



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

SECOND SECTION

CASE OF ARSLANTAY v. TURKEY

(Application no. 9548/06)

JUDGMENT

STRASBOURG

14 December 2010

FINAL

14/03/2011

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

In the case of Arslantay 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 Stanley Naismith, *Section Registrar*,

Having deliberated in private on 23 November 2010,

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

PROCEDURE

1. The case originated in an application (no. 9548/06) 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 Yusuf Kenan Arslantay (“the applicant”), on 21 February 2006. The applicant was represented by Mr A.L. Koçer, a lawyer practising in Ankara. 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 was born in 1986 and lives in Adana.

4. Subsequent to his expulsion from a military academy due to his health problems, the applicant brought a case before the Supreme Military Administrative Court against the Ministry of Defence (“the Ministry”) for damages. The applicant argued that the alleged delay in the diagnosis of his medical condition had led to his unfair expulsion, which had inflicted pecuniary and non-pecuniary damages on him.

5. On 24 November 2004 the Supreme Military Administrative Court held a hearing, where it heard the parties and the opinion of the principal public prosecutor, which had previously been submitted to the court in writing. On 21 September 2005, relying on the findings of medical experts, the Supreme Military Administrative Court refused the applicant's claim for damages. On 23 November 2005 it dismissed the applicant's rectification request.

II. RELEVANT DOMESTIC LAW

6. 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 § 1 OF THE CONVENTION: NON-COMMUNICATION OF THE WRITTEN OPINION OF THE PRINCIPAL PUBLIC PROSECUTOR

7. The applicant complained that the written opinion of the principal public prosecutor submitted to the Supreme Military Administrative Court during the proceedings had not been communicated to him, in breach of the equality of arms principle safeguarded under Article 6 § 1 of the Convention.

8. 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.

9. As for the merits, the Government contended that, unlike in criminal proceedings, the principal public prosecutor in administrative proceedings was not a party to the case and his or her opinion had no influence on the decision of the administrative court. The Government also argued that the principle of equality of arms had not been infringed in the instant case as the applicant had had the option of examining the case file and the written opinion of the principal public prosecutor prior to the hearing, as well as the further opportunity of replying to this opinion during the hearing.

10. The Court observes that it has already examined and dismissed similar submissions by the Government in previous cases and found a violation of Article 6 § 1 of the Convention (see, amongst others, *Miran v. Turkey*, no. 43980/04, §§ 15-18, 21 April 2009; *Yavuz Selim Karayiğit v. Turkey*, no. 45874/05, §§ 11-15, 27 October 2009). It considers that the

Government have not put forward any fact or argument in the instant case which would require it to depart from its previous findings.

11. There has accordingly been a violation of Article 6 § 1 of the Convention on account of the non-communication of the written opinion of the principal public prosecutor to the applicant.

II. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

12. The applicant complained under Article 6 § 1 of the Convention that he had not had access to the documents, confidential or other, submitted by the Ministry to the Supreme Military Administrative Court; that this court had lacked independence and impartiality on account of its composition; that there had been no possibility of appeal against the decisions of the Supreme Military Administrative Court; that it had not been possible to know in advance which chamber of this court would examine the case; and that the Supreme Military Administrative Court's decisions had been erroneous and not sufficiently reasoned. The applicant also alleged violations of Articles 8 § 2, 13, 17 and 18 of the Convention on the basis of the above-mentioned facts, without further substantiation.

13. In the light of all the material in its possession, and in so far as the matters complained of are within its competence, the Court does not find that these complaints disclose any appearance of a violation of the rights and freedoms set out in the Convention or its Protocols (as regards the complaint concerning the independence and impartiality of the Supreme Military Administrative Court, see *Yavuz and Others v. Turkey* (dec.), no. 29870/96, 25 May 2000; as for the complaints concerning appeal procedures, chamber assignments and access to classified documents, see *Karayığit* (dec.), cited above; as regards the complaint concerning the erroneous and insufficient reasoning in the domestic court's decision, see *García Ruiz v. Spain* ([GC], no. 30544/96, ECHR 1999-I); *Van de Hurk v. the Netherlands*, 19 April 1994, § 61, Series A no. 288; *Skorik v. Ukraine* (dec.), no. 32671/02, 8 January 2008).

14. It follows that this part of the application 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

Damage and costs and expenses

15. The applicant claimed 30,000 euros (EUR) in respect of pecuniary damage and EUR 15,000 for non-pecuniary damage. He also claimed EUR 5,000 for the costs and expenses incurred before the Court, without submitting any supporting documents.

16. The Government contested the applicant's claims as being unsubstantiated and fictitious.

17. The Court does not discern any causal link between the violation found and the pecuniary damage alleged; it therefore rejects this claim. As to the alleged non-pecuniary damage, the Court considers that it is sufficiently compensated by the finding of a violation of Article 6 § 1 in paragraph 11 above (see *Meral v. Turkey*, no. 33446/02, § 58, 27 November 2007, and *Dikel v. Turkey*, no. 8543/05, § 18, 29 September 2009).

18. As for costs and expenses, the Court makes no award under this head as the applicant has failed to submit any documentary evidence in support of his claims.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Declares* the complaint under Article 6 § 1 of the Convention concerning the non-communication of the written opinion of the principal public prosecutor to the applicant during the proceedings before 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;
3. *Holds* that the finding of a violation constitutes in itself sufficient compensation for any non-pecuniary damage;
4. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 14 December 2010, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Stanley Naismith
Registrar

Françoise Tulkens
President