



Civil servant's complaint of inadequate workplace facilities for a disabled person should have been brought before the Turkish administrative courts

In its decision in the case of [Bayrakçı v. Turkey](#) (application no. 2643/09) the European Court of Human Rights has unanimously declared the application inadmissible. The decision is final.

The case concerned, in particular, the lack of suitable toilet facilities for a disabled civil servant at his workplace.

The Court, while not ruling out a direct link between the applicant's complaint and the quality of his private life, nevertheless found that his application was inadmissible since he had not brought an action in the Turkish courts against the State authorities for failure to comply with the statutory provisions on disabilities (non-exhaustion of domestic remedies).

Principal facts

The applicant, Mehmet Bayrakçı, is a Turkish national who was born in 1968 and lives in Antalya (Turkey). Following a road accident, he had one leg amputated and was registered as 60% disabled.

Having been employed as a tax official since July 2004, the applicant requested in 2005 that his workplace be equipped with appropriate toilet facilities in view of his disability. He complained to his management, citing in particular Law no. 5378, by which all forms of discrimination against employees with disabilities were prohibited. He also complained that his manager had asked him to use the ladies' toilets, which were accessible to him. On several occasions in 2006 his management refused to grant his request, pointing out that a plan to install disabled toilets had already been included as part of the renovation work scheduled for later that year. They also reminded Mr Bayrakçı of his rights and obligations as a civil servant, noting his repeated unauthorised absences.

The applicant brought an action for damages against his manager in the Ankara District Court, which dismissed his claim on 29 May 2007, holding that the inadequate facilities observed in the building were not the manager's responsibility but that of the State authorities. It also found that Mr Bayrakçı had been asked to use the ladies' toilets purely out of necessity in view of the practical circumstances.

Complaints, procedure and composition of the Court

The application was lodged with the European Court of Human Rights on 22 December 2008.

Relying in particular on Article 14 (prohibition of discrimination), the applicant complained that his manager had not complied with the legislation on disabilities, in particular by not having suitable toilet facilities installed.

The decision was given by a Chamber of seven judges, composed as follows:

Guido **Raimondi** (Italy), *President*,
Danutė **Jočienė** (Lithuania),
Peer **Lorenzen** (Denmark),
András **Sajó** (Hungary),
Işıl **Karakaş** (Turkey),
Nebojša **Vučinić** (Montenegro),
Helen **Keller** (Switzerland), *Judges*,

and also Stanley **Naismith**, *Section Registrar*.

Decision of the Court

The Court examined whether the applicant's complaint fell within the scope of Article 8 (right to respect for private and family life), reiterating that the notion of "private life" was a broad one covering the physical and psychological integrity of an individual.

Mr Bayrakçı's complaint concerned the lack of action taken by the State, which had an obligation to take the necessary steps to ensure effective respect for private and family life. In cases of this kind involving people with disabilities, the fundamental criterion applied by the Court was the existence of a direct and immediate link between the measures sought by an applicant and the latter's private life. In Mr Bayrakçı's case, his main complaint was there were no suitable toilets at his workplace, and the Court did not doubt that this problem could have had real and serious consequences for the applicant's daily life, such as to arouse feelings of humiliation and distress that could impinge on the quality of his private life. Accordingly, Article 8 was applicable and Article 14 – which the applicant had relied on but which could only operate in combination with another provision of the Convention – likewise came into play.

The Court pointed out, however, that before bringing their complaints before it, applicants were required to exhaust domestic remedies in order to afford States the opportunity to provide redress for violations of the Convention. However, Mr Bayrakçı had simply brought an action for damages against his manager without raising his Convention grievances in the administrative courts, which in the Court's view was the only means by which he could have established the State's liability. The applicant could not therefore be said to have done everything that could reasonably have been expected of him to exhaust the remedies available in Turkey. Accordingly, the Court rejected his complaint for failure to exhaust domestic remedies. It also dismissed his other complaints as being manifestly ill-founded.

The decision is available only in French.

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Press contacts

echrpess@echr.coe.int | tel: +33 3 90 21 42 08

Céline Menu-Lange (tel: + 33 3 90 21 58 77)

Tracey Turner-Tretz (tel: + 33 3 88 41 35 30)

Nina Salomon (tel: + 33 3 90 21 49 79)

Denis Lambert (tel: + 33 3 90 21 41 09)

The European Court of Human Rights was set up in Strasbourg by the Council of Europe Member States in 1959 to deal with alleged violations of the 1950 European Convention on Human Rights.