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

Press Release
issued by the Registrar of the Court

ECHR 418 (2016)
15.12.2016

A headteacher, who had lost her post when a law entered into force, had not exhausted domestic remedies

In its decision in the case of Bıdık v. Turkey (application no. 45222/15) the European Court of Human Rights has unanimously declared the application inadmissible. The decision is final.

The case concerned the termination of Ms Bıdık's employment as headteacher following the entry into force of a law.

The Court dismissed the application for failure to exhaust domestic remedies, noting that Ms Bıdık had lodged it without having used all the remedies available under Turkish law, namely an administrative complaint and an individual complaint to the Constitutional Court.

Principal facts

The applicant, Dilek Bıdık, is a Turkish national who was born in 1969 and lives in Manisa (Turkey).

In 2004 Ms Bıdık was appointed as headteacher of State secondary schools and she held this post in a number of different schools until 21 September 2014, when her employment ended automatically as a result of the entry into force of Law no. 6528, which had terminated, with effect from the end of the school year 2013-14, the contracts of all headteachers and deputy headteachers in Turkish schools who had served in that capacity for four years.

Complaints, procedure and composition of the Court

The application was lodged with the European Court of Human Rights on 27 August 2015.

Relying on Article 6 (right of access to a court) and Article 13 (right to an effective remedy), Ms Bıdık complained that she had not had access to a court for the purpose of asserting her rights as regards the termination of her employment as headteacher, indicating that this was the result of the direct application of a law which provided that no other instrument was necessary to implement it. She thus complained that she had been deprived of any possibility of having the termination examined by a court, including by the Constitutional Court.

Relying in particular on Article 14 (prohibition of discrimination) and on the Universal Declaration of Human Rights and the European Social Charter, Ms Bıdık argued that the termination of her employment on account of the direct application of a law had been detrimental to her private life and financial situation, and that it also constituted discrimination on trade-union grounds.

The decision was given by a Chamber of seven, composed as follows:

Julia **Laffranque** (Estonia), *President*,
Işıl **Karakaş** (Turkey),
Nebojša **Vučinić** (Montenegro),
Valeriu **Griţco** (the Republic of Moldova),
Ksenija **Turković** (Croatia),
Jon Fridrik **Kjølbro** (Denmark),
Georges **Ravarani** (Luxembourg), *Judges*,

and also Stanley **Naismith**, *Section Registrar.*

Decision of the Court

Articles 6 (right of access to a court), 13 (right to an effective remedy) and 14 (prohibition of discrimination)

Ms Bıdık lodged her application with the Court without first having referred the matter to the domestic courts. She justified that failure by relying on the Constitutional Court's judgment of 13 July 2015, arguing in particular that the measure complained of was the result of a law which had been found constitutional and in respect of which there was no effective remedy. She referred in particular to Article 152 § 4 of the Constitution to the effect that where the Constitutional Court had rejected, after an examination on the merits, a complaint of unconstitutionality lodged against a statutory provision, no fresh complaint could be lodged in respect of the same provision before a ten-year period from the publication of the Constitutional Court's judgment in the Official Gazette.

The Court did not agree with this point of view, noting first that many claimants in the same situation as Ms Bıdık had appealed against the measures in question in the administrative courts. Even though those courts had initially declined jurisdiction to examine those complaints on the merits, the Supreme Administrative Court had then quashed those decisions, finding that the courts in question had to proceed to an examination on the merits by virtue of the principle of the separation of powers. Without speculating on the outcome of those appeals, which were still pending in the domestic courts, the Court found that it had not been shown that, at the relevant time, the administrative remedy was not effectively accessible to Ms Bıdık in respect of her claims.

Ms Bıdık argued that an appeal to the Constitutional Court was not effective, on the ground that the Supreme Court had already examined the constitutionality of the law in the context of a complaint of unconstitutionality and that it had found it to be compliant with the Constitution. In her view, having regard to Article 152 § 4 of the Constitution, an individual complaint to the Constitutional Court did not offer reasonable prospects of success. However, the Court was not persuaded that the applicant would have been unsuccessful in lodging an individual complaint with the Constitutional Court. The fact that the Supreme Court had ruled on the constitutionality of a law in the context of such a complaint did not preclude claimants from bringing individual complaints before that court in respect of individual decisions taken to implement the provisions in question. In that connection, the activity of the Constitutional Court showed that Article 152 § 4 of the Constitution only precluded the bringing of a new complaint of unconstitutionality and not the bringing of an individual complaint.

The Court thus found that it had not been established that the two above-mentioned remedies were not accessible to Ms Bıdık or capable of providing her with a reasonable prospect of success in respect of her complaints. It also pointed out that the mere fact of casting doubt on the prospects of a given remedy, which was clearly not bound to fail, did not constitute a valid ground in order to justify the failure to use the remedy in question. Consequently, it did not see any particular reason which could have released Ms Bıdık from the obligation to use the domestic remedies made available to it by Turkish law.

The Court thus found that Ms Bıdık had not taken the necessary steps to enable the domestic courts to play their fundamental role in the Convention protection mechanism, in relation to which the Court's protection was subsidiary in nature. The Court thus rejected the application for failure to exhaust domestic remedies (Article 35 §§ 1 and 4 of the Convention).

The decision 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.