



Decision taken by judges of the Turkish Supreme Administrative Court in proceedings in which they had previously participated was not impartial

In today's Chamber judgment in the case of [Fazli Aslaner v. Turkey](#) (application no. 36073/04), which is not final¹, the European Court of Human Rights held, by a majority, that there had been:

a violation of Article 6 (right to a fair hearing) of the European Convention on Human Rights.

The case concerned administrative proceedings in which certain judges at the Turkish Supreme Administrative Court were involved on more than one occasion, in the context of successive appeals on points of law.

The European Court of Human Rights found that the general assembly of the Administrative Proceedings Divisions of the Supreme Administrative Court, as it had been composed in this case, could not be considered impartial, given that certain judges had previously taken a position on the issue to be decided.

Principal facts

The applicant, Fazli Aslaner, is a Turkish national who was born in 1963 and lives in Ankara (Turkey).

In 1993 Mr Aslaner, who was then a court registrar, passed an examination for the post of head registrar at the Ankara Security Court. However, since his ranking in the competition did not enable him to obtain the post, he was placed on a reserve list drawn up at the close of the competition. He applied to the Ministry of Justice to be appointed to the post of head registrar in another district, at the Eskişehir Administrative Court.

The authorities having refused his request, he lodged an application for judicial review with the Ankara Administrative Court, which upheld his application in a judgment of 17 September 1998. The administrative court noted that candidates who had done less well than Mr Aslaner in the competition had been appointed head registrars in other judicial districts, and concluded that the authorities' refusal had no basis in law.

Mr Aslaner was then appointed head registrar in Eskişehir. However, the Ministry of Justice appealed on points of law to the Supreme Administrative Court, which, by a judgment of 20 December 2000, quashed the judgment of 17 September 1998. The Supreme Administrative Court noted that the competition entitled the successful candidate to be appointed only to the post of head registrar at the Ankara Security Court, and that the Ministry of Justice was not therefore obliged to appoint Mr Aslaner as head registrar in another court. This decision was issued by a division of the Supreme Administrative Court composed of five judges, including Ms T.Ç., Mr M.R.Ü., and Mr E.Ç.

In a judgment of 1 July 2002 the Ankara Administrative Court decided to uphold its initial position, and the Ministry of Justice lodged a fresh appeal on points of law. On 17 January 2003 the general

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

assembly of the Administrative Proceedings Divisions of the Supreme Administrative Court (hereafter the general assembly), quashed the administrative court's judgment by 22 votes to nine. Mr E.Ç. and Mr M.R.Ü. sat on the judicial formation, which was presided by Ms T.Ç. in her capacity as deputy president of the Supreme Administrative Court, a post to which she had recently been elected.

Complaints, procedure and composition of the Court

Relying on Article 6 (right of access to a court), Mr Aslaner complained of a lack of impartiality in the judicial formations of the Supreme Administrative Court, certain judges of which had examined his case on more than one occasion.

The application was lodged with the European Court of Human Rights on 21 June 2004.

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

Guido Raimondi (Italy), *President*,
İşıl Karakaş (Turkey),
Dragoljub Popović (Serbia),
András Sajó (Hungary),
Nebojša Vučinić (Montenegro),
Helen Keller (Switzerland),
Egidijus Kūris (Lithuania),

and also Stanley Naismith, *Section Registrar*.

Decision of the Court

Article 6 § 1

The Court noted that Mr Aslaner's fears that the general assembly was not impartial stemmed from the fact that three of the judges sitting on that bench had previously been involved in examining the first appeal on points of law.

The Court reiterated that the existence of impartiality was determined according to a test which, when applied to a body sitting as a bench, entailed determining whether, quite apart from the personal conduct of any of the members of that body, there were ascertainable facts which could raise doubts as to its impartiality. It was not so much the point of view of those involved which was relevant, as the fact that the applicant's misgivings were objectively justified. In this connection, the mere fact that a judge had also made pre-trial decisions in a case could not be taken as in itself justifying fears as to his or her impartiality; what mattered was the scope of the measures taken by the judge before the trial.

In Mr Aslaner's case, however, the Court noted that the question to be examined by the general assembly had not been whether the administrative court was entitled to uphold its position of the judgment of 17 September 1998 – that right having never been contested. The issue on which the general assembly had had to rule was whether the first judgment, which the second judgment intended to uphold, had complied with the law. Thus, the general assembly of the Administrative Proceedings Divisions of the Supreme Administrative Court had been required in January 2003 to rule on the same issue as that which the Administrative Proceedings Division of the Supreme Administrative Court had examined in its judgment of 20 December 2000, namely whether the authorities were bound by the ranking in the competition, even with regard to appointments in other judicial districts.

As the Administrative Proceedings Division and the general assembly of the Supreme Administrative Court had thus been required to examine the same question, the judges who sat on those two benches could legitimately be regarded as being biased with regard to the decision to be taken on the merits during the second appeal on points of law. The fact that the number of judges whose impartiality was questioned was low in relation to the total number of judges making up the general assembly did not alter that finding. Indeed, no justification had been put forward as to the need to include the three judges in question in that judicial formation. In addition, one of them – Ms T.Ç – had presided over the sitting and in that capacity had led the discussions during the deliberations. Mr Aslaner’s doubts about the impartiality of the bench could therefore be regarded as objectively justified.

In consequence, the Court held that there had been a violation of Article 6 § 1.

[Just satisfaction \(Article 41\)](#)

The Court held that Turkey was to pay Mr Aslaner 6,000 euros (EUR) in respect of non-pecuniary damage.

Separate opinion

Judges Raimondi, Karakaş and Keller expressed a joint dissenting opinion. This opinion is annexed to the judgment.

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.