



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

SECOND SECTION

**CASE OF CEVAHİRLİ v. TURKEY**

*(Application no. 15067/04)*

JUDGMENT

STRASBOURG

19 October 2010

**FINAL**

*19/01/2011*

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



**In the case of** Cevahirli v. Turkey,

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

Françoise Tulkens, *President*,

Ireneu Cabral Barreto,

Danutė Jočienė,

András Sajó,

Nona Tsotsoria,

Işıl Karakaş,

Kristina Pardalos, *judges*,

and Françoise Elens-Passos, *Deputy Section Registrar*.

Having deliberated in private on 28 September 2010,

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

## PROCEDURE

1. The cases originated in an application (no. 15067/04) 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, Mr İsmail Cevahirli (“the applicant”), on 5 April 2004. The Turkish Government (“the Government”) were represented by their Agent.

2. On 13 May 2009 the President of the Second Section decided to give notice of the application to the Government. It was also decided to examine the merits of the application at the same time as its admissibility (Article 29 § 1).

## THE FACTS

### I. THE CIRCUMSTANCES OF THE CASE

3. The applicant, a retired military officer, was born in 1955 and lives in Bolu.

4. By an order of the Turkish General Staff dated On 9 May 2002, the applicant's access to the army's social facilities (*orduevi*) was prohibited due to his non-compliance with the rules of conduct set out in the Internal Service Regulation of the Turkish Armed Forces (“the Internal Service Regulation”). It appears that while lodging in an army guesthouse in Ankara, the applicant had insisted on performing the Muslim prayer

(*namaz*) in a communal area despite warnings. It further appears that the order of the Turkish General Staff was never served on the applicant.

5. On 24 December 2002 the applicant was refused entry to the army's social facilities in Ankara on the basis of the order of the Turkish General Staff.

6. On 9 January 2003 the applicant brought an action before the Supreme Military Administrative Court against the Ministry of Defence and requested the annulment of the order of the Turkish General Staff, along with the reinstatement of his right to benefit from the social facilities of the army.

7. The Ministry of Defence submitted certain documents and information to the Supreme Military Administrative Court during the course of the proceedings, which were classified as "secret documents" under Article 52 (4) of Law no. 1602 on the Supreme Military Administrative Court. These documents were not disclosed to the applicant.

8. On 3 October 2003 the Supreme Military Administrative Court dismissed the applicant's case. The court held that the decision of the Turkish General Staff had been in compliance with the Internal Service Regulation, considering in particular that the applicant had refused to perform his prayer in the area allocated to him and had acted in a disorderly fashion and argued with the officer who had warned him. It appears that this decision was served on the applicant on 26 October 2003.

## II. RELEVANT DOMESTIC LAW

9. A description of the relevant domestic law can be found in the decision of *Karayiğit v. Turkey* ((dec.), no. 45874/05, 23 September 2008).

## THE LAW

### I. ALLEGED VIOLATION OF ARTICLE 6 OF THE CONVENTION

10. The applicant complained under Article 6 § 3 (a) of the Convention that he was not aware of the accusations against him as he had not been able to access the classified documents and information submitted by the Ministry of Defence to the Supreme Military Administrative Court.

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

12. As for the merits, the Government contended that the applicant had been aware of the content of the documents submitted to the Supreme Military Administrative Court under Article 52 (4) of Law no. 1602.

13. The Court considers in the first place that this complaint should be examined under Article 6 § 1 of the Convention in its civil limb. The Court further notes that it has previously considered similar complaints and found a violation of Article 6 § 1 of the Convention (see *Güner Çorum v. Turkey*, no. 59739/00, §§ 24-31, 31 October 2006; *Aksoy (Eroğlu) v. Turkey*, no. 59741/00, §§ 24-31, 31 October 2006; *Miran v. Turkey*, no. 43980/04, §§ 13 and 14, 21 April 2009; *Topal v. Turkey*, no. 3055/04, §§ 16 and 17, 21 April 2009). The Court finds no particular circumstances in the instant case which would require it to depart from this jurisprudence.

14. There has accordingly been a violation of Article 6 § 1 of the Convention on account of the applicant's lack of access to the classified documents submitted to the Supreme Military Administrative Court.

## II. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

15. The applicant complained under Article 6 § 1 of the Convention that he had been denied a fair hearing by an independent and impartial tribunal as the Supreme Military Administrative Court had been composed of military judges and officers. He further maintained under Article 9 of the Convention that the decision of the Turkish General Staff to ban his access to the army's social facilities had infringed his freedom of conscience and religion.

16. The Court does not find that the complaint under Article 6 § 1 of the Convention discloses any appearance of a violation of the rights and freedoms set out in the Convention or its Protocols, in the light of all the material in its possession, and in so far as the matters complained of are within its competence (see *Yavuz and Others v. Turkey* (dec.), no. 29870/96, 25 May 2000). It follows that this complaint should be rejected as being manifestly ill founded, pursuant to Article 35 §§ 3 and 4 of the Convention.

17. As for the complaint under Article 9 of the Convention, the Court notes that according to the documents in the case file, the authorities had not interfered with the applicant's religious exercises, but had merely asked him to perform these in the privacy of his room rather than in a public space, which request was ignored by the applicant. The ban on his access to the army's social facilities was not, therefore, based on the applicant's religious practices as such but on his unwillingness to comply with the rules of conduct, which was also acknowledged by the Supreme Military Administrative Court in its decision. It follows that this complaint should be rejected as being manifestly ill founded, pursuant to Article 35 §§ 3 and 4 of the Convention.

### III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

18. The applicant claimed 5,232 euros (EUR) in respect of pecuniary damage and EUR 10,000 for non-pecuniary damage. He also claimed EUR 205 in respect of the costs and expenses incurred before the Court for translation. He submitted bank receipts regarding the payments made to the translation office in support of his claim.

19. The Government contested these claims as being unsubstantiated and fictitious.

20. The Court does not discern any causal link between the violation found and the pecuniary damage alleged; it therefore rejects this claim. However, it considers that the applicant must have suffered non-pecuniary damage which the finding of a violation of the Convention in the present judgment does not suffice to remedy. Ruling on an equitable basis, it awards the applicant EUR 6,500 (see *Güner Çorum*, cited above, § 39; *Aksoy (Eroğlu)*, cited above, § 39; *Miran*, cited above, § 22; *Topal*, cited above, § 23).

21. As for costs and expenses, 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 were reasonable as to quantum. In the present case, regard being had to the information in its possession and the above criteria, the Court considers it reasonable to award the full amount claimed by the applicant.

22. The Court considers it appropriate that the default interest 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 UNANIMOUSLY

1. *Declares* the complaint under Article 6 of the Convention concerning the applicant's lack of access to classified documents submitted to the Supreme Military Administrative Court admissible and the remainder of the application inadmissible;
2. *Holds* that there has been a violation of Article 6 § 1 of the Convention on account of the applicant's lack of access to classified documents submitted to the Supreme Military Administrative Court;
3. *Holds*
  - (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, the following amounts to be converted into Turkish liras at the rate applicable at the date of settlement:

- (i) EUR 6,500 (six thousand five hundred euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;
- (ii) EUR 205 (two hundred five euros), plus any tax that may be chargeable to the applicant, in respect of costs and expenses;
- (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;

4. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 19 October 2010, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Françoise Elens-Passos  
Deputy Registrar

Françoise Tulkens  
President