CONSEIL DE L'EUROPE

COUNCIL OF EUROPE

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

THIRD SECTION

FINAL DECISION

AS TO THE ADMISSIBILITY OF

Application no. 62059/00
by Fatmir SKENDER
against the former Yugoslav Republic of Macedonia

The European Court of Human Rights (Third Section), sitting on 10 March 2005 as a Chamber composed of:

Mr B.M. ZUPANČIČ, *President*,
Mr J. HEDIGAN,
Mr L. CAFLISCH,
Mr C. BÎRSAN,
Mrs M. TSATSA-NIKOLOVSKA,
Mr E. MYJER,
Mr DAVID THÓR BJÖRGVINSSON, *judges*,
and Mr V. BERGER, *Section Registrar*,

Having regard to the above application lodged with the European Commission of Human Rights on 12 September 1998,

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

Having regard to the Court's partial decision of 22 November 2001,

Having regard to the observations submitted by the respondent Government and the observations in reply submitted by the applicant,

Having deliberated, decides as follows:

THE FACTS

The applicant, Mr Fatmir Skender, Turkish by birth, is a national of the former Yugoslav Republic of Macedonia. He was born in 1966 and lives in the village of Mal Papradnik, Centar Župa.

A. The circumstances of the case

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

1. Background to the case

According to the Primary Education Act, pupils have to attend State primary schools in their place of residence. However, in the school situated in the applicant's district Centar Župa no classes in Turkish were available.

Between September and 18 December 1996 the applicant's older daughter attended the primary school in the village of Kođađik in a different district where education in Turkish was provided. However, according to the applicant, on 19 December 1996 classes were allegedly interrupted by the police and the school director announced that pupils from other villages were no longer allowed to attend classes in the Kođađik school.

2. Provision of education in Turkish in the applicant's district

On 11 June 1997 the Ministry of Education and Sport ("the Ministry") refused the applicant's request of April 1997 to provide education in Turkish in Centar Župa. It stated, *inter alia*, the following:

> "... we inform you that the Council of Ministers ... [on] 2 September 1996 decided the following:
>
> 1. The Ministry of Education and Sport is responsible for providing education in the primary schools in the Municipality of Debar - Centar Župa in accordance with the Constitution and the Primary Education Act.
>
> 2. ... [education in] Macedonian cannot be replaced by [education in] Turkish [in Centar Župa], as the children have not been speaking Turkish before they started attending the school.
>
> 3. The Ministry ... is instructed to inform the parents of the pupils who boycotted the classes ... and request the [pupils] to return to the school [in Centar Župa] where special courses will be given so that [they could] catch up with the rest ...
>
> The Ministry of Education and Sport urges that your children attend the courses in the [primary school]... in Centar Župa in accordance with the Primary Education Act."

On 31 August 1999 the Ministry decided to provide education in Turkish in the school in Centar Župa for the pupils whose mother tongue was

Turkish in accordance with the Council of Ministers' decision of 10 August 1999 to that effect.

On 17 May 2000 the political party '*Liga za Demokratija*' and the associations of citizens "The World Macedonian Congress" and "the Association of the Macedonians with Muslim Religion in Macedonia" asked the Constitutional Court to examine the constitutionality of the Council of Minister's decision of 10 August 1999 and the respective Ministry's decision of 31 August 1999. On 5 July 2000 the Constitutional Court declared the decisions null and void on the following grounds:

> "...
>
> ... it, *inter alia*, appears that (1) the impugned acts determined that Turkish was the mother tongue of all the pupils [residing in] the municipality of Centar Župa ...
>
> 5. Under Article 48 § 4 of the Constitution the members of the national minorities have the right to education in their language in primary and secondary schools in accordance with the respective law. In the schools where the education is in the languages of the minorities, the Macedonian language shall be studied as well.
>
> It follows that the members of the minorities are educated in the primary and secondary schools in their language, and that is, according to the court, the language of their choice [which they use] in their everyday life. Therefore, the provision of the Constitution established objective criteria for the fulfilment of the right to education of the national minorities in their language [which] does not depend on the subjective will of the State bodies ...
>
> The impugned acts provide education in Turkish for the pupils in the municipality of Centar Župa who use the Macedonian language of their choice in their everyday communications and, thereby, express their national identity, and who do not use the Turkish language in their everyday communications and of their choice. Thus, [the acts] exceeded the boundaries of the Constitutional framework setting out the rights of the national minorities to education in their language (Article 48 § 4 of the Constitution) and inhibited the achievement of the purpose of education - to provide knowledge, and impinged upon the very content of the right to education, i.e. the [right to] education is being manipulated with the purpose of changing the national identity of a number of pupils in the municipality. Therefore, the court finds that the impugned acts are not in conformity with the aforementioned Constitutional provision.
>
> ..."

3. Enrolment of the applicant's older daughter in a Turkish-speaking school in a different district

On 22 February 1997 the applicant asked the Kođađik school to admit his older daughter. Since he received no reply, on 20 March 1997 he complained to the Second Instance Government Commission ("the Commission"). No reply was received by the applicant.

On 4 June 1997 the applicant brought administrative proceedings before the Supreme Court, arguing that his daughter had the right to education in Turkish.

On 16 June 1997 the Kođađik school refused to enrol the applicant's older daughter as the applicant's place of residence was in a different district.

On 8 October 1997 the Supreme Court refused to examine the applicant's complaint on the merits in respect of the Kođađik school's refusal to enrol his older daughter. It, *inter alia*, stated:

> "...
>
> Under section 26 § 1 of the Administrative Disputes Act if the second instance administrative body does not pass a decision within sixty days, and on the person's repeated request to act does not reply within seven days, the person may institute administrative proceedings ...
>
> ... it cannot be established from the submitted documents that the [second instance] administrative body received [the applicant's] second request to act ... it follows that the complaint is premature.
>
> The applicant's request that the Ministry provides education in Turkish ... is inadmissible, as under section 6 of the Administrative Disputes Act a complaint may only be lodged concerning the administrative acts and the [applicant's] request is not an administrative act ..."

On 28 May 1998 the applicant requested the Constitutional Court to quash the Supreme Court's decision of 8 October 1997. He, *inter alia*, complained that the court had assessed the evidence wrongly and that his daughter had been discriminated against as a result of the Supreme Court's decision since she was denied access to a Turkish-speaking school.

On 17 June 1998 the applicant was informed that the Constitutional Court had not been competent to deal with his complaint. On 9 December 1998 the Constitutional Court refused to examine the applicant's complaint that the Supreme Court's decision of 8 October 1997 interfered with his daughter's right to education in Turkish. It, *inter alia*, held that:

> "... the Supreme Court did not decide on the enjoyment of the right to primary education in the language of the minorities, but on the procedural conditions ... to institute administrative proceedings, as such [the decision] cannot have any repercussions in favour or to the disadvantage of the applicant ...
>
> ... the [impugned] decision is procedural and [does not examine] the merits and does not concern the right to primary education in the minorities' languages, therefore, the court holds that there are procedural impediments to examine the applicant's complaint ...
>
> ..."

4. Enrolment of the applicant's younger daughter D. in a Turkish-speaking school in a different district

On 18 May 1998, the applicant requested that his younger daughter D. be enrolled in the Turkish-speaking primary school in Kođađik.

On 28 August 1998 the applicant's request was refused by the Principal of the school as he lived in another district.

On 31 August 1998 the applicant applied to the Supreme Court to expand his existing claim concerning his older daughter with complaints concerning his younger daughter D.

On 21 October 1998, the Supreme Court informed the applicant that it was not possible to expand his claim as the case concerning his older daughter had terminated on 8 July 1998 and that his application would be treated as concerning a new claim. He was requested to identify and provide a copy of the administrative act against which the claim was directed within fifteen days.

On 6 November 1998, the applicant wrote to the local office of the Ministry lodging an objection with the refusal of the Kođađik school to enrol D.

On 23 December 1998 the Supreme Court refused to examine the applicant's complaint about the school's refusal on the ground that he had not complied with the fifteen day time-limit for completing his appeal.

On 1 February 1999 the applicant complained to the Commission that he had not received a reply to his objection.

On 4 March 1999 the Ministry informed the applicant that he should enrol his daughter in the school in his place of residence.

On 15 March 1999 the applicant applied again to the Commission, considering that this was neither a decision nor an administrative act and requiring that a decision be taken.

On 28 April 1999, having not received an answer from the Commission, the applicant lodged an administrative complaint with the Supreme Court.

From 1 September 1999, following the decision of the Ministry on 31 August 1999, children in the primary school in Centar Župa whose parents had requested them to be taught in Turkish, including the applicant's daughter D., commenced their regulation education classes which were conducted in Turkish.

On 24 November 1999, the Supreme Court requested the applicant to specify the basis of his complaints.

On 21 November 2000 the Supreme Court dismissed the applicant's administrative complaint on the ground that under the Primary Education Act pupils were assigned to schools in accordance with their place of residence and that he had been informed that his daughter had to attend the school in Centar Župa. The court further relied on the Constitutional Court's decision of 5 July 2000 annulling the Government's decisions to provide education in Turkish in Centar Župa.

The Centar Župa primary school attended by D. continues to teach regular classes in Macedonian, Albanian and Turkish.

B. Relevant domestic law and practice

1. Constitution

Article 44 provides as follows:

> "Every person has the right to education. Education is accessible to all persons under equal conditions. Primary education is compulsory and free of charge."

Article 48 provides as follows:

> "The members of minorities have the right to express, nurture and promote their identity and national attributes.
>
> The Republic guarantees the protection of their ethnic, cultural, linguistic and religious identity.
>
> The members of minorities have the right to establish institutions for culture and art, as well as scientific and other associations to express, nurture and promote their identity.
>
> The members of minorities have the right to education in their language in the primary and secondary schools in accordance with the relevant law. In the schools where the education is provided in the minorities' languages, the Macedonian language shall also be taught."

Article 110 § 3 sets out the Constitutional Court's competence to deal with complaints from individuals concerning violation of their rights and freedoms to communication, conscience, opinion and public expression, political association and activities, as well as prohibition of discrimination on the grounds of gender, race, religion or national, political or social affiliation. Article 112 provides that the Constitutional Court shall repeal or revoke a law if it determines that it does not conform to the Constitution and that it shall repeal or revoke any other regulation or enactment, collective agreement, statute or programme of a political party or association, if it determines that it does not conform to the Constitution or law.

2. Rules of the Constitutional Court

Section 51 provides that a person who claims to be a victim of a violation of one of the rights set out in Article 110 § 3 of the Constitution shall have the right to file an application with the Constitutional Court.

3. Primary Education Act

Section 8 provides, *inter alia*, that the members of minorities shall have the right to education in their own language. They shall also study the Macedonian language.

Section 45 provides that primary schools shall admit all the pupils living in their district. Sections 46 and 47 provide that the parents are responsible for the enrolment of their children and for their regular attendance at the classes. The primary school shall inform the Ministry of Education and Sport about the pupils of its area who have not enrolled, or have not attended the classes for more then thirty days without a justification.

Section 48 provides, *inter alia*, that on the parents' or guardians' request the pupils may be transferred to another school.

4. Administrative Procedure Act

Section 230 provides that an appeal can be lodged against a decision of an administrative body with the second instance administrative body within fifteen days.

5. Administrative Disputes Act

Section 26 § 1 provides that a person may institute administrative proceedings before the Supreme Court provided that the second instance administrative body does not decide on the matter within sixty days from the day the appeal against the first instance administrative body is received, and does not react within seven days on the person's repeated request.

COMPLAINTS

The applicant complained under Article 14 of the Convention in conjunction with Article 2 of Protocol No. 1 that his younger daughter was refused access to a Turkish-speaking school on the ground of his place of residence.

THE LAW

The applicant complained that his younger daughter was refused access to a Turkish-speaking school on the ground of his place of residence, invoking Article 14 of the Convention in conjunction with Article 2 of Protocol No. 1 which provide as follow:

Article 2 of Protocol No. 1

"No person shall be denied the right to education. In the exercise of any functions which it assumes in relation to education and to teaching, the State shall respect the right of parents to ensure such education and teaching in conformity with their own religious and philosophical convictions."

Article 14 of the Convention

"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."

1. The parties' submissions

The Government submitted that the applicant had not exhausted domestic remedies as required by Article 35 § 1 of the Convention as he lodged his complaint with the Court in Strasbourg before using the procedures provided by domestic law. They also argued that if he considered his daughter had been discriminated against contrary to the Constitution and Article 14 of the Convention he should have initiated proceedings before the Constitutional Court. The Constitutional Court had earlier dismissed his claim in respect of his older daughter for failure to comply with necessary procedural formalities. They also pointed out that the Constitutional Court decision of 19 September 2000 did not concern discrimination but dealt with proceedings initiated by political and other organisations.

The Government further submitted that the applicant's application to the Court pursued the objective of obliging the State to provide his children with primary school education in the language of the nationality of which they were members. They pointed out that as a result of a political decision the primary school in Centar Župa has provided education in Turkish since 1999 and that the applicant's children have pursued their education in Turkish up until the present time. His application therefore serves no point.

The applicant submitted that in light of the Constitutional Court decision of 5 July 2000 there was no possibility of pursuing the matter further as this had a general invalidating effect. He had in any event brought claims in respect of his older daughter but this procedure proved ineffective.

As regards the Government's argument that his children were attending school in their mother-tongue Turkish, he argued that this arrangement was without legal security due to the decisions of the Supreme Court of 11 November 2000 and the Constitutional Court decision of 5 July 2000. These decisions could be enforced if there was a change of Government and

the applicant argued that this situation was unsatisfactory and required a proper legal decision not a temporary political measure.

2. The Court's assessment

The Court recalls that Article 34 of the Convention requires that an individual applicant should claim to have been actually affected by the violation he alleges. That Article does not institute for individuals a kind of *actio popularis* for the interpretation of the Convention; it does not permit individuals to complain against the state of law or any particular decision *in abstracto* simply because they consider that it contravenes the Convention. Nor, in principle, does it suffice for an applicant to claim that the mere existence of a law violates his rights under the Convention; it is necessary that the law should have been applied to his detriment (*Klass and Others v. Germany* judgment of 6 September 1978, Series A no. 28, § 33). The Court has accepted that an applicant may be a potential victim: for example, where he was not able to establish that the legislation he complained of had actually been applied to him on account of the secret nature of the measures it authorised or where an alien's removal had been ordered, but not enforced, and where enforcement would have exposed him in the receiving country to treatment contrary to Article 3 of the Convention or to an infringement of his rights under Article 8 of the Convention. However, in order to be able to claim to be a victim in such a situation, an applicant must produce reasonable and convincing evidence of the likelihood that a violation affecting him personally will occur; mere suspicion or conjecture is insufficient (see generally *Senator Lines GMBH v. Austria, Belgium, Denmark, Finland, France, Germany, Greece, Ireland, Italy, Luxembourg, the Netherlands, Portugal, Spain, Sweden and the United Kingdom* (dec.), no. 56672/00, with further references, in particular to the above-mentioned *Klass and Others* judgment).

The Court observes that in the present case the applicant's daughter D. has been receiving primary school education in Turkish since 1 September 1999 and that the applicant does not dispute that she continues to receive education in that language notwithstanding the decision of the Constitutional Court of 5 July 2000 that the provision of such language facilities to children whose mother tongue was Macedonian was contrary to the Constitution. It is therefore not apparent that the applicant can claim that his daughter is a victim of any discrimination in the provision of education from that time.

Even assuming that any potential issue arose from the alleged insecurity of the situation if the Centar Župa school ceased to provide teaching in Turkish, the Court would recall that the applicant has not brought the issue of discriminatory provision of education based on his place of residence before the domestic courts. His complaints concerning his older daughter were not decided on the merits due to his failure to comply with procedural

formalities while he did not apply to bring his complaints concerning D. before the Constitutional Court which was empowered under Article 9 of the Constitution to determine complaints alleging discrimination and to revoke or annul any law or regulation that offended this provision.

It is a fundamental principle under the rule of exhaustion of domestic remedies contained in Article 35 § 1 of the Convention that complaints intended to be brought subsequently before the Court should have been made to the appropriate domestic body, at least in substance and in compliance with the formal requirements laid down in domestic law (see *Aksoy v. Turkey*, judgment of 18 December 1996, ECHR 1996-VI, §§ 51-52, and *Akdivar and Others v. Turkey,* judgment of 16 September 1996, ECHR 1996-IV, §§ 65-67).

In the present case, the fact that the applicant's earlier claim in respect of his older daughter was unsuccessful on procedural grounds and that the Constitutional Court had, on application by certain organisations, ruled unconstitutional the decision to provide Turkish teaching in the Centar Župa school, cannot be regarded as indicating that an application concerning discrimination in the provision of Turkish-language teaching on grounds of residence would inevitably have been ineffective or incapable of providing redress and thereby exempting the applicant from the requirement to put the substance of his Convention complaints before the appropriate domestic bodies before coming to Strasbourg.

The Court concludes that the applicant has variously failed to show that his younger daughter is a victim of any violation of the provisions invoked or that he has exhausted domestic remedies.

The remainder of the application must, therefore, be rejected pursuant to Articles 34 and 35 §§1, 3 and 4 of the Convention.

For these reasons, the Court unanimously

Declares the remainder of the application inadmissible.

Vincent BERGER
Registrar

Boštjan M. ZUPANČIČ
President