



## Dismissal of a security officer because she was a woman was discriminatory

In today's **Chamber judgment**<sup>1</sup> in the case of [Emel Boyraz v. Turkey](#) (application no. 61960/08), the European Court of Human Rights held,

by six votes to one, that there had been a **violation of Article 14 (prohibition of discrimination) in conjunction with Article 8 (right for respect to private and family life)** of the European Convention on Human Rights;

unanimously, that there had been a **violation of article 6 § 1 (right to a fair hearing within a reasonable time)** of the Convention.

The case concerned a dismissal from public sector employment – a State-run electricity company – on grounds of gender. Ms Boyraz, the applicant, had worked as a security officer for almost three years before being dismissed in March 2004 because she was not a man and had not completed military service.

In the Court's opinion, the mere fact that security officers had to work on night shifts and in rural areas and had to use firearms and physical force under certain conditions had not in itself justified any difference in treatment between men and women. Moreover, the reason for Ms Boyraz' dismissal had not been her inability to assume such risks or responsibilities, there having been nothing to indicate that she had failed to fulfil her duties, but the decisions of Turkish administrative courts. The Court also considered that the administrative courts had not substantiated the grounds for the requirement that only male staff could be employed as security officers in the branch of the State-run electricity company.

### Principal facts

The applicant, Emel Boyraz, is a Turkish national who was born in 1975 and lives in Elazığ (Turkey).

Having successfully sat a public servant examination in 1999, Ms Boyraz was appointed to the post of security officer in a branch of a State-run electricity company (TEDAŞ). On 5 July 2000 she was informed that she would not be appointed as she did not fulfil the requirements of "being a man" and "having completed military service". She appealed against this decision on 18 September 2000. On 27 February 2001, the Ankara Administrative Court ruled in favour of Ms Boyraz and she was offered a contract by TEDAŞ.

The electricity company appealed against the judgment of 27 February 2001 and on 31 March 2003, the Twelfth Division of the Supreme Administrative Court found that the administration's decision had been in accordance with the law, as the requirement regarding military service demonstrated that the post in question was reserved for male candidates and that this requirement was lawful given the nature of the post and the public interest. Ms Boraz was dismissed from her post on 17 March 2004 on account of this decision and her case was dismissed by the Ankara Administrative Court on 21 February 2006.

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](http://www.coe.int/t/dghl/monitoring/execution).

In her last appeals, Ms Boyraz submitted that the Supreme Administrative Court's General Assembly of Administrative Proceedings Divisions had issued a decision on 6 December 2007 in favour of the applicant in a case similar to hers. The judgment of 21 February 2006 was however subsequently upheld by the Twelfth Division of the Supreme Administrative Court, who took note of the decision of the Supreme Administrative Court's General Assembly of Administrative Proceedings Divisions but did not comment on it. Ms Boyraz' request for rectification was ultimately dismissed on 17 September 2008.

## Complaints, procedure and composition of the Court

Relying on Article 14 (prohibition of discrimination), Ms Boyraz alleged that the decisions given against her in the domestic proceedings had amounted to discrimination on grounds of sex. Also relying on Article 6 § 1 (right to a fair hearing within a reasonable time), she complained about the excessive length as well as the unfairness of the administrative proceedings to dismiss her, alleging in particular that the administrative courts had delivered conflicting decisions in identical cases.

The application was lodged with the European Court of Human Rights on 1 December 2008.

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

Guido **Raimondi** (Italy), *President*,  
İşıl **Karakaş** (Turkey),  
András **Sajó** (Hungary),  
Nebojša **Vučinić** (Montenegro),  
Egidijus **Kūris** (Lithuania),  
Robert **Spano** (Iceland),  
Jon Fridrik **Kjølbro** (Denmark),

and also Abel **Campos**, *Deputy Section Registrar*.

## Decision of the Court

### [Article 14 in conjunction with Article 8](#)

The Turkish government submitted that neither Article 8 nor Article 14 was applicable in the instant case as it concerned a right which was not secured by the Convention, namely the right to recruitment as a public servant. While reiterating that the right of recruitment to the civil service had deliberately been omitted from the Convention, the Court underlined that Ms Boyraz had actually been given the post of security officer on a contractual basis and that the issue in her case was her dismissal on the ground of her sex. The Court had consistently held that a person who had been appointed as a civil servant could complain of being dismissed if that dismissal had violated one of his or her rights under the Convention. A measure as drastic as a dismissal from a post on the sole ground of sex had adverse effects on a person's identity, self-perception and self-respect and, as a result, his or her private life. The Court therefore considered that Ms Boyraz' dismissal on the sole ground of her sex had constituted an interference with her right to respect for her private life, also taking into account her dismissal's consequences on her family and her ability to practise a profession which corresponded to her qualifications. The Court therefore considered that Article 14 was applicable, taken in conjunction with Article 8.

The Court recalled that member States' room for manoeuvre (margin of appreciation) in assessing whether a difference in treatment was justified was narrower where the difference in treatment was based on sex. The advancement of gender equality was today a major goal in the member States and very weighty reasons would have to be put forward before such a difference of treatment could be regarded as compatible with the Convention. The Turkish authorities considered that Ms Boyraz had

not been suitable for the post of security officer as it had been reserved to men. This, in the Court's view, was a clear "difference in treatment", on grounds of sex, between persons in an analogous situation.

The administrative authorities had considered that women had been unable to assume responsibilities such as working at nights in rural areas or using firearms and physical force in case of an attack. The Supreme Administrative Court had not assessed these considerations, which was particularly noteworthy as only three months before, the Supreme Administrative Court's General Assembly of Administrative Proceedings Divisions had held, in a similar case, that there had been no obstacle to the appointment of a woman to the post of security officer. In the Court's opinion, the mere fact that security officers had to work on night shifts and in rural areas and had to use firearms and physical force under certain conditions could not in itself justify any difference in treatment between men and women. Moreover, the reason for Ms Boyraz' dismissal had not been her inability to assume such risks or responsibilities, there having been nothing to indicate that she had failed to fulfil her duties, but the judicial decisions of the Turkish administrative courts. The Court therefore concluded that the difference in treatment of which she had been a victim had not pursued a legitimate aim and had amounted to discrimination on grounds of sex. Consequently, there had been a violation of Article 14 in conjunction with Article 8.

#### Article 6 § 1

The Court considered that the length of the proceedings in Ms Boyraz' case had been excessive. Indeed, it had lasted eight years for two levels of jurisdiction – the period to be taken into consideration began on 18 September 2000 and ended on 17 September 2008 – and Ms Boyraz' case had been pending before the Supreme Administrative Court for approximately seven years and three months out of this total period.

As to the fairness of the proceedings, while the Twelfth Division of the Supreme Administrative Court and the General Assembly of Administrative Proceedings Divisions had reached different conclusions in seemingly identical cases, Ms Boyraz had only submitted one decision given in a similar case. It could not therefore be said that there had been "profound and long-standing differences" in the case-law of the Supreme Administrative Court. This difference of interpretation thus did not, in itself, constitute a violation of Article 6.

However, the Court noted that the Twelfth Division of the Supreme Administrative Court had not considered Ms Boyraz' submissions or the decision of 6 December 2007 in a case similar to hers and had simply endorsed the Ankara Administrative Court's judgment of 21 February 2006. Although such a technique of reasoning by an appellate court was, in principle, acceptable, it had failed to satisfy the requirements of a fair hearing in Ms Boyraz' case as the General Assembly of Administrative Proceedings Divisions had given a decision which had been in conflict with the administrative court's judgment. The Court therefore considered that the Twelfth Division of the Supreme Administrative Court had failed to fulfil its duty to provide adequate reasoning for its decisions, in breach of Article 6 § 1.

#### Just satisfaction (Article 41)

The Court held that Turkey was to pay Ms Boyraz 10,000 euros in respect of non-pecuniary damage.

#### Separate opinion

Judge Spano expressed a partly dissenting opinion, which is annexed to the judgment.

*The judgment is available only in English.*

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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.