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

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The Court has rejected the application of a judge dismissed following the attempted *coup d'État*, as the domestic law provides for a new domestic remedy for challenging her dismissal

In its decision in the case of **Çatal v. Turkey** (application no. 2873/17) the European Court of Human Rights has unanimously declared the application inadmissible. The decision is final.

The case concerns the dismissal of a judge by the Supreme Council of Judges, pursuant to a legislative decree adopted during the state of emergency, as one of a number of measures taken after the attempted *coup d'État*.

The Court has rejected Ms Çatal's application, finding that she did not exhaust domestic remedies.

The Court observed in particular that a new remedy was available to Ms Çatal, provided for in Legislative Decree no. 685[1], enabling her to challenge her dismissal before the Supreme Administrative Court (judicial review). The Supreme Administrative Court's decision could then, where applicable, be challenged before the Constitutional Court (individual application). Following an application to the Constitutional Court and a ruling by that court, anyone could, if necessary, lodge with the European Court of Human Rights a complaint based on the Convention. Legislative Decree no. 685 had therefore put an end to the dispute as to whether the domestic courts had jurisdiction to judicially review the measures taken by the Supreme Council of Judges.

The Court also stated that its conclusion did not in any way prejudice a possible re-examination of the question of the effectiveness of the remedy in question, and particularly the ability of the national courts to establish consistent case-law compatible with the Convention requirements. It stressed, moreover, that it retained its ultimate power of scrutiny of any complaint submitted by applicants who, in accordance with the principle of subsidiarity, had exhausted the available domestic remedies.

Principal facts

The applicant, Kadriye Çatal, is a Turkish national who was born in 1972 and lives in Ankara.

Following the attempted *coup d'État* on 15 July 2016, Ms Çatal, who was a judge at the Ankara Labour Court, was suspended. She was arrested and placed in police custody on 16 July 2016, and subsequently released on 20 July 2016. It appears from the materials in the case file that she has not been prosecuted.

On 21 July 2016 the Turkish authorities declared a state of emergency, during which the Cabinet adopted 21 legislative decrees, including Legislative Decree no. 667[2], which, among other things, empowered the Supreme Council of Judges ("the SCJ") to remove from office judges considered to belong or be affiliated or linked to terrorist organisations or to organisations, structures or groups whose activities the National Security Council had established as harmful to national security. On 18 October 2016 the Grand National Assembly of Turkey enacted Law no. 6749[3] approving that

[1] Legislative Decree no. 685 was adopted on 2 January 2017 and published in the Official Gazette on 23 January 2017.
[2] Article 3 of Legislative Decree no. 667, which was published in the Official Gazette on 23 July 2016.
[3] Law no. 6749 was published in the Official Gazette on 23 October 2016.

legislative decree. On 24 August 2016 the SCJ dismissed 2,847 judges, including Ms Çatal. She appealed against the decision, but the SCJ dismissed her appeal on 29 November 2016.

Complaints, procedure and composition of the Court

The application was lodged with the European Court of Human Rights on 5 December 2016.

Relying on Article 6 (right to a fair hearing) and Article 13 (right to an effective remedy), Ms Çatal complained that she did not have access to a court and did not have an effective remedy before a national authority to assert her rights regarding the measure dismissing her. Ms Çatal also relied on Article 7 (no punishment without law), Article 8 (right to respect for private and family life), Article 14 (prohibition of discrimination), Article 15 (derogation in time of emergency), Article 17 (prohibition of abuse of rights), Article 18 (limitation on use of restrictions of rights) of the Convention, and Article 1 of Protocol No. 1 (protection of property).

The decision was given by a Chamber of seven judges, 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

The Court observed that Ms Çatal had lodged her application without having first applied to the national courts. In that connection Ms Çatal submitted that she did not have an effective remedy enabling her to appeal against the measure dismissing her from office because no appeal lay against measures taken by legislative decree during a state of emergency. She also pointed out that two members of the Constitutional Court and judge rapporteurs working in that court had been arrested and placed in pre-trial detention. According to Ms Çatal, in such circumstances the Constitutional Court was not in a position to take an impartial decision and an appeal lodged with that court would have no prospect of success. As regards an application to the administrative courts, Ms Çatal referred to the judgment of the Supreme Administrative Court of 4 November 2016 in which it had declined jurisdiction to examine the merits of an application for judicial review brought by a judge who had been dismissed by a decision of the SCJ taken pursuant to Legislative Decree no. 667.

With regard to the effectiveness of an application to the administrative courts, after the present application had been lodged Legislative Decree no. 685 had designated the Supreme Administrative Court as a court of first instance for the purpose of examining the merits of appeals against measures taken pursuant to Article 3 of Legislative Decree no. 667. Persons against whom such measures had been taken were therefore now able to apply directly to that court within 60 days from the date on which the decisions concerning them had become final. With regard to Ms Çatal's case in particular, she had the possibility, under Article 1 § 4 of the transitional provisions of Legislative Decree no. 685, of applying to the administrative courts within 60 days from the date of publication of the legislative decree in question. The executive had therefore put an end to the dispute as to whether the national courts had jurisdiction to judicially review measures taken pursuant to legislative decrees enacted during a state of emergency. There was therefore a new legal provision available to Ms Çatal allowing her to give the domestic courts an opportunity to remedy, at national level, a violation of the Convention provisions. Moreover, the Supreme

Administrative Court's decisions could in turn be challenged before the Constitutional Court by means of an individual application and, following an application to that court and its ruling, anyone could, if necessary, lodge with the European Court of Human Rights a complaint based on the Convention.

Having regard to the nature of Legislative Decree no. 685 and the context in which it had been adopted, the Court found that an exception could justifiably be made to the general principle that the condition of exhausting domestic remedies had to be assessed at the time of lodging an application. The onus was therefore on a person considering himself or herself to be a victim of a violation of the provisions of the Convention to test the new remedy. The remedy established by Legislative Decree no. 685 was *a priori* an accessible remedy and there was no evidence before the Court that it was not capable of providing appropriate redress for Ms Çatal's complaints of violations of provisions of the Convention or that it did not offer a reasonable prospect of success.

The Court stressed, however, that this conclusion did not in any way prejudice a possible re-examination of the question of the effectiveness of the remedy in question, and particularly the ability of the national courts to establish consistent case-law compatible with the Convention requirements. It stated that it retained its ultimate power of scrutiny of any complaint submitted by applicants who, in accordance with the principle of subsidiarity, had exhausted the available domestic remedies. It was therefore incumbent on Ms Çatal, who complained of a violation of her Convention rights on account of the measure in question, to apply to the domestic courts as required by Article 35 § 1 of the Convention. **Accordingly, the Court rejected the application for non-exhaustion of domestic remedies, pursuant to Article 35 §§ 1 and 4 of the Convention.**

The decision is available only in French.

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