

**APPLICATION N° 23991/94**

**Teoman ERGUL v/TURKEY**

**DECISION** of 17 January 1996 on the admissibility of the application

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**Article 6, paragraph 1 of the Convention** *Disputes concerning access to, dismissal from or reinstatement in public service do not involve the determination of civil rights and obligations*

**Articles 9 and 10 of the Convention** *Dismissal of application for reinstatement in the national judicial service on the basis of a legislative provision prohibiting the reinstatement of persons who have joined a political party*

*No interference with the exercise of the rights guaranteed by Articles 9 and 10 since the authorities merely ascertained that the applicant did not fulfil the conditions for the office in question and did not take account of his personal opinions*

**Competence *ratione materiae*** *The Convention does not, as such, guarantee the right to hold a position in public service*

*Measures taken by the authorities to satisfy themselves that a candidate for a post possesses the necessary personal qualifications do not constitute an interference with the exercise of a right guaranteed by the Convention*

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**THE FACTS**

The applicant is a Turkish citizen He was born in 1937 and lives in Manisa He is a lawyer

He is represented before the Commission by Mr Onder Sav, President of the Union of Turkish Bars, Mr Turgut Kazan, President of the Istanbul Bar, and Mr Guney Dinç, a lawyer practising in Izmir

A *The particular circumstances of the case*

In 1970, the applicant resigned from his post as a deputy public prosecutor (a member of the national judicial service) and began practising as a lawyer in Manisa. He also engaged in political activities from 1972 to 1981, as a member of the Republican People's Party (known in Turkey as the "CHP")

On 15 March 1993, the applicant, relying on the provisions of Law No 2802 of 24 February 1983, applied to be reinstated in the national judicial service

On 24 May 1993, the Judicial Service Commission (Small Chamber) dismissed the application on the ground that Section 51 of Law No 2802 prohibited persons who had joined a political party from being reinstated in the national judicial service

The applicant's appeal by way of a rehearing was dismissed by the Judicial Service Commission (Grand Chamber) on 23 October 1993

The applicant applied to have this second decision set aside. On 2 December 1993 the Commission dismissed this application also. This decision was served on the applicant on 14 January 1994

B *Relevant domestic law*

Section 51 (5) of Law No 2802 provides as follows

"Judges and public prosecutors may not join a political party. Those who have joined a political party shall be deemed to have resigned forthwith and may not be reinstated in the national judicial service."

## COMPLAINTS

The applicant complains principally of the dismissal, by the Judicial Service Commission, of his application to be reinstated in the national judicial service

Invoking Articles 6 and 13 of the Convention, he complains that he did not have an effective remedy whereby to challenge the decisions of the Judicial Service Commission in the administrative or civil courts

He further alleges that there has been a violation of Articles 9 and 10 of the Convention in conjunction with Article 14 thereof, in that the refusal to reinstate him in the national judicial service was based on his previous political activities

## THE LAW (Extract)

1 The applicant complains of the dismissal of his application to be reinstated in his previous post in the national judicial service and of the related proceedings. He claims to have been a victim of discrimination on the basis of his political opinions and not to have had a remedy whereby to challenge the decisions made in relation to him. He invokes Articles 6, 9, 10, 13 and 14 of the Convention.

The Commission recalls, firstly, that the right to be reinstated in the public service, including the national judicial service, is not, as such, guaranteed by the Convention (cf No 8160/78, Dec. 12 3.81, D R. 22 p 27).

It recalls further that proceedings relating to the right to be reinstated in the public service do not involve the determination of the applicant's civil rights and obligations, nor of a criminal charge against him within the meaning of Article 6 of the Convention.

It follows that this head of the application is incompatible *ratione materiae* with the provisions of the Convention set out in Article 27 para. 2.

2. As regards the applicant's complaints under Articles 9 and 10 of the Convention taken in conjunction with Article 14 thereof, the Commission recalls that the Court has already held that there was no interference with the exercise of a right guaranteed by the Convention where a complaint raised before the Convention organs was based on measures taken by the national authorities in order to satisfy themselves that a candidate for a post in the public service possessed the necessary personal qualifications (cf. the judgments in the cases of *Glaseapp and Kosiek* of 8 August 1986, Series A Nos 104 and 105 respectively, and No 12356/86, Dec 8.9.88, D R. 57 pp 172, 174 and 175).

The Commission notes that, in the present case, the applicant's request to be reinstated in the national judicial service was dismissed on the basis of a Turkish legislative provision prohibiting any person who had engaged in political activities as a member of a political party from holding a post in the national judicial service. The Judicial Service Commission did not, in refusing to reinstate the applicant, take account of his personal opinions and attitudes but merely ascertained that he did not fulfil one of the necessary conditions for the post in question.

Since there has been no interference with the exercise of the applicant's rights protected by Articles 9 and 10 of the Convention, this part of the request must be rejected as being manifestly ill-founded pursuant to Article 27 of the Convention.

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