania*, no. 32907/07, § 33, 29 September 2009).

28. In the present case, the Court observes that the Administrative Court's judgment of 20 November 2014 was not final. That decision was subject to

review by the Supreme Administrative Court, which subsequently quashed it on 17 June 2015 (see paragraph 14 above). Therefore, any failure on the part of the domestic authorities to implement the judgment of 20 November 2014 – even if they had been required to do so under domestic law – would not be considered incompatible with Article 6 of the Convention (see *Ouzounis and Others*, cited above, § 21).

29. It follows that this part of the application is manifestly ill-founded and must be rejected, in accordance with Article 35 §§ 3 (a) and 4 of the Convention.

B. Alleged non-enforcement of the Administrative Court's stay-of-execution decision of 10 April 2014

1. Admissibility

30. The Government submitted several preliminary objections.

(a) Compatibility *ratione materiae*

(i) The parties' arguments

31. The Government submitted that the present complaint was incompatible *ratione materiae* with the provisions of the Convention. Citing the Constitutional Court's findings (see paragraph 18 above), they argued that the non-enforcement of the stay-of-execution decision at issue had not been capable of rendering it impossible or extremely difficult to implement the final decision delivered in the main proceedings. They also asserted that although it had not been possible immediately to enforce the stay-of-execution decision at issue, the authorities had complied with the Administrative Court's judgment of 20 November 2014. The Government also pointed out that the action brought by the applicant had ultimately been dismissed.

32. The Government further submitted that the stay-of-execution decision had related to the applicant's transfer without a change in his grade or related rights. They also contended that the applicant had failed to demonstrate any financial, moral, or social hardships resulting from the non-execution of the decision in question. They added that the applicant's individual application had concerned only the impugned transfer and that he had not raised any complaints relating to his other rights. The Government lastly maintained that the stay-of-execution decision had not been decisive for the civil rights or obligations of applicant.

33. The applicant, referring in particular to the cases of *Micallef v. Malta* ([GC], no. 17056/06, §§ 80-86, ECHR 2009) and *Central Mediterranean Development Corporation Limited v. Malta* (no. 2) (no. 18544/08, §§ 21-23, 22 November 2011), maintained that Article 6 § 1 was applicable.

(ii) The Court's assessment

34. The Court reiterates that the applicability of Article 6 § 1 of the Convention to interim proceedings will depend on the following conditions. Firstly, the right at stake in both the main and the interim proceedings should be “civil” within the autonomous meaning of the notion under Article 6 of the Convention. Secondly, the nature of the interim measure, its object and purpose as well as its effects on the right in question should be scrutinised. Whenever an interim measure can be considered effectively to determine the civil right or obligation at stake, notwithstanding the length of time it is in force, Article 6 will be applicable (see *Micallef*, cited above, §§ 83-85).

35. The Court has previously held that Article 6 is applicable to interim proceedings that pursue the same purpose as that of the pending main proceedings, where the interim injunction is immediately enforceable and entails a ruling on the same right (*ibid.*, § 87, and *Mehmet Taner Şentürk v. Türkiye*, no. 51470/15, § 32, 20 September 2022).

36. Turning to the circumstances of the present case, the Court considers, having regard in particular to the conclusions of the domestic courts (see paragraphs 8, 12 and 14 above), that the applicant had a “right” to be protected against being arbitrarily transferred to a different post. Indeed, despite their different conclusions as to the lawfulness of the disputed transfer, both the Administrative Court and the Supreme Administrative Court noted that the authorities’ discretion to transfer their personnel had to be exercised in accordance with the public interest and the needs of the service (*ibid.*). The applicant’s entitlement to rely on such grounds in contesting the lawfulness of the disputed transfer was therefore not called into question by the domestic courts. Accordingly, the Court accepts that the proceedings before the Administrative Court concerned a dispute about a “right” within the meaning of Article 6 of the Convention. The dispute in question was an ordinary labour dispute, bearing in mind that a transfer to another post directly affects one of the defining factors of the employment relationship (see *Ohneberg v. Austria*, no. 10781/08, § 25, 18 September 2012). Furthermore, the Court observes, and it is not in dispute between the parties, that the applicant was not denied the right of access to a court for the purpose of challenging the decision to transfer him to another position. Accordingly, as the first condition of the two-tier test established in the case of *Vilho Eskelinen and Others v. Finland* ([GC], no. 63235/00, § 62, ECHR 2007-II) has not been met, Article 6 applies under its civil head to the main proceedings before the Administrative Court (see *Kübler v. Germany*, no. 32715/06, § 46, 13 January 2011, and *Juričić v. Croatia*, no. 58222/09, §§ 56-57, 26 July 2011, and the references therein).

37. The Court further notes that the purpose of the stay-of-execution decision was to determine, albeit for a limited period, the same right as that which was the subject matter of the main proceedings (see *Micallef*, § 87, and *Mehmet Taner Şentürk*, § 32, both cited above). That decision was also

immediately enforceable and became final on 13 May 2014, when the Eskişehir Regional Administrative Court dismissed the objection lodged by the General Security Directorate against it (see paragraphs 9 and 20-21 above).

38. Accordingly, the Court finds that the civil limb of Article 6 of the Convention is applicable to the circumstances of the present case. The Government's objection in that regard must therefore be dismissed.

(b) Abuse of the right of application

39. The Government argued that although the applicant had complained of the non-enforcement of the stay-of-execution decision of 10 April 2014, he had failed to inform the Court that following the Administrative Court's judgment of 20 November 2014, he had been assigned to the Eskişehir Police Directorate – firstly on a temporary basis, and subsequently on a permanent basis (see paragraph 13 above). They maintained that the applicant had negligently provided the Court with misleading information and had failed to duly inform the Court of the circumstances surrounding his case.

40. The applicant emphasised that the present complaint concerned the authorities' failure to implement the stay-of-execution decision. He also pointed out that ten days after the date on which that decision had become final, the authorities had reappointed him to the same post as that to which he had been transferred by the impugned decision 3 February 2014 (see paragraph 10 above). He further asserted that despite the General Security Directorate's decisions to transfer him back to Eskişehir, he had not been reassigned to that city (see paragraph 13 above).

41. The Court notes at the outset that despite the authorities' decisions to transfer the applicant back to Eskişehir, it is disputed between the parties whether the applicant's reassignment to that city actually took place (see paragraphs 13 and 39-40 above). In any event, the Court observes that the present complaint concerns the alleged failure of the authorities to implement the stay-of-execution decision of 10 April 2014 (the purpose of which was to suspend the impugned transfer pending the Administrative Court's determination of the applicant's claims), whereas the General Security Directorate's decisions to transfer him to Eskişehir were taken after the Administrative Court had delivered a judgment on the merits (see paragraphs 12-13 above). The Court therefore considers that – regardless of whether the applicant's reassignment to Eskişehir actually took place – the information that he failed to provide when lodging his application with the Court, namely, the General Security Directorate's decisions of 7 January and 27 March 2015, while generally of some contextual relevance, did not concern the very core of the present complaint (see also paragraph 68 below; compare and contrast *Gross v. Switzerland* [GC], no. 67810/10, §§ 28 and 35, ECHR 2014).

42. In view of the above, the Government's objection under this head must also be dismissed.

(c) Exhaustion of the available domestic remedies

43. The Government raised an objection on non-exhaustion of domestic remedies, presenting several arguments in that regard. They firstly submitted that the applicant had not lodged an appeal against the Administrative Court's decision of 22 December 2015 (see paragraphs 15-16 above). They further argued that the applicant could have brought an action for a full remedy (*tam yargı davası*) for compensation of the damage that he had suffered owing to the non-enforcement of the stay-of-execution decision. They lastly submitted that the applicant had failed to bring an action for compensation under section 28 of Law no. 2577 (see paragraph 24 above).

44. The applicant maintained that he had exhausted the available domestic remedies.

45. As regards the first limb of the Government's objection, the Court notes that the present complaint concerns the alleged failure of the authorities to implement the stay-of-execution decision of 10 April 2014. Therefore, the fact that the applicant did not lodge an appeal against the Administrative Court's decision of 22 December 2015 (which concerned the merits of his claims before the domestic courts – see paragraphs 15 and 16 above) is not relevant for the purposes of the present complaint.

46. As to the other limbs of the Government's objection, the Court reiterates that it has previously held that an action for a full remedy and an award of compensation under section 28 of Law no. 2577 could not provide sufficient redress for complaints concerning the non-enforcement of binding judicial decisions (see *Süzer and Eksen Holding A.Ş. v. Turkey*, no. 6334/05, §§ 95-96, 23 October 2012, and *Mehmet Taner Şentürk*, cited above, § 33). The Court sees no reason to hold otherwise in the present case.

47. It follows that this objection must also be dismissed in its entirety.

(d) Objections on the grounds of the lack of victim status, the lack of a significant disadvantage and the manifestly ill-founded nature of the complaint

48. The Government submitted that the applicant had lacked victim status. In the event that the Court decided otherwise, they further argued that the applicant had not suffered a significant disadvantage within the meaning of Article 35 § 3 (b) of the Convention.

49. In that connection, the Government pointed out that seven months had elapsed between the delivery of the stay-of-execution decision (on 10 April 2014) and the delivery of the judgment of the Administrative Court annulling the impugned transfer (on 20 November 2014). Furthermore, after being notified of the latter judgment on 1 December 2014, the authorities had immediately taken action by appointing the applicant to the Eskişehir Police Directorate – firstly on a temporary basis, and subsequently on a permanent

basis (see paragraph 13 above). The applicant's grievances had therefore been remedied within approximately a month and a half after the delivery of the judgment of the Administrative Court. The Government also reiterated that the applicant had failed to demonstrate any hardships resulting from the non-execution of the decision in question and that his individual application had concerned only the impugned transfer.

50. The Government lastly invited the Court to declare the complaint manifestly ill-founded, arguing that – in line with the principle of subsidiarity – there was no reason to deviate from the domestic courts' conclusions.

51. The applicant disagreed with the Government's first and third objections. He did not comment on their second objection.

52. The Court notes that since the present complaint concerns the alleged non-enforcement of the stay-of-execution decision of 10 April 2014, it cannot be said that the implementation by the authorities of the Administrative Court's judgment of 20 November 2014 – leaving aside the disputed question whether it was actually implemented – would have remedied any prejudice suffered by the applicant in the meantime (see paragraphs 8, 12 and 41 above). Accordingly, there is nothing to indicate that the national authorities have acknowledged, either expressly or in substance, and then afforded redress for the alleged breach of the Convention in respect of the period during which the stay of execution was aimed at suspending the impugned transfer (see, for the relevant principles regarding victim status, *Kurić and Others v. Slovenia* [GC], no. 26828/06, § 259, ECHR 2012 (extracts), and *Selahattin Demirtaş v. Turkey (no. 2)* [GC], no. 14305/17, § 218, 22 December 2020). Given those circumstances, the Court dismisses the Government's objection concerning the victim status of the applicant.

53. As to the alleged lack of a significant disadvantage, the Court notes that the stay-of-execution decision concerned the applicant's transfer to another city (see paragraphs 6 and 8 above). The Court also observes that in its decision of 10 April 2014, the Administrative Court noted that the implementation of the authorities' decision to transfer the applicant could cause damage that would be difficult or impossible to remedy, since his family resided in Eskişehir (see paragraph 8 above). The Court further reiterates that a transfer to another post directly affects one of the defining factors of the employment relationship (see paragraph 36 above). Therefore, the alleged non-enforcement of the stay-of-execution decision clearly had significant consequences for the applicant, albeit for a limited period. It follows that the Government's objection in this respect must also be dismissed.

54. The Court lastly considers that the arguments put forward regarding the Government's objection that the present complaint had been manifestly ill-founded raise issues requiring an examination of the merits of the

complaint (see *Mehmet Çiftci v. Turkey*, no. 53208/19, § 26, 16 November 2021, and the references therein).

(e) Conclusion as to admissibility

55. The Court notes that the complaint concerning the alleged non-enforcement of the stay-of-execution decision of 10 April 2014 is neither manifestly ill-founded nor inadmissible on any other grounds listed in Article 35 of the Convention. It must therefore be declared admissible.

2. Merits

(a) The parties' arguments

56. The applicant maintained that the national authorities had failed to reinstate him to his previous position, in breach of the stay-of-execution decision taken in his favour. He emphasised that following that decision, the authorities had appointed him once again to the Samsun Police Academy, where he had been working after the impugned transfer, and had subsequently transferred him to Erzurum (see paragraph 11 above).

57. The Government argued that following the stay-of-execution decision, the applicant had been appointed to the post of "lecturer chief of police" at the Samsun Police Academy, pursuant to section 28 of Law no. 2577, as in force at the material time (see paragraph 22 above), since his former position had initially no longer been vacant at the Eskişehir Security Directorate. They further maintained that although it had not been possible immediately to enforce the stay-of-execution decision owing to the absence of a vacant position, the authorities had subsequently implemented the Administrative Court's judgment annulling the impugned transfer by appointing the applicant to the Eskişehir Security Directorate – firstly on a temporary basis, and subsequently on a permanent basis.

58. The Government submitted that it had not been possible to implement the stay-of-execution decision within the thirty-day period stipulated by section 28 of Law no. 2577 (see paragraph 21 above). They asserted, however, that the authorities had eventually complied with that decision, albeit approximately eight months later than required by that provision. The Government argued that while a question may arise about the delay in enforcement, the delay in question had not impaired the essence of the right protected under Article 6 § 1 – bearing also in mind the fact that the applicant's action had ultimately been dismissed. The Government also maintained that the process of planning and determining staffing needs for a position inherently consumed time, and that that had been the primary reason for the delay in executing not only the stay-of-execution decision but also the judgment delivered in November 2014. Therefore, the reason cited by the national authorities had justified the nine-month delay in executing the stay-of-execution decision.

59. The Government argued that the failure to duly implement the stay-of-execution decision had not rendered the enforcement of the final decision at the end of the proceedings impossible or excessively difficult. They also reiterated most of the arguments set out in paragraph 32 above. The Government lastly endorsed the conclusions of the Supreme Administrative Court and those of the Constitutional Court.

(b) The Court's assessment

(i) General principles

60. The Court reiterates that Article 6 § 1 of the Convention must be interpreted in the light of the Preamble to the Convention, which declares, among other things, the rule of law to be part of the common heritage of the Contracting States (see *Advance Pharma sp. z o.o v. Poland*, no. 1469/20, § 331, 3 February 2022).

61. It further reiterates that the right to a court protected by Article 6 would be illusory if a Contracting State's domestic legal system allowed a final, binding judicial decision to remain inoperative, to the detriment of one party. The execution of a judgment given by any court must therefore be regarded as an integral part of the "trial" for the purposes of Article 6 (see *Hornsby v. Greece*, 19 March 1997, § 40, *Reports of Judgments and Decisions* 1997-II, and *Sharxhi and Others v. Albania*, no. 10613/16, § 92, 11 January 2018). Otherwise, the provisions of Article 6 § 1 of the Convention would be deprived of all useful effect (see *C.M. v. Belgium*, no. 67957/12, § 55, 13 March 2018, and the references therein).

62. This applies, by definition, to the implementation of judicial decisions on interim measures that remain in force until a final decision determining the case before a court has been given (see *Sharxhi and Others*, cited above, § 92, and *Camara v. Belgium*, no. 49255/22, § 105, 18 July 2023). To hold otherwise would mean delivering a binding, albeit transitional, judicial decision that is devoid of purpose and meaning (*ibid.*, § 105, with further reference).

63. The burden of ensuring compliance with a judgment against a State lies primarily with the authorities of the State in question, starting from the date on which the judgment becomes binding and enforceable (see *Burdov v. Russia (no. 2)*, no. 33509/04, § 69, ECHR 2009, and *Arbačiauskienė v. Lithuania*, no. 2971/08, § 86, 1 March 2016).

64. The above-noted principles are of even greater importance within the context of administrative proceedings concerning a dispute whose outcome is decisive for a litigant's civil rights. The Court reiterates in this connection that the administrative authorities form one element of a State subject to the rule of law and that their interests accordingly coincide with the need for the proper administration of justice. Where administrative authorities refuse or fail to comply with a judgment against the State, or even delay in doing so,

the guarantees under Article 6 enjoyed by a litigant during the judicial phase of the proceedings are rendered devoid of purpose (see *Hornsby*, cited above, § 41, and *Cingilli Holding A.Ş. and Cingilioğlu v. Turkey*, nos. 31833/06 and 37538/06, § 38, 21 July 2015).

(ii) *Application of those principles to the present case*

65. The Court observes that on 10 April 2014 the Administrative Court decided to stay the execution of the General Security Directorate's decision of 3 February 2014 to transfer the applicant to the Samsun Police Academy. The Court further notes that under section 28 of Law no. 2577 (see paragraph 21 above), which does not make a distinction between judgments on the merits and stay-of-execution decisions regarding their binding nature, the national authorities were under an obligation to comply with the decision of 10 April 2014 even before it was reviewed by a higher court and became final (see also *Alkın v. Turkey*, no. 75588/01, § 52, 13 October 2009, and *Mehmet Taner Şentürk*, cited above, § 40). In any event, the Court observes that the stay-of-execution decision became final on 13 May 2014, when the Eskişehir Regional Administrative Court dismissed the General Security Directorate's objection against it (see paragraph 9 above).

66. The Court notes that, bearing in mind the fact that under Turkish administrative law, judgments on the merits delivered at first instance are binding and enforceable even before an appeal review (see paragraph 21 above), the main purpose of the Administrative Court's stay-of-execution decision was to suspend the impugned transfer until the delivery of a judgment on the merits by that court. However, the domestic authorities failed to duly comply with that decision. In that connection, on 23 May 2014 – following the dismissal of its objection against the stay-of-execution decision – the General Security Directorate appointed the applicant once again to the same post to which he had been transferred by its impugned decision 3 February 2014 (see paragraphs 6 and 10 above). The authorities' conduct in so doing was clearly contrary to the very purpose of the stay-of-execution decision of 10 April 2014. Yet the Government and the national authorities referred to section 28 of Law no. 2577 (as in force on 23 May 2014 – see paragraphs 10, 21-22 and 57 above) when justifying the steps taken after the stay-of-execution decision. Admittedly, that provision, as in force at that time, permitted the General Security Directorate to assign the applicant to a different position instead of reinstating him in his previous position on the grounds that it was no longer vacant (see paragraph 22 above). That being said, the Court considers that this circumstance does not change the fact that the stay-of-execution decision, the purpose of which was to suspend the impugned transfer pending the Administrative Court's determination of the applicant's claims, was deprived of any useful effect by the General Security Directorate's decision of 23 May 2014.

67. At this juncture, the Court finds it important to note that – albeit after the material time – the Constitutional Court declared unconstitutional the provisions of section 28 of Law no. 2577 that had allowed for the possibility of appointing plaintiffs to different positions (instead of reinstating them to their previous positions following judicial decisions in their favour – see paragraph 23 above). The Constitutional Court considered, in particular, that by conditioning the enforcement of judicial decisions on the vacancy of the positions in question, those amendments had breached the rule of law and Articles 36 and 138 of the Constitution (*ibid.*). In that connection, the Court also notes that the possibility of appointing plaintiffs to different positions, which appears to have been used by the national authorities in the case of the applicant, would mean that the authorities could avoid the enforcement of a binding judicial decision by either filling with someone else or abolishing entirely the post in question following a contested dismissal or transfer (see, *mutatis mutandis*, *Vasile Nițescu v. Romania*, no. 20763/03, § 39, 21 April 2009). The Court notes, moreover, that it has on many occasions emphasised that the domestic authorities’ failure to duly enforce judicial decisions – including binding and enforceable interim decisions (see, for example, *Okuy and Others v. Turkey*, no. 36220/97, § 73, ECHR 2005-VII, and *Mehmet Taner Şentürk*, cited above, §§ 41-42) – would be incompatible with the rule of law and the principle of legal certainty (*ibid.*; see also, *Hornsby*, cited above, §§ 40-41, and *Dolińska-Ficek and Ozimek v. Poland*, nos. 49868/19 and 57511/19, § 328, 8 November 2021).

68. The Government appears to acknowledge that the authorities failed to comply with the stay-of-execution decision until 7 January 2015 – that is, the date on which the General Security Directorate decided to temporarily assign the applicant to his previous position following the Administrative Court’s judgment on the merits (see paragraphs 57-58 above). As regards the Government’s argument that the stay-of-execution decision was ultimately implemented on that date, the Court notes – leaving aside the disputed question of whether that assignment actually took place (see paragraph 13 above) – that the decision of 7 January 2015 was not taken spontaneously with a view to enforcing the stay-of-execution decision; indeed, that decision was taken only after the Administrative Court delivered its judgment on the merits. In so far as the Government pointed out that the action brought by the applicant had ultimately been dismissed, the Court considers that the eventual dismissal of that action has to be regarded as being irrelevant for the assessment of whether there has been a violation of Article 6 § 1 on account of the non-enforcement of the interim decision of 10 April 2014, which was binding until the determination of the applicant’s claims – regardless of the result of the main proceedings (see also *Mehmet Taner Şentürk*, cited above, §§ 22-25 and 37-44, where the Court found a violation of Article 6 § 1 on account of the non-compliance with the stay-of-execution decisions delivered

by an administrative court, despite the fact that the action brought by the applicant had ultimately been dismissed).

69. While the Court takes note of the Government's arguments regarding the time-consuming nature of the process of planning and determining the staffing needs for a position, it observes that in the present case, the stay-of-execution decision was not implemented during the entire period in which it aimed to maintain the status quo and prevent any damage to the applicant. Furthermore, there is nothing to indicate that the authorities made any effort to properly implement the stay-of-execution decision before the delivery of the judgment on the merits – quite the opposite: the applicant was subsequently transferred to yet another city before the delivery of that judgment (see paragraph 11 above).

70. As to the approach adopted by the Constitutional Court in the applicant's case (see paragraph 18 above), the Court considers that such an approach – to the effect that non-compliance with a stay-of-execution decision would not constitute a breach of the applicant's rights under Article 6 § 1 unless it renders the enforcement of the final decision determining the case impossible or excessively difficult – would impair the effectiveness of the stay-of-execution mechanism and undermine its purpose of preventing any damage pending the determination of the case. Such an approach would also mean delivering a binding (albeit transitional) judicial decision that is devoid of purpose in cases where non-compliance with it does not render the enforcement of the final decision on the merits impossible or excessively difficult. Furthermore, the Court has previously held that it was not convinced that a defect in interim proceedings would necessarily be remedied at a later stage, that is, in proceedings on the merits, since any prejudice suffered in the meantime may by then have become irreversible and there would be little realistic opportunity to redress the damage caused – except perhaps the possibility of pecuniary compensation (see *Micallef*, cited above, § 80). Similarly, the Court considers that even when non-compliance with a binding interim order does not render the implementation of the final decision in the main proceedings impossible or excessively difficult, such a final decision and its implementation may often not be capable of redressing any harm suffered by plaintiffs in the meantime.

71. In view of the above, the Court considers that the national authorities did not merely delay the enforcement of the decision at issue; they rather failed to comply with it (see, *mutatis mutandis*, *Camara*, cited above, § 121).

72. There has accordingly been a violation of Article 6 § 1 of the Convention.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

73. 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

74. The applicant claimed 5,847 euros (EUR) in respect of pecuniary damage. He submitted that part of that amount represented various expenses relating to the need to maintain residences in two cities for a period of five months, as he had initially moved to Samsun without his family owing to his daughter’s schooling in Eskişehir. He further maintained that another part of the claimed amount concerned the relocation allowance that he would have received if he had been transferred back from Erzurum to Eskişehir. Lastly, the remaining part of the claimed amount, totalling 6,146 Turkish liras, represented postal expenses, representation costs, and court and notary fees associated with the proceedings before the domestic courts and the Court. The applicant submitted in that connection copies of various payment receipts.

75. The applicant also claimed EUR 50,000 in respect of non-pecuniary damage.

76. The Government contested these claims.

77. The Court does not discern any causal link between the violation found and the alleged pecuniary damage in so far as it concerns the above-mentioned relocation allowance and various expenses claimed to have been incurred in relation to maintaining residences in two cities. It therefore rejects that part of the claim. As to the remaining part of the claim for pecuniary damage (concerning expenses, costs and fees associated with the proceedings before the domestic courts and the Court), the Court considers it appropriate to examine it under the head of costs and expenses (see *Dimitrov and Others v. Bulgaria*, no. 77938/11, § 180, 1 July 2014), and will do so below.

78. However, the Court considers that the applicant must have suffered some non-pecuniary damage and awards him, on an equitable basis, EUR 1,950 under this head, plus any tax that may be chargeable.

B. Costs and expenses

79. The applicant further claimed EUR 15,000 for costs and expenses incurred in relation to the proceedings at the national level and for those incurred before the Court. He referred in that connection to the costs, expenses and fees mentioned in paragraph 74 *in fine* above and to the Union of Turkish Bar Associations’ scale of fees in relation to his representation before the Court.

80. The Government contested these claims.

81. 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 were actually and necessarily incurred and are reasonable as to quantum (see, for example, *H.F. and Others v. France* [GC], nos. 24384/19 and 44234/20, § 291, 14 September 2022). In the present case, regard being had to the documents in its possession and the above criteria, the Court considers it reasonable to award the sum of EUR 1,000 covering costs under all heads, plus any tax that may be chargeable to the applicant.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Declares* the complaint concerning the alleged non-enforcement of the stay-of-execution decision of 10 April 2014 admissible and the remainder of the application inadmissible;
2. *Holds* that there has been a violation of Article 6 § 1 of the Convention;
3. *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 1,950 (one thousand nine hundred fifty euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;
 - (ii) EUR 1,000 (one thousand 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;
4. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 19 March 2024, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Hasan Bakırcı
Registrar

Arnfinn Bårdsen
President