CONSEIL DE L'EUROPE

COUNCIL OF EUROPE

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

SECOND SECTION

DECISION

AS TO THE ADMISSIBILITY OF

Application no. 39822/98
by Hüseyin ALTIN
against Turkey

The European Court of Human Rights (Second Section), sitting on 6 April 2000 as a Chamber composed of

Mr C.L. Rozakis, *President*,
Mr M. Fischbach,
Mr R. Türmen,
Mrs V. Strážnická,
Mr P. Lorenzen,
Mr A.B. Baka,
Mr A. Kovler, *judges*,
and Mr E. Fribergh, *Section Registrar*,

Having regard to the above application introduced with the European Commission of Human Rights on 15 August 1997 and registered on 13 February 1998,

Having regard to Article 5 § 2 of Protocol No. 11 to the Convention, by which the competence to examine the application was transferred to the Court,

Having deliberated, decides as follows:

THE FACTS

The applicant is a Turkish national, born in Yeşilhisar and living in Kayseri, Turkey.

A. Circumstances of the case

The facts of the case, as submitted by the applicant, may be summarised as follows.

The applicant was formerly a public prosecutor. In 1993 he wrote a letter to the Minister of Interior criticising him as well as a political party forming part of the coalition government for, *inter alia*, the continuation of the terrorist campaign. He stated that the party in question had been elected on the backs of the terrorists. Furthermore he criticised a number of new amendments made to the law on criminal procedure which were intended to increase the rights of the accused. The applicant repeated the same views and opinions in a book which he published.

On 9 June 1994 the Supreme Board of Judges and Public Prosecutors (*Hakimler ve Savcılar Yüksek Kurulu* : "the Supreme Board") held that his statements were highly political and incompatible with the objectivity required by his functions. The Supreme Board transferred him to a lesser jurisdiction for disciplinary reasons.

The applicant requested the Supreme Board to rectify ("*yeniden inceleme*") its decision. On 15 February 1994 his request was rejected. The applicant then raised an objection ("*itiraz*") to the decision before the Objections Examination Board (*İtirazları İnceleme Kurulu*: "the Objections Board"). On 16 March 1995 the Objections Board upheld the Supreme Board's decision.

On several occasions in 1994 the applicant made oral comments to his colleagues or published poems expressing his disapproval of the activities of the above-mentioned political party. He gave a television interview in which he criticised the Supreme Board's decision to transfer him as well as the Board's structure.

On 9 March 1995 the Supreme Board again ruled that the applicant's statements and conduct were highly political and incompatible with the objectivity requirements of his office. The Supreme Board found, *inter alia*, that the applicant had been behaving "like a professional politician". The Supreme Board also found that the applicant had spent his sick leave in a distant locality without prior permission. On the basis of these two grounds the Supreme Board again transferred the applicant to a lesser jurisdiction for disciplinary reasons. The applicant requested the Supreme Board to rectify this decision. On 20 April 1995 his request was rejected. The applicant then raised an objection to the initial decision with the Objections Board. On 25 September 1995 the Objections Board upheld the decision.

Subsequently the Supreme Board noted that the applicant had been given two disciplinary punishments. It held on 29 February 1996 that, in accordance with section 69 § 2 of Law no. 2802, the applicant should be removed from office. The applicant requested the Supreme Board to rectify this decision. In the meantime, on 3 April 1996, the applicant resigned from his functions.

On 23 September 1996 the Supreme Board re-examined the applicant's disciplinary file and upheld the decision of 29 February 1996. The applicant raised objection to the

decision of the Supreme Board. In his petition of 5 May 1997 to the Objections Board the applicant wrote *inter alia* that he had voluntarily ("*kendi isteğimle*") resigned and requested that the administrative punishment (removal from office) be, at least, converted to a lighter form of punishment. The applicant was heard in person by the Objections Board on 5 May 1997. On the same day the Objections Board ruled that the Supreme Board's decision of 29 February 1996 was taken in accordance with the law.

B. Relevant domestic law

According to Article 68(b) of the Code on Judges and Public Prosecutors, conduct of a judge or public prosecutor which is considered incompatible with the impartiality requirements of his functions renders him liable to be transferred to a lesser jurisdiction.

According to Article 69 of the Code, any judge or public prosecutor who has been sanctioned for disciplinary reasons on two occasions by being transferred to a lesser jurisdiction shall be liable to be removed form office.

COMPLAINTS

The applicant contends that the proceedings leading to his dismissal from office for disciplinary reasons were "criminal" proceedings within the meaning of Article 6 of the Convention. He complains that the decisions of the Supreme Board cannot be challenged before other judicial organs.

The applicant also complains that the expression of personal views was not an act punishable under domestic law. He contends that he was dismissed from office for acts which were not proscribed by law. The applicant invokes Article 7 of the Convention.

Finally, the applicant complains that he was dismissed from office on the basis of his personal views, although the expression of these views was not prohibited by law. He states that he had never been convicted by a criminal court for the expression of his personal views and on that account could not be dismissed from office for having expressed such views. The applicant invokes Articles 9 and 10 of the Convention in this connection.

THE LAW

1. The applicant maintains that he did not receive a fair trial in the determination of criminal charges against him and that the matters for which he was punished were not unlawful under domestic law. He invokes Articles 6 and 7 of the Convention, which provide as relevant:

> Article 6
>
> "1. In the determination of ... any criminal charge against him, everyone is entitled to a fair ... hearing (...)"

Article 7

"1. No one shall be held guilty of any criminal offence on account of any act or omission which did not constitute a criminal offence under national or international law at the time when it was committed. (...)"

The Court does not accept the applicant's submission on the nature of the impugned proceedings before the Supreme Board and the decisions handed down by that body. For the Court the applicant had to defend disciplinary charges relating to his behaviour as a public prosecutor. The Supreme Board took the view that his utterances and writings called into question his integrity as a law officer and in particular the effects which his conduct might have on the public's perception of the Office of the Public Prosecutor. The sanctions which were imposed on the applicant, in a first stage transfer to a lesser jurisdiction and later on dismissal, were in the nature of disciplinary measures taken within the framework of the rules and regulations governing the rights, duties and responsibilities of the judiciary and law officers such as the applicant.

While having regard to the fact that the concept of a "criminal charge" within the meaning of Article 6 § 1 of the Convention is an autonomous one (see the Öztürk v. Germany judgment of 21 February 1984, Series A no. 73, p.p. 17 - 18, §§ 49 and 50) and to the criteria which have been developed for ascertaining whether a particular form of conduct can be construed as "criminal" (*ibidem*, § 50), the Court concludes that the measures taken against the applicant and the nature of the impugned proceedings were not such as to render that Article applicable. On that account the applicant's complaint must be considered incompatible *ratione materiae* with the provisions of the Convention For the same reason the Court finds that the applicant's complaint under Article 7 of the Convention is also incompatible *ratione materiae*.

Having regard to the above considerations, the Court concludes that the applicant's complaints under these heads must be rejected in accordance with Articles 35 §§ 3 and 4.

2. The applicant states that the sanctions applied to him amounted to an interference with his rights to freedom of thought and freedom of expression, guaranteed respectively by Articles 9 and 10 of the Convention. These Articles provide:

Article 9

"1. Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief and freedom, either alone or in community with others and in public or private, to manifest his religion or belief, in worship, teaching, practice and observance.

2. Freedom to manifest one's religion or beliefs shall be subject only to such limitations as are prescribed by law and are necessary in a democratic society in the interests of public safety, for the protection of public order, health or morals, or for the protection of the rights and freedoms of others."

Article 10

"1. Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. This article shall not prevent States from requiring the licensing of broadcasting, television or cinema enterprises.

2. The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a

democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary."

The Court notes that the essence of the applicant's complaints concerns the alleged interference with his right to express views and opinions. It will accordingly examine his complaints from the standpoint of Article 10.

The Court observes that, as a general rule, the guarantees in the Convention including the rights protected by Article 10 extend to civil servants. Accordingly, the applicant's status as a public prosecutor did not deprive him of the protection of Article 10 (see, *mutatis mutandis*, the Kosiek v. Germany judgment of 28 August 1986, Series A no. 105, p. 20, § 35; and the Vogt v. Germany judgment of 26 September 1995, Series A no. 323, p.p. 22-23, § 43).

In addressing the applicant's complaint the Court refers to the applicable principles laid down in the above-mentioned Vogt judgment (see pp. 25-26, § 52 and 53).

The Court does not dispute the applicant's argument that the sanctions imposed on him amounted to an interference with the exercise of the rights at issue. However it finds that in the circumstances of the case the disciplinary measures taken by the Supreme Board can be considered "necessary in a democratic society ... for maintaining the authority and impartiality of the judiciary" within the meaning of paragraph 2 of Article 10.

In the Court's opinion the applicant has not adduced any evidence which would call into question the assessment made by the Supreme Board of his behaviour and the risks which such behaviour entailed for the integrity of the profession. It notes in this connection that the Supreme Board found that the applicant was conducting himself like a "professional politician" having regard to his oral and written statements on politically divisive issues such as the fight against terrorism. In making that assessment and in determining the nature of the sanction to be applied to the applicant, the Supreme Board, as the ultimate guardian of professional standards, must be taken to enjoy a margin of appreciation. It is also relevant that as a law officer the applicant's conduct was circumscribed by the "duties and responsibilities" attaching to his office in regard to what he said and wrote. This factor must equally be weighted in the balance when assessing the necessity for the interference.

In the Court's opinion there is nothing to suggest that the Supreme Board exceeded that margin by ultimately removing the applicant from his functions. It is to be observed that the applicant had already been put on notice that his conduct was considered detrimental to the impartiality requirements of his Office. However the applicant persisted in his conduct. On that account he cannot criticise the Supreme Board's decision to remove him from his functions as a disproportionate response in the circumstances. The Court must also have regard to the fact that the Supreme Board's second decision to order his transfer to a lesser jurisdiction was motivated in part by the fact that the applicant, quite apart from his public conduct, had abused his sick leave provisions in breach of professional regulations. Having recorded two disciplinary offences in relatively quick succession, the Supreme Board was obliged to dismiss the applicant under Article 69 of the Code governing Judges and Public Prosecutors.

In the Court's opinion the facts at issue are to be distinguished from those which led it to find a breach of Article 10 in the above-mentioned Vogt judgment. In the latter case the Court found it significant that Mrs Vogt, a school teacher, did not allow her political activities to intrude on her classroom duties. Her professional work was beyond reproach and there was no evidence that she adopted an anti-constitutional stance outside school hours (*ibidem*, p. 29, § 60). On the other hand, the applicant in the instant case was much less discreet in his political comments and was reproached for his non-respect of the profession's regulations governing sick leave. Although the applicant, like Mrs Vogt, was a public servant, it cannot be ignored that he was specifically entrusted with the performance of judicial functions. The confidence of the public in the independent administration of justice must not be impaired on account of conduct on the part of a law officer which might put in issue his impartiality and objectivity to the detriment of that confidence.

The Court finds accordingly that the impugned measures were a proportionate response to a pressing social need to maintain the authority and impartiality of the judiciary.

For the above reasons the Court concludes that this part of the application is manifestly ill-founded within the meaning of Article 35 § 3 of the Convention and must be rejected in accordance with Article 35 § 4.

For these reasons, the Court, unanimously,

DECLARES THE APPLICATION INADMISSIBLE.

Erik Fribergh
Registrar

Christos Rozakis
President