CONSEIL DE L'EUROPE

COUNCIL OF EUROPE

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

FOURTH SECTION

PARTIAL DECISION

AS TO THE ADMISSIBILITY OF

Application no. 42091/02
by Ali Riza YENGİN
against Turkey

The European Court of Human Rights (Fourth Section), sitting on 10 May 2005 as a Chamber composed of:

Sir Nicolas BRATZA, *President*,
Mr G. BONELLO,
Mr R. TÜRMEN,
Mr M. PELLONPÄÄ,
Mr K. TRAJA,
Mr L. GARLICKI,
Mr J. BORREGO BORREGO, *judges*,
and Mr M. O'Boyle, *Section Registrar*,

Having regard to the above application lodged on 30 October 2002,

Having deliberated, decides as follows:

THE FACTS

The applicant, Mr Ali Rıza Yengin, is a Turkish national, who was born in 1954 and lives in Istanbul. He is represented before the Court by Mr Gökhan Candoğan, a lawyer practising in Ankara.

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

On 31 January 1994 the applicant was dismissed from AKTAŞ Electricity Company (hereinafter AKTAŞ), where he worked as a civil servant. Consequently, he initiated proceedings in the Istanbul Administrative Court, contested the termination of his contract and requested to be reinstated in his former post.

On 12 November 1997 the Istanbul Administrative Court found in favour of the applicant and decided to annul the administrative decision that had terminated the applicant's employment contract.

On 30 September 1999 the Supreme Administrative Court rejected the appeal filed by AKTAŞ. This decision was served on the applicant on 9 December 1999.

Thereafter on 12 February 2000, 17 February 2000 and 4 September 2000 respectively, the applicant applied to AKTAŞ and demanded to be reinstated in his post, however his requests were rejected.

Consequently, on 2 October 2000 the applicant initiated a second set of proceedings before the Istanbul Administrative Court. He requested compensation for the failure of the authorities to comply with the court decision that had ordered his reinstatement in his former post. He also requested the payment of his monthly salary and related monetary entitlements for the periods during which he had been entitled to assume his duties in accordance with the judgment of the domestic courts upholding his claim to reinstatement.

On 29 May 2001 the Istanbul Administrative Court held that the applicant should have initiated compensation proceedings or applied to AKTAŞ within sixty days following the notification of the decision of the Supreme Administrative Court. It accordingly dismissed the case.

The applicant appealed. On 12 May 2004 the Supreme Administrative Court delivered a partial decision. It decided to uphold the decision of the Istanbul Administrative Court as regards the monthly salary and related monetary entitlements of the applicant. In this respect, it held that, pursuant to Article 7 of the Code of Administrative Procedure, the applicant should have applied to the administrative authorities to request his monthly salary and other related entitlements within sixty days following the notification of the domestic court decision which annulled the administrative decision dismissing him. As regards the applicant's second complaint concerning the non-enforcement of the court decision which ordered his reinstatement in his former post, the court held that this part of the case had been brought within the ten-year statutory time limit, and was not time-barred. It accordingly quashed the decision of the Istanbul Administrative Court in this respect.

The case is still pending before the Istanbul Administrative Court.

COMPLAINTS

The applicant alleges that the length of the administrative proceedings exceeded the reasonable time requirement, in breach of Article 6 of the Convention. He maintains in this connection that the first set of proceedings

lasted for almost five years and the second of set of proceedings, which commenced in 2000 is still pending before the domestic courts.

The applicant further complains under Article 6 of the Convention about the administrative authorities' failure to comply with the domestic court judgment given in his favour.

The applicant finally alleges that he has suffered financial loss as a result of the refusal of the authorities to grant him his monthly salary and other related entitlements since 1994. He invokes, in this respect, Article 1 of Protocol No. 1 to the Convention.

THE LAW

1. The applicant complains about the excessive length of the domestic proceedings.

As regards the first set of proceedings

The Court reiterates that, pursuant to Article 35 § 1 of the Convention, it may only deal with the matter within a period of six months from the date on which the final decision was taken.

The Court observes that the first set of proceedings, which were initiated by the applicant in 1994, were terminated on 30 September 1999 by the decision of the Supreme Administrative Court. This decision was served on the applicant on 9 December 1999. However, the application was introduced with the Court on 30 October 2002, that is more than six months later.

It follows that this complaint has been introduced out of time and must be rejected in accordance with Article 35 §§ 1 and 4 of the Convention.

As regards the second set of proceedings

The Court notes that the second set of proceedings was initiated by the applicant on 2 October 2000 and is still pending before the domestic courts.

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 complains under Article 6 § 1 of the Convention that his right to a fair hearing has been breached as the national authorities refused to execute the decision of the Supreme Administrative Court which ordered his reinstatement in his former post.

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.

3. Finally, invoking Article 1 of Protocol No. 1 to the Convention, the applicant alleges that he suffered financial loss due to the refusal of the authorities to grant him his monthly salary and other related entitlements as of 1994.

The Court observes that in the present case the Istanbul Administrative Court held that, pursuant to Article 7 of the Code of Administrative Procedure, the applicant should have applied to the administrative authorities to request his monthly salary and other related entitlements within sixty days following the notification of the domestic court decision which annulled the termination of the applicant's employment contract. The court held that although this decision had been served on the applicant on 9 December 1999, the applicant had applied to AKTAŞ on 12 February 2000. It accordingly dismissed the case without examining the merits, as having been introduced out of time. Subsequently, the Supreme Administrative Court also upheld this decision without examining the merits of the applicant's complaint.

In the light of the foregoing, the Court notes that the applicant failed to bring his complaint before the domestic authorities within the time-limit provided for by law. He has therefore not exhausted domestic remedies in this respect.

It follows that this complaint must be rejected in accordance with Article 35 §§ 3 and 4 of the Convention for non-exhaustion of domestic remedies.

For these reasons, the Court unanimously

Decides to adjourn the examination of the applicant's complaints concerning the length of the proceedings and the failure of the authorities to execute the decision of the domestic court;

Declares the remainder of the application inadmissible.

Michael O'BOYLE
Registrar

Nicolas BRATZA
President