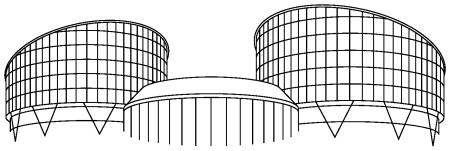

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

SECOND SECTION

CASE OF EMEL BOYRAZ v. TURKEY

(Application no. 61960/08)

JUDGMENT

STRASBOURG

2 December 2014

FINAL

02/03/2015

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

In the case of Emel Boyraz v. Turkey,

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

Guido Raimondi, *President,*
Işıl Karakaş,
András Sajó,
Nebojša Vučinić,
Egidijus Kūris,
Robert Spano,
Jon Fridrik Kjølbro, *judges,*
and Abel Campos, *Deputy Section Registrar,*

Having deliberated in private on 4 November 2014,

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

PROCEDURE

1. The case originated in an application (no. 61960/08) 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 Emel Boyraz ("the applicant"), on 1 December 2008.

2. The applicant was represented by Mr İ. Solak, a lawyer practising in Batman. The Turkish Government ("the Government") were represented by their Agent.

3. On 1 March 2010 notice of the application was given to the Government.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

4. The applicant was born in 1975 and lives in Elazığ.

5. On 19 October 1999 the applicant sat an examination in order to become a public 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 Batman branch of TEDAŞ, the state-run Electricity Company, the first of the five choices that the applicant had made in the course of the examination procedure.

6. On 5 July 2000 the human resources department of the Batman branch of TEDAŞ informed the applicant that she would not be appointed as she did not fulfil the requirements of "being a man" and "having completed military service".

7. In a letter dated 9 August 2000 and addressed to the Ministry of Energy and Natural Resources, the human resources department of TEDAŞ requested the Ministry to provide a list of new persons to be appointed instead of a number of persons, including the applicant, who could not be recruited for various reasons. As regards the applicant and three other persons, B.U., R.B. and A.O.C., the human resources department of TEDAŞ informed the Ministry that they were women and therefore could not work as security officers. In the letter, it was stated that security officers had the task of protecting depots, switchyards and transformer stations in rural areas far from city centres, against attacks and in case of fire and sabotage. They were obliged to work day and night and to use weapons, including those with long barrels, and physical force in case of an attack. It was therefore considered that women were not suitable for the post of security officer.

8. On 18 September 2000 the applicant lodged an action against the general directorate of TEDAŞ with the Ankara Administrative Court requesting the annulment of the decision of the Batman branch of TEDAŞ with all its financial consequences. In her deposition, the applicant noted that being a man was not a requirement for appointment to the post in question and that she fulfilled all the requirements for that post. The applicant also noted that she had been deprived of the opportunity to be appointed to one of the other four posts that she had indicated following the refusal in question and that she could not sit the examination again in 2000 as she had succeeded in 1999.

9. On an unspecified date the general directorate of TEDAŞ submitted to the administrative court that one of the requirements for the post in question had been declared by the State Personnel Department as "having completed military service" and that therefore only men could be appointed to the post. The applicant, being a woman, could therefore not be recruited as a security officer.

10. On 27 February 2001 the Ankara Administrative Court annulled the decision of the Batman 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. The court also noted that another woman, Y.P., who had also brought a case against TEDAŞ for the same reasons as the applicant, had been appointed to the post of security officer after she had lodged the case.

11. Subsequent to the judgment of 27 February 2001, the applicant was offered a contract by the Batman branch of TEDAŞ. On 11 July 2001 she

took up her duties. On 1 March 2002 she was transferred to the Elazığ branch of TEDAŞ as her husband lived and worked in that city.

12. On 8 May 2001 TEDAŞ lodged an appeal against the judgment of 27 February 2001, requesting the Supreme Administrative Court to order a stay of execution of the judgment of the Ankara Administrative Court and to subsequently quash it. The representative of TEDAŞ submitted, *inter alia*, that the announcement of the post of security officers in the Batman branch contained the requirement of "having completed military service" and not "in respect of male candidates, having completed military service", unlike the post in the Gaziantep branch of TEDAŞ, which first rejected Y.P. According to the lawyer, this expression demonstrated that the post was reserved for male candidates only and that therefore the status of the applicant was different from that of Y.P.

13. On 27 June 2001 the Supreme Administrative Court dismissed the request for a stay of execution.

14. On 31 March 2003 the Twelfth Division of the Supreme Administrative Court quashed the judgment of the Ankara Administrative Court, holding that the requirement regarding military service demonstrated that the post in question was reserved for male candidates and that this requirement was lawful having regard to the nature of the post and the public interest. The high court therefore found that the administration's decision had been in accordance with the law.

15. On 1 August 2003 the applicant requested rectification of the decision of 31 March 2003. In her petition, she submitted that the post of security officer was not reserved for male candidates and that therefore the high court's decision was in breach of the principle of equality.

16. On 17 March 2004 the applicant was dismissed from her post at the Elazığ branch of TEDAŞ. According to the letter sent by the deputy head of the human resources department of TEDAŞ to the Elazığ branch, the applicant's contract was to be terminated on account of the decision of the Supreme Administrative Court dated 31 March 2003.

17. On 22 March 2004 the applicant lodged a petition with the Supreme Administrative Court. She maintained that she had lost her post and requested the high court to order a stay of execution of the decision of 31 March 2003. She noted, in her petition, that the post in question should not be reserved only for men, since certain acts, such as a body search on women, should be carried out by female officers.

18. On 16 April 2004 her request was dismissed by the Twelfth Division.

19. On 11 October 2005 the Twelfth Division of the Supreme Administrative Court further dismissed the applicant's request for rectification.

20. On 21 February 2006 the Ankara Administrative Court dismissed the applicant's case, taking into consideration the decision of the Supreme Administrative Court.

21. On 24 April 2006 the applicant appealed. In her deposition she noted that there were three other similar cases brought against TEDAŞ by female candidates for the same reasons as hers and that one of these cases, brought by R.B., who had also not been appointed to a post of security officer in the Batman branch of TEDAŞ on the same grounds as those applied to the applicant, was pending before the Supreme Administrative Court's General Assembly of Administrative Proceedings Divisions. She further noted that she would have lost the opportunity to apply for another public post, had the high court decided in favour of TEDAŞ.

22. On 6 December 2007 the Supreme Administrative Court's General Assembly of Administrative Proceedings Divisions (*Danıştay İdari Dava Daireleri Genel Kurulu*) issued a decision in favour of R.B. The General Assembly held that the requirement of "having completed military service" should be considered to apply only to male candidates and that the refusal to appoint R.B. to the Batman branch of TEDAŞ had therefore been unlawful.

23. On 12 February 2008 the Twelfth Division of the Supreme Administrative Court upheld the judgment of 21 February 2006, holding that the latter was in accordance with the law. In its decision, the court noted the content of the decision of the Supreme Administrative Court's General Assembly of Administrative Proceedings Divisions but did not comment on it.

24. On 17 March 2008 the applicant requested rectification of the decision of 12 February 2008, maintaining that the decision in question constituted a breach of the principle of equality and the right to a fair hearing since the Supreme Administrative Court's General Assembly of Administrative Proceedings Divisions had ruled in favour of R.B. She further claimed that there had been discrimination, since pursuant to the Constitution no distinction could be made in public employment.

25. On 17 September 2008 the Twelfth Division of the Supreme Administrative Court dismissed the applicant's request.

II. RELEVANT DOMESTIC LAW AND INTERNATIONAL MATERIAL

A. The Constitution

26. The relevant provisions of the Constitution of Turkey, as in force at the material time, read as follows:

Article 10 - Equality before the law

"Everyone is equal before the law without distinction as to language, race, colour, sex, political opinion, philosophical belief, religion and sect, or any such grounds.

Men and women have equal rights. The State has the obligation to ensure that this equality exists in practice.

No privilege shall be granted to any individual, family, group or class.

State organs and administrative authorities are obliged to act in compliance with the principle of equality before the law in all proceedings."

Article 70 - Entry into public service

"Every Turk has the right to enter public service.

No criteria other than the qualifications for the office concerned shall be taken into consideration for recruitment into public service."

B. Supreme Administrative Court Act (Law no. 2575)

27. According to section 38 of the Supreme Administrative Court Act (Law no. 2575), the General Assembly of Administrative Proceedings Divisions of the Supreme Administrative Court has the authority to review administrative courts' decisions confirming their previous judgments, following decisions by the Supreme Administrative Court Divisions quashing those previous judgments.

28. Section 39 of Law no. 2575 stipulates that if a conflict or a dispute arises between the decisions of Divisions and the General Assembly of Administrative Proceedings or Tax Proceedings Divisions of the Supreme Administrative Court, rendered either by the same organ or by different organs, the Assembly on the Unification of Conflicting Case-Law must examine the matter and decide on the harmonisation of the conflicting judgments upon referral by the President of the Supreme Administrative Court and receipt of the opinion of the principal public prosecutor at the Supreme Administrative Court.

C. The revised European Social Charter

29. Article 20 of the revised European Social Charter, ratified by Turkey in 2007, provides as follows:

Article 20 - The right to equal opportunities and equal treatment in matters of employment and occupation without discrimination on the grounds of sex

"With a view to ensuring the effective exercise of the right to equal opportunities and equal treatment in matters of employment and occupation without discrimination on the grounds of sex, the Parties undertake to recognise that right and to take appropriate measures to ensure or promote its application in the following fields:

a. access to employment, protection against dismissal and occupational reintegration;

b. vocational guidance, training, retraining and rehabilitation;

c. terms of employment and working conditions, including remuneration;

d. career development, including promotion."

D. The United Nations Convention on the Elimination of All Forms of Discrimination against Women

30. Article 11 § 1 of the UN Convention on the Elimination of All Forms of Discrimination against Women, ratified by Turkey in 1985, provides as follows:

"1. States Parties shall take all appropriate measures to eliminate discrimination against women in the field of employment in order to ensure, on a basis of equality of men and women, the same rights, in particular:

a. the right to work as an inalienable right of all human beings;

b. the right to the same employment opportunities, including the application of the same criteria for selection in matters of employment;

c. the right to free choice of profession and employment, the right to promotion, job security and all benefits and conditions of service and the right to receive vocational training and retraining, including apprenticeships, advanced vocational training and recurrent training;

d. the right to equal remuneration, including benefits, and to equal treatment in respect of work of equal value, as well as equality of treatment in the evaluation of the quality of work;

e. the right to social security, particularly in cases of retirement, unemployment, sickness, invalidity and old age and other incapacity to work, as well as the right to paid leave;

f. the right to protection of health and to safety in working conditions, including the safeguarding of the function of reproduction."

THE LAW

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

31. The applicant complained under Article 14 of the Convention that the administrative authorities' decisions and the domestic courts' judgments constituted discrimination against her on grounds of sex.

32. The Government contested those allegations.

33. The Court, as the master of the characterisation to be given in law to the facts of any case before it (see *Akdeniz v. Turkey*, no. 25165/94, § 88, 31 May 2005; *Zorica Jovanović v. Serbia*, no. 21794/08, § 43, 26 March 2013; and, most recently, *İhsan Ay v. Turkey*, no. 34288/04, § 22, 21 January 2014) 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. 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

1. Compliance with Article 35 § 1 of the Convention

34. The Government submitted that the applicant had failed to comply with Article 35 of the Convention as she had failed to lodge an action with the administrative or civil courts requesting compensation for the alleged damage caused to her by the conduct of the administrative authorities or civil servants. Alternatively, they submitted that the applicant had failed to lodge her application with the Court within the six-month time-limit.

35. The applicant maintained that she had exhausted the available domestic remedies. She noted that she had even requested rectification of

the Supreme Administrative Court's decisions, even though that was not obligatory under Turkish law.

36. As regards the Government's objection that the applicant had failed to exhaust domestic remedies, the Court notes that her claims concern her inability to take up her duties and, subsequently, her dismissal from public employment. It observes in this connection that she brought and pursued an action for the annulment of the administrative authorities' decisions before the administrative courts and asked for her financial loss to be compensated. The Court therefore considers that the applicant brought her grievances under the Convention to the attention of the appropriate judicial authorities in domestic law. Moreover, the Government have not demonstrated how an action for compensation before administrative or civil courts would provide redress for the applicant's grievances. Nor did they provide any example in which an action for compensation before such courts had been successful in situations similar to that of the applicant. The Court accordingly rejects the Government's objection under this head.

37. As to the Government's objection regarding the six-month rule, the Court observes that the final domestic decision was rendered on 17 September 2008 and the application was lodged on 1 December 2008. The Court therefore considers that the present application was introduced in conformity with the six-month time-limit and rejects the Government's objection.

2. Applicability of Article 14 of the Convention taken in conjunction with Article 8

38. 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 to recruitment as a public servant. Referring to the judgments of *Glasenapp v. Germany* (28 August 1986, Series A no. 104), *Kosiek v. Germany* (28 August 1986, Series A no. 105) and *Thlimmenos v. Greece* ([GC], no. 34369/97, ECHR 2000-IV), the Government maintained that the refusal to appoint a person as a public servant could not as such provide the basis for a complaint under the Convention. They also maintained that the applicant would be able to obtain public-service employment as long as she fulfilled the requirements of another post.

39. The applicant maintained, in reply, that the domestic authorities had accepted her candidature for the post of security officer in the Batman branch of TEDAŞ and had appointed her to the post even though it was known to them that she was a woman. Besides, she had worked as a security officer in TEDAŞ between 11 July 2001 and 17 March 2004 and had subsequently been dismissed from her post. She lastly alleged that she had lost the opportunity to take up other posts in the public sector and to sit a similar examination, as a result of the administrative and judicial decisions.

40. The Court reiterates that Article 14 of the Convention protects individuals in similar situations from being treated differently without justification in the enjoyment of their Convention rights and freedoms. This provision has no independent existence, since it has effect solely in relation to the rights and freedoms safeguarded by the other substantive provisions of the Convention and its Protocols. However, the application of Article 14 does not presuppose a breach of one or more of such provisions and to this extent it is autonomous. For Article 14 to become applicable, it suffices that the facts of a case fall within the ambit of another substantive provision of the Convention or its Protocols (see *Thlimmenos*, cited above, § 40, and *Sidabras and Džiautas v. Lithuania*, nos. 55480/00 and 59330/00, § 38, ECHR 2004-VIII). The Court should therefore establish whether the facts of the case fall within the ambit of Article 8 of the Convention, in order to rule on the applicability of Article 14.

41. In this connection, the Court reiterates that the right of recruitment to the civil service was deliberately omitted from the Convention. Consequently, the refusal to appoint a person as a civil servant cannot as such provide the basis for a complaint under the Convention (see *Vogt v. Germany*, 26 September 1995, § 43, Series A no. 323, and *Otto v. Germany* (dec.), no. 27574/02, 24 November 2005).

42. The Court considers, however, that the issue to be examined in the present case is not whether the applicant had a right to be recruited to the civil service. The applicant did not complain about the refusal of the domestic authorities to appoint her as a civil servant as such. She, for example, did not complain about her failure to become a civil servant on the ground that she did not possess the necessary qualifications required of anyone seeking such a post. Her submissions under this head concerned the difference in treatment to which she had been subjected on the ground of her sex (compare *Glasenapp v. Germany*, 28 August 1986, § 52, Series A no. 104; and *Kosiek v. Germany*, 28 August 1986, § 38, Series A no. 105). Besides, the applicant succeeded in the examination in order to become a public servant and was notified that she would take up the post of security officer in the Batman branch of TEDAŞ by the State Personnel Department attached to the Prime Minister's office, before the Batman branch of TEDAŞ refused to recruit her (see paragraph 5 above). What is more, subsequent to the judgment of the Ankara Administrative Court of 27 February 2001, she was given the post of security officer on a contractual basis on 11 July 2001 and worked in the Batman and Elazığ branches of TEDAŞ until 17 March 2004 (see paragraphs 11 and 16 above). In these circumstances, in the Court's view, the applicant should be regarded as an official who was appointed to the civil service and subsequently dismissed.

43. The Court has consistently held that a person who has been appointed as a civil servant can complain of being dismissed if that dismissal violates one of his or her rights under the Convention, including

Article 8. Civil servants do not fall outside the scope of the Convention (see *Glasenapp*, cited above, § 49; *Kosiek*, cited above, § 35; *Vogt*, cited above, § 43; and *Wille v. Liechtenstein* [GC], no. 28396/95, § 41, ECHR 1999-VII). With regard to Article 8, the Court has already held in a number of cases that the dismissal from office of a civil servant constituted an interference with the right to private life (see *Özpınar v. Turkey*, no. 20999/04, §§ 43-48, 19 October 2010; and *Oleksandr Volkov v. Ukraine*, no. 21722/11, §§ 165-167, 9 January 2013).

44. Turning back to the circumstances of the present case, the Court reiterates that the administrative authorities dismissed the applicant from her post in 2004 on the ground of her sex. In the Court's view, the concept of "private life" extends to aspects relating to personal identity and a person's sex is an inherent part of his or her identity. Thus, a measure as drastic as a dismissal from a post on the sole ground of sex has adverse effects on a person's identity, self-perception and self-respect and, as a result, his or her private life. The Court therefore considers that the applicant's dismissal on the sole ground of her sex constituted an interference with her right to respect for her private life (see, *mutatis mutandis*, *Smith and Grady v. the United Kingdom*, nos. 33985/96 and 33986/96, § 71, ECHR 1999-VI). Besides, the applicant's dismissal had an impact on her "inner circle" as the loss of her job must have had tangible consequences for the material well-being of her and her family (see *Oleksandr Volkov*, cited above, § 166). The applicant must also have suffered distress and anxiety on account of the loss of her post. What is more, the applicant's dismissal affected a wide range of her relationships with other people, including those of a professional nature and her ability to practise a profession which corresponded to her qualifications (see *Sidabras and Džiautas*, cited above, § 48; *Oleksandr Volkov*, cited above, § 166; and *İhsan Ay*, cited above, § 31). Thus, the Court considers that Article 8 is applicable to the applicant's complaint.

45. Finally, the applicant alleged that she had lost the opportunity to take up other positions in the public sector and to sit a similar examination, as a result of the administrative and judicial decisions, whereas the Government denied the veracity of this claim, both parties failing to substantiate their arguments. The Court does not consider it necessary to rule on this claim. In the Court's view, even assuming that the applicant was able to take up another job in the public sector, as claimed by the Government, this would not suffice to erase the alleged detrimental effect of her dismissal on grounds of sex and the ensuing judicial proceedings on her private life (see, *mutatis mutandis*, *I.B. v. Greece*, no. 552/10, § 72, ECHR 2013).

46. In the light of the foregoing, 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.

3. Conclusion

47. The Court notes that this part of the application 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

48. 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 in view of the nature of the service and the need to recruit male personnel. Referring to the considerations of the human resources department of TEDAŞ (see paragraph 7 above) the Government contended that all female candidates had been refused appointment to the post in question.

49. The applicant submitted in reply that she had worked as a security officer in the Batman and Elazığ branches of TEDAŞ subsequent to the Ankara Administrative Court's judgment. Besides, the administrative courts had ruled in favour of at least two other women, Y.P. and R.B., whose appointment to the posts of security officer in the Gaziantep and Batman branches of TEDAŞ had been previously refused. She considered that the Government's observations were not relevant in the circumstances of the case.

50. The Court reiterates that in order for an issue to arise under Article 14 there must be a difference in the treatment of persons in comparable situations. Such a difference of treatment is discriminatory if it has no objective and reasonable justification; in other words, if it does not pursue a legitimate aim or if there is not a reasonable relationship of proportionality between the means employed and the aim sought to be realised. The notion of discrimination within the meaning of Article 14 also includes cases where a person or group is treated, without proper justification, less favourably than another, even though the more favourable treatment is not called for by the Convention (see *Abdulaziz, Cabales and Balkandali v. the United Kingdom*, 28 May 1985, § 82, Series A no. 94 and *Vallianatos and Others v. Greece* [GC], nos. 29381/09 and 32684/09, § 76, ECHR 2013).

51. The Contracting State enjoys a margin of appreciation in assessing whether and to what extent differences in otherwise similar situations justify a different treatment (see *Ünal Tekeli v. Turkey*, no. 29865/96, § 52, ECHR 2004-X (extracts), and *Vallianatos and Others v. Greece* [GC], cited above, § 76, ECHR 2013, and the cases cited therein). The scope of the margin of appreciation will vary according to the circumstances, the

subject-matter and the background to the case (see *Ünal Tekeli*, cited above, § 52), but the final decision as to observance of the Convention's requirements rests with the Court (see *Kafkaris v. Cyprus* [GC], no. 21906/04, § 161, ECHR 2008). Where a difference of treatment is based on sex, the margin of appreciation afforded to the State is narrow and in such situations the principle of proportionality does not merely require that the measure chosen should in general be suited to the fulfilment of the aim pursued, but it must also be shown that it was necessary in the circumstances. The Court further reiterates that the advancement of gender equality is today a major goal in the member States of the Council of Europe and very weighty reasons would have to be put forward before such a difference of treatment could be regarded as compatible with the Convention (see *Konstantin Markin v. Russia* [GC], no. 30078/06, § 127, ECHR 2012 (extracts)).

52. In the present case, the Court observes at the outset that both the administrative authorities and the Twelfth Division of the Supreme Administrative Court considered that the post of security officer in the Batman branch of TEDAŞ was reserved for men and that therefore the applicant, being a woman, was not suitable for the post. In the Court's view, this is a clear "difference in treatment", on grounds of sex, between persons in an analogous situation.

53. As regards the question of whether the difference in treatment between women and men was objectively and reasonably justified under Article 14, the Court takes note of the Government's submissions concerning the nature of the service carried out by security officers in the Batman branch of TEDAŞ and the working conditions therein (see paragraph 48 above). These explanations were also submitted by the human resources department of the same branch to the Ministry of Energy and Natural Resources (see paragraph 7 above). The Court observes in this connection that the main consideration in these explanations is that the activities of security officers carried certain risks and responsibilities as the security officers had to work at nights in rural areas and since they had to use firearms and physical force in case of an attack on the premises they were guarding. It appears that the administrative authorities considered that women were unable to face those risks and assume such responsibilities. There is, however, no explanation in the submissions of the administrative authorities or the Government as to this purported inability. What is more, the decisions of the Twelfth Division of the Supreme Administrative Court did not contain any assessment of those considerations on the part of the administration. Nor did the Twelfth Division give any other reasoning as to why only men were suitable for the post in question.

54. The Court is aware that there may be legitimate requirements for certain occupational activities depending on their nature or the context in which they are carried out. However, in the instant case, neither the

administrative authorities nor the Twelfth Division of the Supreme Administrative Court substantiated the grounds for the requirement that only male staff be employed in the post of security officer in the Batman branch of TEDAŞ. The absence of such reasoning in the Twelfth Division's decision is particularly noteworthy given that only three months prior to that decision, the Supreme Administrative Court's General Assembly of Administrative Proceedings Divisions had held, in the case brought by R.B., that there had been no obstacle to the appointment of a woman to the post of security officer in the Batman branch of TEDAŞ. The Court, for its part, also takes the view that the mere fact that security officers in Batman had to work on night shifts and in rural areas and might be required to use firearms and physical force under certain conditions could not in itself justify the difference in treatment between men and women.

55. Moreover, the applicant worked in the Batman and Elazığ branches of TEDAŞ between 11 July 2001 and 17 March 2004 as a security officer. The Court notes that the reason for her subsequent dismissal from the post of security officer was not her inability to assume the risks or responsibilities of her position but the judicial decisions. There is nothing in the case file to indicate that the applicant failed to fulfil her duties as a security officer in TEDAŞ because of her sex.

56. In sum, it has not been shown that the difference in treatment pursued a legitimate aim. The Court concludes that this difference in treatment, of which the applicant was a victim, amounted to discrimination on grounds of sex.

There has accordingly been a violation of Article 14 of the Convention taken in conjunction with Article 8.

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

57. The applicant complained under Article 6 of the Convention that the proceedings that she had brought before the administrative courts had not been concluded within a reasonable time. She further maintained under the same head 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 with regard to R.B.

58. The Government contested those arguments.

59. The Court considers that these complaints should be examined from the standpoint of Article 6 § 1 of the Convention, which provides, in so far as relevant, as follows:

> "In the determination of his civil rights and obligations ... everyone is entitled to a fair ... hearing within a reasonable time by [a] ... tribunal ..."

A. Admissibility

1. Applicability of Article 6 of the Convention

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

61. The applicant did not make any submission on this issue.

62. The Court notes at the outset that it will examine the Government's objection under this head in the light of the principles set out in the judgment *Vilho Eskelinen and Others v. Finland* [GC] (no. 63235/00, §§ 40-64, ECHR 2007-II). In this connection, the Court observes that it is not disputed that the applicant had a right, according to the domestic law, to apply for the post of security officer and that there was a genuine and serious "dispute" ("*contestation*" in the French text) within the meaning of Article 6 § 1. The Court further observes that the applicant clearly had access to a court in order to challenge the lawfulness of her dismissal from the post of security officer. As a result, the applicant had the right to challenge before the domestic courts the administrative decisions. The domestic courts examined the merits of the applicant's appeals and in so doing they determined the dispute over her rights. The Court therefore finds that Article 6 of the Convention is applicable to the present case and rejects the Government's objection (see, *mutatis mutandis*, *Vilho Eskelinen and Others*, cited above, §§ 61-62; *Lombardi Vallauri v. Italy*, no. 39128/05, § 62, 20 October 2009; *Eero Penttinen v. Finland* (dec.), no. 9125/07, 5 January 2010; and *Juričić v. Croatia*, no. 58222/09, §§ 53-56, 26 July 2011).

2. Compliance with Article 35 § 1 of the Convention

63. The Court notes that a new domestic remedy was established in Turkey after the application of the pilot judgment procedure in the case of *Ümmühan Kaplan v. Turkey* (no. 24240/07, 20 March 2012). The Court recalls that in its decision in the case of *Turgut and Others v. Turkey* (no. 4860/09, 26 March 2013), it declared a new application inadmissible on the ground that the applicants had failed to exhaust domestic remedies, as a new domestic remedy could have been envisaged. In so doing, the Court in particular considered that this new remedy was, *a priori*, accessible and capable of offering a reasonable prospect of redress for complaints concerning the length of proceedings.

64. The Court further points out that, in its decision in the case of *Ümmühan Kaplan* (cited above, § 77), it stressed that it could pursue the examination of applications of this type of which notice had already been given to the Government. It notes that in the present case the Government did not raise an objection in respect of the new domestic remedy. In the

light of the above, the Court decides to pursue the examination of the present application (see *Rifat Demir v. Turkey*, no. 24267/07, §§ 34-36, 4 June 2013).

3. Conclusion

65. The Court notes that this part of the application 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

1. As regards the length of the proceedings

66. The Government contended that the length of the proceedings could not be considered unreasonable in view of the complexity of the case and the conduct of the parties.

67. The applicant reiterated her claim.

68. The Court observes that the period to be taken into consideration began on 18 September 2000 and ended on 17 September 2008. It thus lasted eight years for two levels of jurisdiction and the case was pending before the Supreme Administrative Court for approximately seven years and three months out of this total period.

69. The Court has frequently found violations of Article 6 § 1 of the Convention in cases raising issues that are similar to the one in the present application (see, among many other authorities, *Frydlender v. France* [GC], no. 30979/96, § 43, ECHR 2000-VII, and *İhsan Ay*, cited above, § 48). Having examined all the material submitted to it, the Court considers that the Government have not put forward any fact or convincing argument capable of persuading it to reach a different conclusion in the present circumstances. Having regard to its case-law on the subject, the Court considers that the length of the proceedings was excessive and failed to meet the "reasonable time" requirement.

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

2. As regards the fairness of the proceedings

70. The Government maintained that the applicant had been able to submit her arguments to the domestic courts and that all decisions taken in the proceedings had contained extensive reasoning. They contended that there was nothing in the case file to show that the proceedings brought by the applicant had been unfair.

71. The applicant maintained, in reply, that the Twelfth Division of the Supreme Administrative Court had failed to take into consideration the decision rendered by the Supreme Administrative Court's General

Assembly of Administrative Proceedings Divisions in favour of R.B. and that, as a result, the highest court had given contradictory decisions in respect of two persons in the same situation.

72. 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 *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).

73. In the present case, the Court notes that, in support of her claims under this head, the applicant submitted only one decision rendered by the Supreme Administrative Court's General Assembly of Administrative Proceedings Divisions in favour of R.B., who had also been refused a post of security officer in the Batman branch of TEDAŞ on grounds of sex. While it is true that the Twelfth Division of the Supreme Administrative Court and the General Assembly of Administrative Proceedings Divisions reached different conclusions in seemingly identical cases, it cannot be said that there were "profound and long-standing differences" in the case-law of the Supreme Administrative Court. The Court further notes that, although it is not directly accessible to plaintiffs, according to Article 39 of the Supreme Administrative Court Act (Law no. 2575), in cases where there is inconsistency between a decision of a division of the Supreme Administrative Court and the General Assembly of Administrative Proceedings Divisions, the Assembly for the Unification of Conflicting Case-Law renders a legally binding decision settling the conflict of case-law. Taking these aspects into consideration, the Court finds no reason to further examine whether the aforementioned provision for overcoming the judicial inconsistencies could have been applied in the instant case and to what effect (see, *mutatis mutandis*, *Arişanu v. Romania* (dec.), no. 17436/09, 28 January 2014). In these circumstances and bearing in mind that it is not the Court's function to compare different decisions of national

courts, even if given in similar proceedings, the Court considers that the difference of interpretation between the Twelfth Division and the General Assembly of Administrative Proceedings Divisions does not, in itself, constitute a violation of Article 6 of the Convention.

74. The Court, however, 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 (see *García Ruiz v. Spain* [GC], no. 30544/96, § 26, ECHR 1999-I; *Hirvisaari v. Finland*, no. 49684/99, § 30, 27 September 2001; and *Stepanyan v. Armenia*, no. 45081/04, § 35, 27 October 2009).

75. The Court notes that it is not in dispute between the parties that, in her appeal, the applicant drew the attention of the Twelfth Division of the Supreme Administrative Court to the case brought by R.B. (see paragraph 21 above). Moreover, in its decision dated 12 February 2008, the Twelfth Division cited the text of the decision rendered by the General Assembly of Administrative Proceedings Divisions on 6 December 2007 with regard to R.B. (see paragraph 23 above). The Twelfth Division of the Supreme Administrative Court, however, did not consider the applicant's submissions or the decision of 6 December 2007 and simply endorsed the Ankara Administrative Court's judgment. Although such a technique of reasoning by an appellate court is, in principle, acceptable, in the circumstances of the present case, it failed to satisfy the requirements of a fair hearing. Following the administrative court's judgment and prior to the examination of the applicant's appeal, the General Assembly of Administrative Proceedings Divisions had rendered a decision which was in conflict with the administrative court's judgment. In the Court's opinion, under those circumstances, the applicant's submissions regarding the case of R.B. required an adequate response by the Twelfth Division. In addition, the applicant's request for rectification of the decision containing an explicit reference to the decision of 6 December 2007 was also dismissed by the Twelfth Division without any reasoning (see paragraph 25 above). The Court therefore considers that the Twelfth Division of the Supreme Administrative Court failed to fulfil its duty to provide adequate reasoning for its decisions.

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

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

76. 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

77. The applicant claimed 200,000 euros (EUR) and EUR 50,000 in respect of pecuniary and non-pecuniary damage, respectively.

78. The Government contested these claims, submitting that the requested amounts were unsubstantiated and excessive.

79. The Court observes that the applicant did not submit any relevant documents to substantiate her claim for pecuniary damage. It therefore rejects this claim. The Court, however, finds that she must have suffered pain and distress which cannot be compensated for solely by the Court's finding of a violation. Having regard to the nature of the violations found, the Court finds it appropriate to award her EUR 10,000 in respect of non-pecuniary damage.

B. Costs and expenses

80. The applicant also claimed EUR 5,000 for the costs and expenses incurred before the domestic courts and EUR 7,500 for those incurred before the Court, without submitting any documentary evidence in support of her claims.

81. The Government contested the applicant's claims.

82. According to the Court's case-law, an applicant is entitled to the reimbursement of costs and expenses only in so far as it has been shown that these have been actually and necessarily incurred and are reasonable as to quantum. In the present case, the applicant has not demonstrated that she actually incurred the costs claimed. In particular, she has failed to submit documentary evidence, such as bills, receipts, or a breakdown of the hours spent by her lawyer on the case. Accordingly, the Court makes no award under this head.

C. Default interest

83. 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*, by six votes to one, 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 a violation of Article 6 § 1 of the Convention on account of the excessive length of the proceedings;

4. *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;

5. *Holds*, unanimously, 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 decisions;

6. *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 10,000 (ten thousand euros), plus any tax that may be chargeable, in respect of 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 amount at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

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

Done in English, and notified in writing on 2 December 2014, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Abel Campos	Guido Raimondi
Deputy Registrar	President

In accordance with Article 45 § 2 of the Convention and Rule 74 § 2 of the Rules of Court, the separate opinion of Judge Spano is annexed to this judgment.

G.R.A.
A.C.

PARTLY DISSENTING OPINION OF JUDGE SPANO

I.

1. It is clear that the applicant was wronged by her dismissal from her job as a security officer solely on the grounds of her gender. However, as Turkey has not ratified Protocol No. 12 to the Convention, she is unable to seek relief before this Court as she has not argued that the facts, in substance, fall within the ambit of Article 8 of the Convention. Therefore, and as explained in more detail below, I respectfully dissent from the majority's findings of a violation of Article 14, taken in conjunction with Article 8, in the present case.

II.

2. In the recent Grand Chamber judgment in *Fernández Martínez v. Spain* ([GC], no. 56030/07, 12 June 2014), the Court reiterated its previous case-law to the effect that, whereas no general right to employment or to the renewal of a fixed-term contract could be derived from Article 8, the notion of "private life" was a broad term not susceptible to exhaustive definition. It found that it would thus be too restrictive to limit this notion to an "inner circle" in which the individual could live his own personal life as he chose and to entirely exclude therefrom the outside world not encompassed within that circle (ibid., § 109). The Grand Chamber thus stated that there was no reason of principle why the notion of "private life" should be taken to exclude professional activities. On this basis, the Court held that Article 8 might be applicable where a civil servant had been dismissed if a concrete examination of the applicant's situation established that (1) the dismissal had "repercussions on the manner in which he or she construct[ed] his or her social identity by developing relationships with others", or that (2) "factors relating to private life, in the strict sense of the term, [were] regarded as qualifying criteria for a given profession" (ibid., § 110).

3. In the case of *Volkov v. Ukraine* (no. 21722/11, § 166, ECHR 2013), the Court had previously examined the dismissal of a civil servant on the basis of two other elements, namely whether the dismissal (3) "had an impact on his 'inner circle' as the loss of his job must have had tangible consequences for the material well-being of the applicant and his family" and whether (4) the "reason for the applicant's dismissal" suggested "that his professional reputation was affected".

4. When analysing the individual elements from the Court's case-law that are necessary to establish the applicability of Article 8 in cases

concerning the termination of a civil servant's employment, it is clear that they are *inherently fact-based and personal* to each individual in question. It is thus self-evident that an applicant who has had to endure dismissal from his or her job as a civil servant must, either expressly or implicitly, make the claim, both at the domestic level and, if necessary, before this Court, that the dismissal has affected his or her private life in a way that conforms to the necessary elements laid down by the Court. It cannot be for this Court to assess the existence of such elements in a particular case of its own motion, in other words without the applicant even having argued, at the domestic level or before the Court, that the termination of her service affected her private life. However, that is exactly what the majority have done in the present case.

III.

5. Both before the domestic courts and before this Court, the applicant has relied solely on Article 14 of the Convention, claiming that she was discriminated against on grounds of sex when she was dismissed from her job as a security officer. She has made no claim to the effect that one or more of the four necessary elements under the Court's case-law (see paragraphs 3 and 4 above) were present in her case or that the termination has affected her private life within the meaning of Article 8 of the Convention.

6. Despite the total lack of argument on the part of the applicant as to the applicability of Article 8 to her case, the majority have found that they are entitled, of their own motion, to assess whether her dismissal falls within the ambit of that provision. In paragraph 44 of the judgment, the majority thus conclude, firstly, that a measure "as drastic as a dismissal from a post on the sole ground of sex has adverse effects on a person's identity, self-perception and self-respect, and, as a result, his or her private life", and that "the applicant's dismissal on the sole ground of her sex [therefore] constituted an interference with her right to respect for her private life".

7. This reasoning of the majority raises the following question: if this interpretation of Article 8 is correct, what is the difference between the scope of that provision, taken in conjunction with Article 14, on the one hand, and Article 1 of Protocol No. 12, on the other, in cases of gender discrimination in employment? If dismissal on the sole ground of sex is sufficient, in and of itself, for the measure to constitute an interference with the civil servant's private life, does that interpretation not, in substance, make Article 1 of Protocol No. 12 redundant in this context? I fail to see the difference.

8. In paragraph 44 of the judgment, the majority, secondly, add that the applicant's dismissal "had an impact on her 'inner circle' as the loss of her job must have had tangible consequences for the material well-being of her

and her family". Lastly, they state in the same paragraph, in their findings on the applicability of Article 8, that the applicant "must have suffered distress and anxiety on account of the loss of her post. What is more, the applicant's dismissal affected a wide range of her relationships with other people, including those of a professional nature and her ability to practise a profession which corresponded to her qualifications".

9. But again, the applicant has made no such claims in the present case. These conclusions are based on an abstract hypothesis on the part of the Court as to the way in which dismissal from employment as a civil servant must invariably impact upon the private life of the person concerned, without the majority's conclusions being substantiated by any evidence before them.

10. To properly delineate the boundaries between Article 8 in cases concerning the dismissal of a civil servant on discriminatory grounds under Article 14, on the one hand, and the applicability of Article 1 of Protocol No. 12, on the other, the applicant must in my view demonstrate convincingly the existence of one or more of the elements described above which the Court has recognised in its case-law as supporting the conclusion that such dismissal must have affected the private life of the applicant in question (see paragraphs 2-3 above). As the applicant in the present case has relied solely on Article 14, and has not claimed that the facts of her case fall within the ambit of Article 8, I disagree that the facts and evidence before the Court justify its conclusions as set out in paragraphs 44-46 of the judgment.