CONSEIL DE L'EUROPE

COUNCIL OF EUROPE

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

THIRD SECTION

PARTIAL DECISION

AS TO THE ADMISSIBILITY OF

Application no. 29840/03
by Hasan ERKAN
against Turkey

The European Court of Human Rights (Third Section), sitting on 24 March 2005 as a Chamber composed of:

Mr B.M. ZUPANČIČ, *President*,
Mr J. HEDIGAN,
Mr L. CAFLISCH,
Mr R. TÜRMEN,
Mr C. BÎRSAN,
Mrs A. GYULUMYAN,
Ms R. JAEGER, *judges*,
and Mr V. BERGER, *Section Registrar*,

Having regard to the above application lodged on 15 August 2003,

Having deliberated, decides as follows:

THE FACTS

The applicant, Mr Hasan Erkan, is a Turkish national who was born in 1927 and lives in Yalova. He is represented before the Court by Mrs Becerik, a lawyer practising in Istanbul.

The facts of the case, as submitted by the applicant, may be summarised as follows.

The applicant worked as a teacher and retired on 3 September 1973. On 31 October 1991 he completed a pre-undergraduate (*önlisans*) program at the Anadolu University.

On 19 February 1992 he applied to the Istanbul Directorate of Education (*Milli Eğitim Müdürlüğü*) and requested to be reassigned to a post as a teacher. Since he had received a higher education, he would be promoted to a higher degree for each year he would work according to Article 36 of the Law on Civil Servants (Law No. 657) which regulates the careers of civil servants.

On 5 May 1992 the Ministry of Education appointed the applicant to the post of primary school teacher in Kartal, Istanbul. This decision was sent to the Kartal District Governor (*Kaymakamlık*) on 26 May 1992; however, it was not served on the applicant.

On 7 August 1992 the applicant once again applied to the Istanbul Directorate of Education and found out about the decision. On the same date, he started to work as a teacher.

On 1 October 1992 the applicant's contract was terminated by the Ministry of Education on the ground that he was over the age of 65, the compulsory retirement age in Turkey, when he started to work. Furthermore, the days he worked from 7 August 1992 until 1 October 1992 were not added to the total period of his service. As a result, the applicant could not advance to a higher degree.

On an unspecified date in January 1993 the applicant filed an action with the Ankara Administrative Court requesting the days he worked in 1992 to be taken into account when calculating the total period of his service which would allow him to advance to a higher degree. He also noted that the reason for him to start working after he was over the age of sixty-five was the failure of the authorities to serve the decision concerning his assignment on him promptly.

On 22 December 1994 the court dismissed his request. The applicant appealed.

On 27 April 1998 the Supreme Administrative Court quashed the judgment of the first-instance court. It noted that the applicant could have been considered as a civil servant on the day of the appointment.

On 7 October 1999 the Administrative Court challenged the judgment of the Supreme Administrative Court on the ground that the applicant could only be considered as a civil servant on the day he started to work. It further stated that awarding the statutory rights (*özlük hakları*) to civil servants before they begin their service had no legal basis in domestic law. In the light of the aforementioned considerations, the court ruled that the applicant did not have the right to advance to a higher degree.

On 15 November 2002 the Joint Council of the Administrative Courts (*Danıştay İdari Dava Daireleri Genel Kurulu*) upheld the first-instance court's judgment. This decision was served on the applicant on 17 February 2003.

COMPLAINTS

The applicant complains under Article 6 of the Convention that his right to a fair trial was breached on the grounds that the national courts failed in the assessment of the facts and erred in their decisions. He further complains under the same Article about the length of the proceedings since they lasted for more than nine years.

The applicant invokes Article 1 of Protocol No. 1 and contends that he would have had a higher amount of pension when he had retired, if he had been promoted to a higher degree. Finally, he alleges under Article 14 of the Convention that he was discriminated against since the domestic courts decided in favour of other claimants who filed actions for the same reason and were exactly in the same position as the applicant.

THE LAW

1. The applicant alleges that the length of the civil proceedings which lasted more than nine years exceeded the reasonable time requirement in breach of Article 6.

The Court considers that it cannot, on the basis of the case file, determine the admissibility of this complaint and that it is therefore necessary, in accordance with Rule 54 § 2 (b) of the Rules of Court, to give notice of this part of the application to the respondent Government.

2. The applicant further complains under Article 6 of the Convention that the national authorities have failed in the interpretation of the domestic law and assessment of facts.

The Court recalls that it is not competent to examine applications concerning errors of fact or law allegedly committed by the competent national authorities. There is no evidence or basis on which to conclude that the domestic courts, in establishing the facts or interpreting the domestic law, acted in an arbitrary or unreasonable manner.

It follows that this part of the application must be rejected as being manifestly ill-founded within the meaning of Article 35 §§ 3 and 4 of the Convention.

3. The applicant argues that he was deprived of his possessions, i.e. his future pension has diminished by a certain amount since he was not accommodated to a higher degree.

The Court reiterates that future income constitutes a “possession” only if the income has been earned or where an enforceable claim to it exists (see *Ian Edgar* (*Liverpool*) *Ltd v. the United Kingdom* (dec.), no. 37683/97, ECHR 2000-I, p.475; *Casotti et al. v. Italy* (dec), no. 24877/94, 16 October

1996, Decisions and Reports (DR) 87-A p.63; *Storksen v. Norway* (dec), no. 19819/92, 5 July 1994, DR 78-A p. 89).

In the present case, the Court observes that by the judgments of the domestic courts, the applicant did not advance to a higher degree. Thus, the future income in question cannot be considered as an "earned" one. Furthermore, there is no enforceable claim concerning the future pension which would constitute a possession. In conclusion, this complaint, which is based upon the diminution in value of the pension, assessed by the future income and position, and which amounts to a claim for the loss of future income, falls outside the scope of Article 1 of Protocol No. 1 and therefore should be declared inadmissible as being manifestly ill-founded within the meaning of Article 35 §§ 3 and 4 of the Convention.

4. The applicant complains under Article 14 that he was discriminated against on the ground that although the domestic courts examined many cases similar to his; they allegedly reached to a different judgment in his case.

The Court recalls that there was no element in the proceedings which would indicate that the domestic courts decided in an arbitrary or unreasonable manner. It further observes that the applicant has failed to lay the basis of an arguable claim that he had been discriminated against on any grounds laid down under Article 14. In the light of the above considerations, the applicant's complaint under Article 14 is unsubstantiated and it should be rejected as being manifestly ill-founded within the meaning of Article 35 §§ 3 and 4 of the Convention.

For these reasons, the Court unanimously

Decides to adjourn the examination of the applicant's complaint concerning the length of the civil proceedings;

Declares the remainder of the application inadmissible.

Vincent BERGER
Registrar

Boštjan M. ZUPANČIČ
President