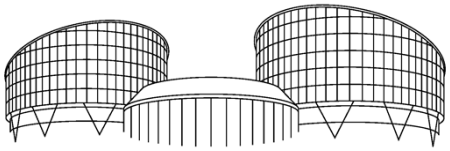

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

SECOND SECTION

CASE OF HÜLYA EBRU DEMİREL v. TURKEY

(Application no. 30733/08)

JUDGMENT

STRASBOURG

19 June 2018

FINAL

03/12/2018

This judgment has become final under Article 44 § 2 of the Convention. It may be subject to editorial revision.

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In the case of Hülya Ebru Demirel v. Turkey,

The European Court of Human Rights (Second Section), sitting as a Chamber composed of:

Robert Spano, *President,*
Paul Lemmens,
Ledi Bianku,
Işıl Karakaş,
Nebojša Vučinić,
Valeriu Griţco,
Jon Fridrik Kjølbro, *judges,*
and Stanley Naismith, *Section Registrar,*

Having deliberated in private on 22 May 2018,

Delivers the following judgment, which was adopted on that date:

PROCEDURE

1. The case originated in an application (no. 30733/08) against the Republic of Turkey lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by a Turkish national, Ms Hülya Ebru Demirel ("the applicant"), on 17 June 2008.

2. The applicant was represented by Mr Y. Alataş, a lawyer practising in Ankara. The Turkish Government ("the Government") were represented by their Agent.

3. The applicant alleged, in particular, that the administrative authorities' refusal to appoint her to the post of security officer and her subsequent dismissal from that post had been discriminatory. She also complained of the unfairness of the proceedings before the administrative courts. She relied on Articles 6 and 14 of the Convention.

4. On 8 January 2014 the complaints under Article 14 in conjunction with Article 8 of the Convention and Article 6 of the Convention were communicated to the Government and the remainder of the application was declared inadmissible pursuant to Rule 54 § 3 of the Rules of Court.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1976 and lives in Kilis.

6. On 17 October 1999 the applicant sat an examination in order to become a civil servant. She was successful in the examination and on an unspecified date she was informed by the State Personnel Department attached to the Prime Minister's office that she had been appointed to the post of security officer in the Kilis branch of TEDAŞ (*Türkiye Elektrik Dağıtım A.Ş.* – Turkish Electricity Distribution S.A.), a State-run electricity company.

7. On an unspecified date TEDAŞ informed the applicant that she would not be appointed to the post in question as she did not fulfil the requirements of "being a man" and "having completed military service".

8. On 4 September 2000 the applicant lodged an action against TEDAŞ with the Gaziantep Administrative Court requesting the annulment of the decision of the Kilis Branch of TEDAŞ not to appoint her to the post in question and a stay of execution of this decision.

9. On 9 May 2001 the Gaziantep Administrative Court ordered the stay of execution of TEDAŞ's decision not to appoint the applicant as a security officer. The court considered that "being a male" was not a requirement for the post.

10. On 23 July 2001 the applicant was offered a contract by the Kilis branch of TEDAŞ subject to a probationary period of six months. On an unspecified date the applicant took up her duties.

11. On 4 October 2001 the Gaziantep Administrative Court annulled the decision of the Kilis branch of TEDAŞ. The court held that the requirement of "having completed military service" should be considered to apply only to male candidates and that there had been no restriction on women working as security officers in TEDAŞ. It further noted in that connection that since there had not been a specific requirement to recruit only male candidates for the said post, the fact that the applicant had been rejected solely on account of her sex had been unlawful.

12. On 28 January 2002 TEDAŞ lodged an appeal against the judgment of 4 October 2001, requesting that the Supreme Administrative Court order a stay of execution of the judgment of the Gaziantep Administrative Court and subsequently quash it.

13. On 12 April 2002 the Twelfth Division of the Supreme Administrative Court granted the stay of execution of the judgment of 4 October 2001.

14. On 11 June 2002 TEDAŞ informed the applicant that her contract of employment had been terminated on 27 May 2002 by virtue of the Supreme Administrative Court decision of 12 April 2002.

15. On 26 December 2002 the Twelfth Division of the Supreme Administrative Court quashed the judgment of 4 October 2001. The Supreme Administrative Court considered that given that there had been a requirement of "having completed military service", the post had been reserved for male candidates only. The Supreme Administrative Court

therefore found that the decision not to appoint the applicant to the post had been in accordance with the law.

16. On 23 October 2003 the Gaziantep Administrative Court dismissed the applicant's case by following the reasoning of the Supreme Administrative Court.

17. The applicant appealed against the decision of 23 October 2003 and argued that the Supreme Administrative Court's interpretation, namely that the post in question must have been reserved only for male candidates given that there was a requirement to complete military service, ran counter to the principle of equality and the State's positive obligation to ensure non-discrimination between men and women. In support of her arguments, the applicant maintained that this obligation was set out not only in Article 10 of the Constitution but also in Article 2 § d of the United Nations Convention on the Elimination of All Forms of Discrimination Against Women as well as Article 3 of the International Covenant on Economic, Social and Cultural Rights. She further argued that it was of no importance to dwell on whether the post in question had been reserved for male candidates only, since such a reservation itself would be contrary to the prohibition on discrimination on the basis of sex in access to employment as set out in the relevant international instruments and European Union regulations. On 16 November 2017 the Twelfth Division of the Supreme Administrative Court unanimously upheld the decision of 23 October 2003, without replying to the arguments of the applicant.

18. On 6 December 2007 the Supreme Administrative Court's General Assembly of Administrative Proceedings Divisions (*Danıştay İdari Dava Daireleri Genel Kurulu*), the composition of which included some members of the Twelfth Division, delivered a decision in favour of R.B., who, like the applicant had been a female candidate for TEDAŞ whose application to be appointed to the post of security officer had been rejected by TEDAŞ on account of not fulfilling the requirements of "being a male" and "having completed military service". The General Assembly held that the requirement of "having completed military service" should be considered to apply only to male candidates. It found, however, that it was unlawful to refuse to appoint R.B. on that ground.

19. On an unspecified date, the applicant applied for rectification of the decision of 16 November 2007, and maintained the arguments she had submitted during appeal (see paragraph 17 above). Relying on the right to a fair hearing, she argued that her submissions concerning the prohibition of discrimination were also supported by the findings of the Supreme Administrative Court's General Assembly of Administrative Proceedings Divisions in its decision concerning the case of R.B.; she therefore requested the Supreme Administrative Court to rectify its decision of 16 November 2007.

20. In the rectification proceedings the judge rapporteur of the Twelfth Division submitted his written opinion on the merits of the case and argued, *inter alia*, that the decision of 16 November 2007 should be rectified in the light of the decision of the Supreme Administrative Court's General Assembly of Administrative Proceedings Divisions of 6 December 2007 in the case of R.B. He also noted in that connection that Turkey had ratified the United Nations Convention on the Elimination of All Forms of Discrimination Against Women and that pursuant to its Article 11, the State was bound to take all appropriate measures to ensure, *inter alia*, the right to the same employment opportunities on a basis of equality of men and women, including the application of the same criteria for selection in matters of employment.

21. On 24 June 2009 the Twelfth Division of the Supreme Administrative Court dismissed the applicant's application for the rectification of its previous decision, holding that none of the reasons put forth by the applicant for rectification fell within the exhaustive list of permissible grounds for rectification indicated in section 54 (1) of the Administrative Procedure Act (Law no. 2577) and that its previous decision was in accordance with law and procedure. Therefore the Gaziantep Administrative Court's decision of 23 October 2003 became final.

II. RELEVANT DOMESTIC LAW AND INTERNATIONAL MATERIAL

22. The relevant domestic law in force at the material time, and the relevant international material can be found in *Emel Boyraz v. Turkey* (no. 61960/08, §§ 26-30, 2 December 2014).

23. The relevant provisions of the Administrative Procedure Act (Law no. 2577), as in force at the material time, provided as follows:

> Section 49 - Grounds for setting aside a judgment
>
> "1. On appeal review, the Supreme Administrative Court may quash a judgment on the following grounds:
>
> a) lack of jurisdiction,
>
> b) incompatibility with the law,
>
> c) incompatibility with procedure.
>
> ...
>
> 4. [In a case where a judgment has been quashed on appeal and remitted to the relevant court,] the court may insist on its previous judgment. If the parties appeal against this judgment, the case shall be examined by the General Assembly of Administrative or Tax Proceedings Divisions, depending on the subject-matter. If the General Assembly agrees with the decision, it shall quash the judgment; otherwise, it shall uphold it. The decisions of the General Assembly are binding.
>
> ..."

Section 54 - Rectification of a decision

"1. Rectification of a Supreme Administrative Court decision, or a decision of the General Assembly of Administrative or Tax Proceedings Divisions ... may be applied for by the parties within fifteen days of the notification of the impugned decision on the following grounds:

a) The decision does not address the arguments and objections of the parties concerning the merits of the dispute,

b) The decision contains contradictory provisions,

c) The decision is not in accordance with the law or procedure,

d) Some of the documents examined during the appeal proceedings were fraudulent or false.

2. The Supreme Administrative Court and regional administrative courts [in their examination] shall be bound by the reasons put forth by the parties in their application for rectification.

3. Review for rectification shall be carried out by the same division of the Supreme Administrative Court, which rendered the decision subject to rectification. The judge rapporteur who was previously assigned to the case may not act in this role during the rectification review."

Section 55 – Special provisions concerning the reopening of the proceedings and rectification of a decision

"...

2. The request [for rectification of a decision or reopening of proceedings] shall be examined after the defendant party makes its submissions. Provided that the legal grounds for rectification or reopening are met, [the Supreme Administrative Court] shall re-examine the case and render a decision.

3. If the request does not correspond to the legal grounds permitted by law, the request shall be dismissed.

..."

24. The relevant provisions concerning the rectification of a decision in the Administrative Procedure Act were repealed by Law no. 6545, published in the Official Gazette on 28 June 2017, which provided for a transitional period during which the rectification of a decision remedy would be gradually phased out.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 14 IN CONJUNCTION WITH ARTICLE 8 OF THE CONVENTION

25. Relying on Article 14 of the Convention and Article 11 of the Convention on the Elimination of All Forms of Discrimination against

Women ("the CEDAW"), which prohibits discrimination against women in the field of employment, the applicant complained that the administrative authorities' decisions and the domestic courts' judgments had constituted discrimination against her on the grounds of sex.

26. The Government contested that argument.

27. The Court, as the master of the characterisation to be given in law to the facts of any case before it and having regard to the circumstances of the present case, considers that this complaint falls to be examined under Article 14 of the Convention, taken in conjunction with Article 8 of the Convention (see *Emel Boyraz v. Turkey*, no. 61960/08, § 33, 2 December 2014, and the cases cited therein, and *Radomilja and Others v. Croatia* [GC], nos. 37685/10 and 22768/12, § 126, ECHR 2018). Articles 8 and 14 of the Convention read as follows:

Article 8

"1. Everyone has the right to respect for his private and family life, his home and his correspondence.

2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others."

Article 14

"The enjoyment of the rights and freedoms set forth in [the] Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status."

A. Admissibility

28. The 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 of access to a particular profession.

29. The applicant contested that claim.

30. The Court notes that it has already examined and rejected the Government's preliminary objection in the case of *Emel Boyraz* (cited above, §§ 38-46). The Court finds no particular circumstances in the present case which would require it to depart from that conclusion. The Court considers that Article 14 of the Convention is applicable in the circumstances of this case, taken in conjunction with Article 8, and rejects the Government's objection.

31. The Court notes that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. It further notes

that it is not inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

32. The Government maintained that there had been an objective and reasonable justification for the refusal of the domestic authorities to appoint the applicant to the post of security officer. They noted that the post in question had been reserved for male candidates who had completed military service. According to the Government such a requirement could not be deemed discriminatory in view of the nature of the duties of the post, which involved using firearms and working at night.

33. The applicant contested that argument by submitting that the sole reason she had been refused the post in question had been her sex. The applicant also disagreed with the Government that the difference in the treatment of female and male candidates could be justified by taking into account the dangerous factors implied in the occupation of a security officer. She submitted in that connection that many women in Turkey were successfully employed in dangerous occupations, such as police officers, army pilots and prison guards.

34. The Court reiterates that in *Emel Boyraz* it held that the decisions of the administrative and judicial authorities finding that the post of security officer was reserved solely for male candidates had amounted to a clear difference of treatment, on grounds of sex, between persons in an analogous situation (see *Emel Boyraz*, cited above, § 52). After thoroughly examining whether there were reasonable and objective grounds that justified such a difference of treatment, the Court held in that case that the impugned difference of treatment had not pursued a legitimate aim (ibid., §§ 53-56).

35. In the instant case, the Court observes that the administrative authorities and the Twelfth Division of the Supreme Administrative Court reviewing the conformity of the impugned administrative decision with the law both considered that the post of security officer in the Kilis branch of TEDAŞ had been reserved for men and that therefore the applicant, as a woman, had been excluded. What is more, the decision of the Twelfth Division of the Supreme Administrative Court did not adduce any reasons other than the applicant's sex for her not having been appointed to the post in question. The present case is, therefore, identical to *Emel Boyraz* in which the Court concluded that the decisions of the administrative and judicial authorities had amounted to a discriminatory difference in treatment in breach of Article 14 taken in conjunction with Article 8 of the Convention (ibid., § 56). Accordingly, and for the detailed reasons elaborated on in *Emel Boyraz*, the Court concludes that there has been a violation of Article 14 taken in conjunction with Article 8 resulting from the

refusal of the authorities to appoint, and then their subsequent dismissal of the applicant from the post of security officer.

II. ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION

36. The applicant complained under Article 6 § 1 of the Convention that the domestic courts had delivered contradictory decisions in identical cases and that the Twelfth Division of the Supreme Administrative Court had failed to examine her submissions regarding the decision rendered by the General Assembly of Administrative Proceedings Divisions in respect of R.B.

A. Admissibility

37. The Government submitted that Article 6 § 1 was not applicable in the instant case as the administrative decisions concerning the applicant fell within the sphere of public law.

38. The applicant contested that argument.

39. The Court notes that it has already examined and rejected the Government's preliminary objection in the case of *Emel Boyraz* (cited above, § 62). The Court finds no particular circumstances in the present case which would require it to depart from that conclusion. The Court considers that Article 6 § 1 of the Convention is applicable in the circumstances of this case.

40. The Court notes that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. It further notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

41. The Government denied that the proceedings had been unfair. They submitted that while Article 6 § 1 obliged courts to give reasons for their decisions, it could not be understood as requiring a detailed answer to every argument. Thus, in dismissing an appeal, an appellate court may, in principle, simply endorse the reasons for the lower court's decision. The Government argued that a decision of the Supreme Administrative Court's General Assembly of Administrative Proceedings Divisions would only be binding for the relevant chamber of the Supreme Administrative Court and only for the relevant proceedings in question. They went on to add that the fact that a seemingly contradictory decision was adopted by the Supreme Administrative Court's General Assembly of Administrative Proceedings Divisions would not be sufficient grounds to grant a rectification request in

a similar case. In support of their position they provided the Court with two sample decisions of the Supreme Administrative Court.

42. The applicant disagreed with the Government's submissions. She argued that one of the grounds for rectification of a decision is the previous decision not being in accordance with the law or procedure, which allows the Supreme Administrative Court to review its previous decision and its compliance with the law, including the case-law of the Supreme Administrative Court's General Assembly of Administrative Proceedings Divisions.

43. The Court reiterates at the outset that conflicting decisions in similar cases heard in the same court which, in addition, is the court of last instance in the matter may, in the absence of a mechanism which ensures consistency, breach the principle of fair trial and thereby undermine public confidence in the judiciary, such confidence being one of the essential components of a State based on the rule of law (see, *inter alia, Balažoski v. the former Yugoslav Republic of Macedonia*, no. 45117/08, § 30, 25 April 2013, and the cases cited therein). In the *Iordan Iordanov and Others* case, the Court identified the issues that needed to be assessed when analysing whether conflicting decisions in similar cases stemming from the same court violated the principle of legal certainty under Article 6 of the Convention: (1) the existence of "profound and long-lasting divergences" in the relevant case-law; (2) whether the domestic law provided for a mechanism capable of removing the judicial inconsistency; and (3) whether this mechanism was applied and, if so, what its effects were (see *Iordan Iordanov and Others v. Bulgaria*, no. 23530/02, § 49, 2 July 2009). Consequently, the Contracting States had an obligation to organise their legal system so as to avoid the adoption of discordant judgments (see *Nejdet Şahin and Perihan Şahin v. Turkey* [GC], no. 13279/05, § 55, 20 October 2011).

44. In *Emel Boyraz* (cited above, § 73), the Court held that the situation complained of by the applicant, namely that the Supreme Administrative Court had reached contradictory conclusions in similar situations, had not amounted to "profound and long-lasting divergences" in the relevant case-law of the Supreme Administrative Court, regard being had to the fact that the applicant had submitted only one such decision, which had been rendered in the case of R.B., who had also been refused a post of security officer on account of her sex. The same considerations also hold true for the applicant in the present case, who did not submit any other decisions by the Supreme Administrative Court, and therefore the Court considers that the difference of interpretation between the Twelfth Division and the General Assembly of Administrative Proceedings Divisions did not, in itself, amount to a violation of Article 6 § 1 of the Convention on account of the conflicting decisions rendered by the Supreme Administrative Court.

Therefore, the Court does not find a violation of Article 6 § 1 in respect of the first limb of the applicant's complaint.

45. Turning to the second limb of the applicant's Article 6 § 1 complaint, the Court recalls that in *Emel Boyraz* it found a violation of Article 6 § 1 of the Convention on account of the failure of the Supreme Administrative Court to reply to that applicant's submissions regarding the conflicting conclusions reached by the Supreme Administrative Court in her case and the General Assembly of Administrative Proceedings Divisions in the case of R.B (ibid., § 75). In that connection, the Court reiterates that according to its established case-law reflecting a principle linked to the proper administration of justice, judgments of courts and tribunals should adequately state the reasons on which they are based. The extent to which this duty to give reasons applies may vary according to the nature of the decision and must be determined in the light of the circumstances of the case. Although Article 6 § 1 obliges courts to give reasons for their decisions, it cannot be understood as requiring a detailed answer to every argument. Thus, in dismissing an appeal, an appellate court may, in principle, simply endorse the reasons for the lower court's decision (ibid., § 74, and the cases cited therein). Although such a technique of reasoning by an appellate court is, in principle, acceptable, there might be circumstances in which an appellate court might be required to give proper reasons of its own (see *Hirvisaari v. Finland*, no. 49684/99, § 32, 27 September 2001; *Tatishvili v. Russia*, no. 1509/02, § 62, ECHR 2007-I; *Emel Boyraz,* cited above, § 75; and *Deryan v. Turkey*, no. 41721/04, § 37, 21 July 2015).

46. The Court notes that, in contrast to the *Emel Boyraz* case (cited above), the decision of the General Assembly of Administrative Proceedings Divisions in the case of R.B. was rendered on 6 December 2007, that is to say after the Gaziantep Administrative Court's judgment had been upheld in the Supreme Administrative Court's appeal review in the applicant's case. Therefore, unlike the applicant in *Emel Boyraz*, the applicant in the instant case had the opportunity to submit her pleadings concerning the opposite conclusions reached by the Supreme Administrative Court only during the rectification stage of the proceedings. The Court will therefore examine whether the applicant's submissions concerning the opposite conclusions reached by the General Assembly of Administrative Proceedings Divisions regarding the same issue which had only became available after the appeal proceedings in the applicant's case nevertheless required a specific reply from the Twelfth Division of the Supreme Administrative Court.

47. From the outset the Court emphasises that its review in this matter is not concerned with whether the emergence of a seemingly opposite case-law of the General Assembly of Administrative Proceedings Divisions could constitute grounds for rectification of a decision in the Turkish

Administrative Law context. Furthermore, the Court does not consider it necessary to determine whether Article 6 § 1 of the Convention imposes an obligation on a court of final instance to reconsider an issue in the light of subsequent case-law of a higher judicial authority. Moreover, it is not the Court's task to express a view on the correctness of the conclusion reached by the Twelfth Division of the Supreme Administrative Court when it dismissed the rectification request on the basis of section 54 § 1, holding that its previous decision was in accordance with law and procedure. The Court's assessment in the present case is limited to examining whether the high court's reasoning in the circumstances of the applicant's case complied with the requirements of a fair hearing under the Convention.

48. In examining this issue, the Court must bear in mind that where a high court refuses to accept a case on the basis that the legal grounds for such a case are not made out, very limited reasoning may satisfy the requirements of Article 6 § 1 of the Convention (see, *mutatis mutandis*, *Nerva v. the United Kingdom* (dec.), no. 42295/98, 11 July 2000; *Marini v. Albania*, no. 3738/02, § 106, ECHR 2007-XIV (extracts); and, *Bachowski v. Poland* (dec.), no. 32463/06, ECHR 2010 (extracts)). More specifically, the Court has held that courts of cassation comply with their obligation to provide sufficient reasoning when they base themselves on a specific legal provision, without further reasoning, in dismissing cassation appeals which do not have any prospects of success (see *Sale v. France*, no. 39765/04, § 17, 21 March 2006, and *Burg and Others v. France* (dec.), no. 4763/02, ECHR 2003-II; for the same approach with regard to constitutional court practice see e.g. *Wildgruber v. Germany*, (dec.) no. 32817/02, 16 October 2006, and *Wnuk v. Poland* (dec.), no. 38308/05, 1 September 2009; and *mutatis mutandis*, regarding the public prosecutor's decision rejecting a civil party's request to lodge an appeal on points of law *Gorou v. Greece (no. 2)* [GC], no. 12686/03, § 41, 20 March 2009). However, the Court has also held that in the circumstances of a particular case, the requirement to give more detailed reasons could apply to courts of appeal (see, in particular, *Yanakiev v. Bulgaria*, no. 40476/98, § 72, 10 August 2006; *Gheorghe v. Romania*, no. 19215/04, § 50, 15 March 2007; *Wagner and J.M.W.L. v. Luxembourg*, no. 76240/01, § 96, 28 June 2007; *Velted-98 AD v. Bulgaria*, no. 15239/02, § 48, 11 December 2008). In order to determine the extent to which this duty to give specific reasons applies at the appeal level, the Court has considered matters such as the nature of a filtering procedure and its significance in the context of the proceedings as a whole, the scope of the powers of a court of appeal, and the manner in which the applicant's interests were actually presented and protected before that court (see *Hansen v. Norway*, no. 15319/09, § 73, 2 October 2014, with further references to *Ekbatani v. Sweden*, 26 May 1988, § 27, Series A no. 134, and *Monnell and Morris v. the United Kingdom*, 2 March 1987, § 56). In cases where the Court found that a court of appeal had been required to give more

adequate reasons, it took into account factors such as whether the arguments that had been raised by the parties which had a decisive impact on the outcome of the case had been examined before any of the previous instances (see *Yanakiev*, cited above, § 71; *Gheorghe*, cited above, § 48; and *Deryan,* cited above, §§ 36-37) or whether the main pleas put forward by a party, especially when they concern the 'rights and freedoms' guaranteed by the Convention and the Protocols thereto, had been examined with rigour and care (see *Wagner and J.M.W.L.,* cited above, §§ 96-97). Finally, in a later case concerning the filtering procedure of a court of appeal, the Court held that the very brief reasoning – namely that the appeal would not succeed - by a high court, ruling at second instance, had been insufficient in the particular circumstances of the case in so far as the appellate court in question had full jurisdiction to review facts, law and procedure in the case and the limited reasons given therein did not have due regard to that applicant's interest concerning his effective right of appeal to a higher court (see *Hansen*, cited above, §§ 82-83).

49. The Court first notes that in Turkish law, as in force at the material time, the rectification of a decision in administrative proceedings was an ordinary remedy and involved asking the appeal court which had given the impugned judgment to reconsider its decision on the grounds that it had made a mistake. If the rectification request were admitted, the court of appeal in question conducted a re-examination of the case without taking new facts or findings into consideration (see, *inter alia*, *Dedecan and Ok v. Turkey*, nos. 22685/09 and 39472/09, § 23, 22 September 2015). The Court notes in that connection that the relevant provisions of Law no. 2577 gave considerable leeway to the Supreme Administrative Court for its scope of review applicable in the rectification proceedings concerning questions of law and procedure. It can further be understood that if the rectification request were admitted, the Supreme Administrative Court had the power to uphold its previous decision, if necessary by giving additional reasons, or to annul it by rendering a new decision and remitting the case to the first-instance court if the circumstances so required (see paragraph 23 above).

50. On the question of whether the emergence of new case-law has been recognised as a ground for rectification by the Supreme Administrative Court, the Court observes that in one of two sample decisions submitted by the Government to the Court (E. 2010/9332, K. 2013/13079, 30 December 2013), the Supreme Administrative Court granted the rectification of its previous decision and remitted the case to the first-instance court for a fresh examination, highlighting in particular a decision rendered by the General Assembly of Administrative Proceedings Divisions in a similar case which had also been rendered after the Supreme Administrative Court's appeal review.

51. Turning to the circumstances of the present case, the Court observes that the applicant's submissions brought before the Supreme Administrative Court for her rectification request included not only the fact that a similar case had been examined and decided by the General Assembly with an outcome different from the one reached by the Twelfth Division but that the latter's impugned decision ran contrary to the prohibition of discrimination against women and her Convention right to a fair trial (see paragraph 19 above). In the Court's view, those arguments concerning the merits of her dispute on points of law, which were coincidentally fully supported by the conclusions of the General Assembly of Administrative Proceedings Divisions, were not addressed by the Supreme Administrative Court in its previous decision on appeal, which had only endorsed the reasons of the first-instance court. Therefore, the applicant could have reasonably expected a specific reply from the Supreme Administrative Court. What also lends support to this position is the opinion of the judge rapporteur in charge of presenting the case to the Twelfth Division of the Supreme Administrative Court drawing attention to the decision of the General Assembly of Administrative Proceedings Divisions in the case of R.B. and recommending that the rectification request be granted. Furthermore, it was not the case that the Twelfth Division was ignorant of the General Assembly decision, the composition of which included some members of the Twelfth Division (see paragraph 18 above). Having therefore participated in the determination of the case of R.B., the interests of justice required them to elucidate the reasons for their decision of inadmissibility in the applicant's case. In that respect, sight must not be lost of the fact that the applicant who gained knowledge of the General Assembly's conclusions regarding the same issue sought recourse before the Twelfth Division in the expectation that this would be the final and only opportunity for the Supreme Administrative Court to re-evaluate her case before it became final.

52. The Court therefore concludes that the applicant's submissions concerning the different conclusion reached by the General Assembly of Administrative Proceedings Divisions were not only relevant in the examination of admissibility of the rectification stage, but that it was the sole opportunity for the Twelfth Division to differentiate the applicant's case from that of R.B.'s before her case became final. Having regard in particular to the fact that the applicant's arguments concerning the prohibition of discrimination between women and men were not reviewed during any of the relevant stages before the Supreme Administrative Court, the Court considers that in the circumstances of the applicant's case, the Twelfth Division of the Supreme Administrative Court failed to fulfil its obligation to provide adequate reasoning for dismissing the applicant's rectification request.

There has accordingly been a violation of Article 6 § 1 of the Convention.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

53. Article 41 of the Convention provides:

> "If the Court finds that there has been a violation of the Convention or the Protocols thereto, and if the internal law of the High Contracting Party concerned allows only partial reparation to be made, the Court shall, if necessary, afford just satisfaction to the injured party."

A. Damage

54. The applicant claimed 25,000 euros (EUR) in respect of non-pecuniary damage. In respect of pecuniary damage, she claimed EUR 56,318.90 representing the salary and social benefits she would have received from the day when her employment contract was terminated by TEDAŞ until 14 September 2014, the date when she made her final submissions to the Court. The applicant explained that in calculating that amount, she had taken an average of the minimum wage amounts applicable during the period of thirteen years and two months to compensate for her loss of salary.

55. The Government contested these amounts for being unsubstantiated and excessive.

56. The Court's case-law establishes that there must be a clear causal connection between the damage claimed by the applicants and the violation of the Convention. In appropriate cases, this may include compensation in respect of loss of earnings (see, among other authorities, *Kurić and Others v. Slovenia* [GC], no. 26828/06, § 81, ECHR 2012 (extracts), and the cases cited therein).

57. The Court notes that in the present case the applicant was dismissed from her post on account of her sex, which the Court has found to be discriminatory, in breach of Article 14 in conjunction with Article 8 of the Convention. The loss of her employment undoubtedly deprived the applicant of her main source of income. Hence, there is a direct causal link between the violation found and the pecuniary damage claimed, which has to be reimbursed in such a way as to restore, as far as possible, the situation existing before the breach (see, *inter alia, Rainys and Gasparavičius v. Lithuania*, nos. 70665/01 and 74345/01, § 45, 7 April 2005). However, the Court notes that a precise calculation of the sums necessary to make complete reparation (*restitutio in integrum*) in respect of the pecuniary loss suffered by the applicant is prevented by the inherently uncertain character of the damage flowing from the violations. This is particularly so in relation to the question of how long the applicant would have remained in TEDAŞ

had it not been for her dismissal. Nevertheless, an award may still be made notwithstanding the large number of imponderables involved in the assessment of future losses, though the greater the lapse of time involved the more uncertain the link becomes between the breach and the damage. The question to be decided in such cases is the level of just satisfaction, in respect of both past and future pecuniary loss, which it is necessary to award to each applicant, the matter to be determined by the Court at its discretion, having regard to what is equitable (see *Lustig-Prean and Beckett v. the United Kingdom* (just satisfaction), nos. 31417/96 and 32377/96, §§ 22-23, 25 July 2000, and *Smith and Grady v. the United Kingdom* (just satisfaction), nos. 33985/96 and 33986/96, §§ 18-19, ECHR 2000-IX).

58. Turning to the circumstances of the present case, the Court notes that the applicant did not provide information to the Court as to how long she had remained unemployed after she had been dismissed from her position in TEDAŞ or whether she had taken any steps to mitigate her loss of earnings. The Court therefore finds it difficult to ascertain the precise amount of pecuniary damage which ensued. At the same time, it considers that the applicant would have been able to work as a security officer at least from the moment when she was offered the post after having succeeded in the examination and until the date her employment was actually confirmed by TEDAŞ subsequent to the stay of execution decision of the Gaziantep Administrative Court. Moreover, had the administrative courts prevented the violation found under Article 14 in conjunction with Article 8 of the Convention, the applicant would have been able to obtain redress for her loss of income concerning the period starting from her dismissal until the date of the final judgment in the domestic proceedings. The Court also considers that the applicant must have sustained non-pecuniary damage which the finding of a violation of the Convention in this judgment does not suffice to remedy. Therefore, taking into account the number of imponderables involved in the assessment of the applicant's loss of earnings and in the light of all the information in its possession, the Court decides on an equitable basis to award the applicant an aggregate sum of EUR 11,000 under all heads of damage combined, plus any tax that may be chargeable on that amount.

B. Costs and expenses

59. The applicant also claimed EUR 6,769.11 for the costs and expenses incurred before the domestic courts and for those incurred before the Court. In support of her claim, the applicant only referred to the Istanbul Bar Association's scale of fees.

60. The Government contested that claim arguing that it was not sufficiently itemised.

61. In accordance with the Court's case-law, an applicant is entitled to reimbursement of his costs and expenses only in so far as it has been shown that these have been actually and necessarily incurred and were reasonable as to quantum. In the present case, the Court notes that the applicant merely referred to the Istanbul Bar Association's scale of fees and failed to submit any supporting documents. In those circumstances, and bearing in mind the terms of Rule 60 § 2 and 3 of its Rules, the Court makes no award in respect of the costs and expenses claimed by the applicant (see, *inter alia, Hasan Döner v. Turkey*, no. 53546/99, §§ 59-61, 20 November 2007, and *Yılmaz Yıldız and Others v. Turkey*, no. 4524/06, § 57, 14 October 2014).

C. Default interest

62. The Court considers it appropriate that the default interest rate should be based on the marginal lending rate of the European Central Bank, to which should be added three percentage points.

FOR THESE REASONS, THE COURT,

1. *Declares*, unanimously, the application admissible;

2. *Holds*, unanimously, that there has been a violation of Article 14 of the Convention, in conjunction with Article 8 of the Convention;

3. *Holds*, unanimously, that there has been no violation of Article 6 § 1 of the Convention on account of the conflicting decisions rendered by the Supreme Administrative Court;

4. *Holds*, by five votes to two, that there has been a violation of Article 6 § 1 of the Convention on account of the absence of adequate reasoning in the Supreme Administrative Court's rectification decision;

5. *Holds*, unanimously,
   (a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, EUR 11,000 (eleven thousand euros), plus any tax that may be chargeable, in respect of pecuniary and non-pecuniary damage, to be converted into the currency of the respondent State at the rate applicable at the date of settlement;
   (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a

rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

6. *Dismisses*, unanimously, the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 19 June 2018, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Stanley Naismith	Robert Spano
Registrar	President

In accordance with Article 45 § 2 of the Convention and Rule 74 § 2 of the Rules of Court, the joint partly dissenting opinion of Judges Spano and Kjølbro is annexed to this judgment.

R.S.
S.H.N.

JOINT PARTLY DISSENTING OPINION OF JUDGES SPANO AND KJØLBRO

I.

1. The Court finds a violation of Article 6 § 1 of the Convention due to the lack of reasoning in the Turkish Supreme Administrative Court´s rejection of the applicant's request for rectification of the same court's judgment on the merits. We respectfully dissent from this finding which does not in our view find support in the existing case-law of the Court, as we will explain below. However, we agree with our colleagues that there has been no violation of Article 6 § 1 of the Convention on account of the conflicting decisions rendered by the Supreme Administrative Court and also that there has, conversely, been a violation of Article 14 of the Convention, taken in conjunction with 8.[1]

II.

2. When the Court examines a complaint under Article 6 § 1 of the Convention, of the type presented by the applicant, the starting point must be the scope of appellate review in the high court in question. The majority is right when it states at paragraph 48 of the judgment, that according to the Court´s case-law where a high court refuses to accept a case on the basis that the legal grounds for such a case are made out, very limited reasoning may satisfy the requirement of Article 6 § 1 of the Convention. In fact, the Court has held that courts of cassation comply with their obligation to provide sufficient reasoning when they base themselves on a specific legal provision, without further reasoning, in dismissing cassation appeals which do not have any prospects of success. In other words, in order to determine the extent to which this duty to give specific reasons applies at the appeal level, the Court has considered matters such as the nature of a filtering procedure and its significance in the context of the procedure as a whole, the scope of the powers of a court of appeal, and the manner in which the applicant's interests were actually presented and protected before the Court. The most recent consolidation of these general principles is found in the judgment of the Court in *Hansen v Norway* (no. 15319/09, § 73, 2 October 2014).

1. Statement by Judge Spano: In the light of the precedential value of Chamber judgments of the Court, I accept that there has been a violation of Article 14, taken in conjunction with Article 8 of the Convention, in the present case as the facts here cannot be distinguished from the judgment of the Court in the case of *Emel Boyraz v Turkey*, no. 6196008, 2 December 2014. However, I remain of the view, as expressed in my separate opinion in the latter case, that the Court´s application of these provisions of the Convention, to facts, as presented in both of these cases, is not persuasive.

3. In applying these principles, we begin by observing that the question for determination by the Turkish Supreme Administrative Court in examining a request for rectification is, under domestic law, not the same as the question which that court determines by its decision on appeal (see *Fazlı Aslaner v. Turkey*, no. 36073/04, § 46, 4 March 2014). In other words, the question in the rectification proceedings is whether the party requesting rectification has demonstrated the existence of arguable grounds which would justify examining the rectification on the merits. Therefore, the decision on the rectification request cannot in itself be equated to a decision on the merits on appeal, for instance whether the law was applied correctly at first instance. It is true that this remedy is considered, as noted by the majority (see paragraph 49 of the judgment), an ordinary remedy under Turkish administrative law. However, for the purposes of Article 6 § 1 of the Convention and the duty to give reasons at the appellate stage, rectification proceedings must in our view, due to their very nature and purpose, be treated by this Court as a special and particular type of appellate remedy which requires the Court to be cautious in imposing on the domestic high court the duty to give reasons that limits its ability to adequately apply this mechanism in a manner which conforms with the very narrow scope of possible rectification of a previous judgment on appeal provided under domestic law.

4. We also find it important to recall that the function of a reasoned judgment is to afford the parties the possibility of an effective appeal and to show to the parties that they have been heard. In the present case, account must therefore be taken of the fact that the Supreme Administrative Court, in dismissing the applicant's rectification request, acted as the final instance and that there was no possibility for the applicant to seek a further review of that decision (compare *Hansen v. Norway* (cited above, § 83), and unlike the applicant's situation in the case of *Emel Boyraz* (cited in the judgment)).

5. In the rectification proceedings, the applicant requested that the Supreme Administrative Court revisit its previous decision in her case on direct appeal, due to the subsequent decision of the General Assembly of the same court applying the law differently. The Supreme Administrative Court rejected the applicant's request for rectification by referring to the conditions for rectification as set out in section 54 of Law no. 2577 and held that the conditions for granting the rectification had not been made out. It also briefly noted that its previous decision had been in accordance with the law and procedure, implying therefore that the emergence of new case-law on a similar issue was not one of the grounds of rectification and that the decision of the General Assembly of Administrative Proceedings Divisions which post-dated the Twelfth Division's decision did not render it retrospectively unlawful. In our view, that decision, which is analogous to a rejection on manifestly ill-founded grounds, cannot be considered a decision on the merits. We also note that changes in domestic case-law are part and

parcel of every-day work in courts of appeals and supreme courts all over Europe. High courts must have flexibility to assess if and to what extent changes in previous case-law will be applied retroactively to already decided cases or whether they will only be applied in the future.

6. In sum, we conclude that taking account of the nature and scope of the rectification remedy under Turkish domestic law, and the applicable principles in the Court´s case-law, the Supreme Administrative Court was not under a duty deriving from Article 6 § 1 of the Convention to provide further reasons for its dismissal of the applicant's rectification request.

7. Finally, we observe that in its decision, the Supreme Administrative Court endorsed the statement of facts and the legal reasoning set out in its previous decision. Furthermore, the written decision contained the judge rapporteur's analysis as well as the reference to the decision of the Supreme Administrative Court's General Assembly of Administrative Proceedings Divisions of 6 December 2007 in the case of R.B. It is therefore not the case that the Twelfth Division of the Supreme Administrative Court ignored the applicant's submissions altogether (see *Ruminski v. Sweden*, no. 17906/15, § 32, 2 May 2017, and compare *Bochan v. Ukraine*, no. 7577/02, § 84, 3 May 2007). We are therefore not persuaded that in the circumstances of this case, the absence of further reasoning, on the part of the Twelfth Division of the Supreme Administrative Court, regarding the opposite conclusions reached by the Supreme Administrative Court's General Assembly, in itself rendered the proceedings unfair.