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

SECOND SECTION

DECISION

Application no. 22803/19
Ahmet Mücahit SELÇUK
against Türkiye

The European Court of Human Rights (Second Section), sitting on 11 April 2023 as a Committee composed of:

Pauliine Koskelo*, President*,
Lorraine Schembri Orland,
Davor Derenčinović*, judges*,

and Dorothee von Arnim, *Deputy Section Registrar,*

Having regard to:

the application (no. 22803/19) 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") on 23 April 2019 by a Turkish national, Mr Ahmet Mücahit Selçuk, born in 1990 and living in Istanbul ("the applicant"), who was granted leave to present his own case in the proceedings before the Court;

the decision to give notice of the application to the Turkish Government ("the Government"), 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;

the parties' observations;

Having deliberated, decides as follows:

SUBJECT MATTER OF THE CASE

1. The application concerns the rejection of the applicant's administrative law action as being out of time. The main issue before the Court is whether the domestic court's approach in the application of the relevant time-limit was excessively formalistic and unforeseeable.

2. According to section 7 of the Law on Administrative Justice Procedure (Law no. 2577), the time-limit for bringing an action shall be sixty days before the administrative courts unless otherwise stated in other specific laws.

The time-limits shall run from the day following the date of written notification in administrative disputes. According to section 11, before bringing an action the person concerned may request the abolition, withdrawal or alteration of the administrative act or the implementation of a new act from the superior authority, and if there is no superior authority, from the authority that implements the act, in the prescribed time-limit for bringing administrative proceedings. This application shall stop the time-limit that has started to run. If no response is given within the sixty days, the request shall be deemed to be refused. Where the request is refused or deemed to be refused the time-limit shall start to run again.

3. At the time of the events giving rise to the present application, the applicant was a candidate judge in training, having been successful in the written examination and in the interview held for selecting candidate judges and prosecutors for ordinary courts.

4. On 11 August 2016 he participated in the oral examination held by the Justice Academy of Türkiye ("the Academy") at the end of his training as a candidate judge.

5. On 29 August 2016 he was notified that he had been unsuccessful in the final oral examination of his candidate judge training. On the same day the applicant objected in writing to the Academy, requesting a review of that outcome.

6. The Academy did not respond to the objection in question within the time-limit set out by Article 11 of the Law no. 2577, that is to say, during the sixty days following the applicant's objection of 29 August 2016.

7. However, on 28 February 2017 the Academy notified the applicant that his objection had been rejected in a decision of 14 February 2017.

8. On 26 April 2017 the applicant filed an action for annulment of the express rejection of the Academy before the Ankara Administrative Court ("the Administrative Court").

9. On 14 July 2017 the Administrative Court rejected the action, noting that the administration's lack of reply to the applicant within sixty days following his objection had amounted to an implicit rejection and that the applicant had failed to bring his action within sixty days as required by section 11 of Law no. 2577. The court further reasoned that the fact that the Academy had replied to the applicant after that date could not restart the expired time-limit.

10. On 30 November 2018 the Constitutional Court, by way of a summary formula decision, rejected the applicant's complaint regarding an alleged violation of his right of access to a court as manifestly ill-founded.

11. The applicant complained under Articles 6 and 14 of the Convention that he had been denied access to a court on account of the administrative court's interpretation of time-limits, which in his view had been excessively formalistic and, in any event, unforeseeable with regard to other courts' interpretation of the time-limit in question. He further complained under

Article 13 of the Convention about the manner in which the Constitutional Court rejected his Convention complaint.

THE COURT'S ASSESSMENT

12. The Court being the master of the characterisation to be given in law to the facts of the case (*Radomilja and Others v. Croatia* [GC], nos. 37685/10 and 22768/12, §§ 114 and 126, 20 March 2018) will examine the applicant's complaints under Article 6 § 1 of the Convention alone.

13. The applicant alleged that the domestic courts' approach to time-limits in bringing an action against an administrative act was contrary to the letter of the law and in any event excessively formalistic and unforeseeable. In particular, he argued that the sixty-day statutory time-limit for bringing the action should have started again from 28 February 2017, when he received the explicit rejection to his objection. He provided two decisions of the first-instance administrative court delivered in identical cases. In those cases, the administrative courts examined the merits of the case despite the fact that the litigants had not lodged their cases within the sixty-day time-limit following the administration's implicit rejection. Moreover, he argued that there were decisions by which some chambers of the Supreme Administrative Court had accepted that the time-limit to bring a case started again after a request was expressly refused in writing, even after the implicit refusal of a request.

14. The Government challenged this view and submitted that the application should be declared inadmissible as manifestly ill-founded. They noted that the right to a court was not absolute, and was in any event subject to limitations, holding that the Contracting States enjoy a margin of appreciation in this respect. They stated that there was a clear provision in law regarding the starting point of the time-limit for bringing an action. The main objective of setting up a time-limit for bringing an action against an administrative act was to ensure the stability of administrative acts, and so sustain the efficient functioning of public services. The Government asserted that there was well-established case law of the Supreme Administrative Court and the Regional Administrative Courts regarding time-limit rules, which accepted that, following the implicit rejection of an objection, the time-limit started to run again and a belated reply to the objection would not revive the time-limit anew. The Government underlined that the decisions cited by the applicant as precedents concerned the particular situation of the disputes arising exclusively from zoning practices and submitted that the related Chamber of the Supreme Administrative Court no longer followed the aforementioned case-law. The Government provided final decisions of the administrative courts in respect of candidate judges in similar positions to the applicant.

15. The Court notes that the core issue in the present case is whether the administrative court's interpretation that a subsequent express rejection by an administration after the lapse of the time-limit to bring a case against the administration's implicit rejection would not restart the time-limits could be considered as excessive formalism and unforeseeable within the meaning of Article 6 § 1 of the Convention.

16. The general principles concerning the right of access to a court are set out in *Zubac v. Croatia* [GC] (no. 40160/12, §§ 76-79, 5 April 2018). The Court reiterates that the rules on time-limits for bringing judicial claims are undoubtedly designed to ensure the proper administration of justice and compliance with, in particular, the principle of legal certainty (see *Mizzi v. Malta,* no. 26111/02, § 83, ECHR 2006-I (extracts), and the references contained therein). That being so, the rules in question, or their application, should not prevent litigants from using an available remedy. Furthermore, the Court must make its assessment in each case in the light of the special features of the proceedings in question and by reference to the object and purpose of Article 6 § 1 (see, *mutatis mutandis, Miragall Escolano and Others v. Spain,* nos. 38366/97, 38688/97, 40777/98, 40843/98, 41015/98, 41400/98, 41446/98, 41484/98, 41487/98 and 41509/98, § 36, ECHR 2000 I).

17. The Court reiterates that it is primarily for the national courts to interpret the rules concerning procedure. In the instant case, the administrative courts accepted that, according to section 11 of Law no. 2577, the applicant should have lodged his case within the time-limit following the implicit rejection, and the express reply of the administration after the time-limit had passed would not restart the time-limit. The Court observes at the outset that the national courts' interpretation was neither arbitrary nor unreasonable. The Court further observes that there is uniformity and consistency in the final court decisions provided by the Government concerning identical situations to the applicant's, in which the courts rejected the cases as out of time.

18. The Court is mindful of the fact that some opposite decisions were rendered not only in cases almost identical to the applicant's in the first-instance administrative courts, but also in similar cases, namely in cases arising out of zoning disputes before the Supreme Administrative Court. Nevertheless, the Court notes that there is no information in the case file as to whether the administrative courts' decisions in those identical cases became final before the Supreme Administrative Court, while the government provided final court decisions in identical cases in which the courts had come to the opposite conclusion. The Court further observes that the difference in treatment of zoning disputes in the Supreme Administrative Court cannot be understood as a difference in case-law, since it is justified by a difference in the factual situations in question (see, *mutatis mutandis*, *Erol Uçar v. Turkey,* (dec.), no. 12960/05, 29 September 2009). Moreover, the Court has already acknowledged that the possibility of conflicting court decisions is an inherent

trait of any judicial system which is based on a network of trial and appeal courts with authority over the area of their territorial jurisdiction. Such divergences may also arise within the same court. That, in itself, cannot be considered contrary to the Convention (see *Nejdet Şahin and Perihan Şahin v. Turkey* ([GC], no. 13279/05, § 51, 20 October 2011). The Court has set out the conditions in which conflicting decisions of domestic courts are in breach of the fair trial requirement enshrined in Article 6 § 1 of the Convention. One of these is the existence of "profound and long-standing" differences in domestic case-law (ibid., §§ 52-54), which is clearly not the situation here.

19. The Court further notes that after the notification of the final oral examination result, the applicant chose to submit an objection to the administration instead of directly bringing an action before the administrative courts. The applicant was entitled to bring an action directly against the act without initially submitting an objection on the basis of section 11 of law no. 2577. There was no mandatory administrative remedy prescribed by law which the applicant had to exhaust prior to bringing an action before the administrative courts in respect of the dispute at issue. Moreover, the applicant could have brought an action based on the implicit rejection of the Academy. It therefore follows that the applicant was not prevented from using the remedies that were at his disposal before the express rejection of the Academy. The applicant did not provide the Court with any explanation of the reasons why he did not comply with the time-limits stipulated under domestic law. It follows that the applicant himself brought about the situation in which his action was declared inadmissible as out of time.

20. Under these circumstances, the Court considers that the administrative court's interpretation in the present case that the subsequent reply given by the administration after the lapse of the time-limit to bring a case would not restart the time-limits cannot be considered as either excessive formalism or unforeseeable within the meaning of Article 6 § 1 of the Convention.

21. As regards the applicant's complaint concerning the Constitutional Court's examination of his Article 6 § 1 complaint, the Court reiterates that for national superior courts – such as the Turkish Constitutional Court – it suffices to refuse to admit a complaint by simply referring to the legal provisions allowing for that procedure, if the questions raised by the complaint – as in the present case – are not of fundamental importance (see *Sawoniuk v. the United Kingdom* (dec.), no. 63716/00, ECHR 2001-VI; *Teuschler v. Germany* (dec.), no. 47636/99, 4 October 2001; *Krutil v. Germany* (dec.), no. 71750/01, 20 March 2003; *Floquet v. Germany* (dec.), no. 50215/99, 9 February 2006). Given that the Administrative Court had duly reasoned its decision, the Court finds no issue with the way the Constitutional Court rejected the applicant's individual appeal.

22. In view of the foregoing, it follows that the application must be rejected for being manifestly ill-founded under Article 35 §§ 1 and 4 of the Convention.

For these reasons, the Court, unanimously,

Declares the application inadmissible.

Done in English and notified in writing on 11 May 2023.

Dorothee von Arnim Deputy Registrar	Pauliine Koskelo President