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

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Candidate who contested the results of a civil service entrance examination did not enjoy the right of access to a court

In today's **Chamber** judgment[1] in the case of **Ronald Vermeulen v. Belgium** (application no. 5475/06) the European Court of Human Rights held, unanimously, that there had been:

a violation of Article 6 § 1 (right of access to a court) of the European Convention on Human Rights.

The case concerned an administrative dispute relating to the results obtained by Mr Vermeulen in a competitive examination for admission to the civil service[2].

Mr Vermeulen, who was informed that he had failed the oral tests, lodged an application for a stay of execution of the decision and an appeal seeking its annulment. The *Conseil d'État*, which was the only judicial body with jurisdiction to hear the case, declared the appeal inadmissible on the grounds that at the time of its ruling Mr Vermeulen had no longer had standing before it (section 19(1) of the Laws on the *Conseil d'État*) as the marks of the successful candidates had become final and the reserve list had expired.

The Court found in particular that when the application for a stay of execution and the appeal had been lodged, the reserve list had still been valid; hence, at that juncture, Mr Vermeulen had had standing. The reason for his loss of standing had been the length of the proceedings before the *Conseil d'État*: the application for a stay of execution had remained pending for ten months and the appeal for over three and a half years.

The Court therefore found that, since the *Conseil d'État* had not considered how the length of the proceedings before it might have contributed to Mr Vermeulen's loss of standing, the decision declaring the appeal inadmissible had impaired the very substance of his right of access to a court and had not been proportionate to the principle of the proper administration of justice.

Principal facts

The applicant, Ronald Vermeulen, was born in 1951 and lives in Sas van Gent (the Netherlands). He was a Belgian national at the relevant time and obtained Dutch nationality during the proceedings.

In June 2000 Mr Vermeulen was informed by the Permanent Secretariat for the Recruitment of Civil Servants that he had not passed the examination for the recruitment of "category 4 administrative officials in the cabinet office", having failed the oral part. He lodged an initial appeal with the *Conseil d'État*, which annulled the decision, finding that it lacked reasoning.

In November 2001 Mr Vermeulen was asked to retake the oral part but he again failed. In January 2002 he lodged an application with the *Conseil d'État* for a stay of execution of the decision; this was rejected in November 2002 for lack of arguable grounds. He also lodged a second appeal with that body, complaining of a lack of reasoning in the decision and a lack of impartiality on the part of the examiners. In August 2005 his appeal was declared inadmissible on the grounds that he no longer

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.

2 Organised by the Permanent Secretariat for the Recruitment of Civil Servants in order to recruit "category 4 administrative officials in the cabinet office".

had standing within the meaning of section 19(1) of the Laws on the *Conseil d'État*, as he had only requested the annulment of his own result. He had not challenged the marks of the successful candidates, the reserve list itself, or the ensuing appointments, nor had he submitted any other grounds to justify the annulment of the competition as a whole.

According to the *Conseil d'État*, Mr Vermeulen had allowed the marks of the successful candidates to become final, with the result that a legal situation had been created. Furthermore, the reserve list had expired in the meantime (on 4 June 2002), so that the administrative authorities could no longer have appointed the applicant in any case, even if he had passed the last part of the examination.

Complaints, procedure and composition of the Court

Relying on Article 6 § 1 (right of access to a court) of the European Convention on Human Rights, Mr Vermeulen complained about the outcome of his second appeal and, in particular, about the interpretation of the rule on standing before the *Conseil d'État*.

The application was lodged with the European Court of Human Rights on 23 January 2006.

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

Robert **Spano** (Iceland), *President*,
Ledi **Bianku** (Albania),
Işıl **Karakaş** (Turkey),
Nebojša **Vučinić** (Montenegro),
Valeriu **Griţco** (the Republic of Moldova),
Stéphanie **Mourou-Vikström** (Monaco) and,
Françoise **Tulkens** (), *ad hoc Judge*,

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

Decision of the Court

Article 6 § 1 (right of access to a court)

The Court noted that the appeal had been declared inadmissible owing to the application by the *Conseil d'État* of section 19(1) of the Laws on the *Conseil d'État*, which provided that applicants had to demonstrate standing throughout the proceedings in order to secure the removal from the legal system of unlawful administrative acts, while avoiding an *actio popularis*.

That condition was intended, among other things, to ensure that the administrative authorities' actions were not challenged improperly, which might paralyse their activities, and to prevent the highest administrative court from becoming overburdened with applications. Like the Constitutional Court (judgment no. 117/99 of 10 November 1999), the Court considered that these aims, which were designed to ensure the proper administration of justice, were legitimate.

In the present case the Court noted that the *Conseil d'État* was the only judicial body with jurisdiction to hear appeals against the decision in question. At the time the appeal was lodged the reserve list had still been valid. Hence, at that juncture, Mr Vermeulen had had standing within the meaning of section 19(1) of the Laws on the *Conseil d'État*. The reason for his loss of standing had been the length of the proceedings before the *Conseil d'État*.

Furthermore, the reserve list had expired a little over four months after the lodging of the appeal and the application for a stay of execution. The *Conseil d'État* had ruled on the application for a stay of execution of the decision ten months after the application had been lodged and after the expiry of the reserve list, without taking account of the fact that the list had expired. It had delivered its

judgment on the appeal a little over three and a half years after it had been lodged, and had at no point examined the causes of Mr Vermeulen's loss of standing, and in particular the possible impact of the length of the proceedings in that regard.

The Court also noted that the Constitutional Court had already reminded the *Conseil d'État* of the need to ensure that the requirement as to standing was not applied in too restrictive or formalistic a manner. It had previously found the interpretation of the notion of standing to have been excessively formalistic, in a case that bore some similarities to the present case (judgment no. 109/2010 of 30 September 2010). Moreover, the appeal lodged by Mr Vermeulen did not appear to have been manifestly unfounded, given that the legal assistant at the *Conseil d'État*, in his report of 9 January 2004, had concluded that two of the grounds of appeal submitted by the applicant were well-founded.

Consequently, taking into account the proceedings as a whole and in particular the fact that the *Conseil d'État* had not examined how the length of the proceedings before it might have contributed to Mr Vermeulen's loss of standing, the Court found that the decision finding the applicant's appeal inadmissible had impaired the very substance of his right of access to a court and had not been proportionate to the principle of the proper administration of justice. **There had therefore been a violation of Article 6 § 1 of the Convention.**

Article 41 (just satisfaction)

The Court held that Belgium was to pay Mr Vermeulen 5,000 euros (EUR) to cover all heads of damage, and EUR 263.18 in respect of costs and expenses.

The judgment is available only in French.

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