



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

SECOND SECTION

CASE OF KIRAN v. TURKEY

(Application no. 23321/09)

JUDGMENT

STRASBOURG

10 January 2012

FINAL

10/04/2012

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

In the case of Kıran v. Turkey,

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

Françoise Tulkens, *President*,

Danutė Jočienė,

Isabelle Berro-Lefèvre,

András Sajó,

Işıl Karakaş,

Paulo Pinto de Albuquerque,

Helen Keller, *judges*,

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

Having deliberated in private on 6 December 2011,

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

PROCEDURE

1. The case originated in an application (no. 23321/09) 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 Erdal Kıran (“the applicant”), on 9 April 2009.

2. The applicant was represented by Mr S. Çakmak, a lawyer practising in Van. The Turkish Government (“the Government”) were represented by their Agent.

3. The applicant alleged, in particular, that his right of access to court was breached by the domestic court’s refusal of his legal aid request.

4. On 25 May 2010 the President of the Second Section decided to give notice of the application to the Government. It was also decided to rule on the admissibility and merits of the application at the same time (Article 29 § 1).

THE FACTS**I. THE CIRCUMSTANCES OF THE CASE**

5. The applicant was born in 1987 and lives in Van.

6. In 2008, during his military service, the applicant was disbanded from the army as he was diagnosed with a psychotic illness by the Van Military Hospital.

7. Subsequently, on 7 October 2008 he initiated compensation proceedings, claiming that he had become ill during his military service as a result of the degrading treatment he had been subjected to in the army. He claimed that he had been healthy before and that the Ministry of Defence had failed to provide medical treatment for his condition. The applicant requested a total of 150,000 Turkish liras (TRY) (approximately 80,000 euros (EUR) at the time) in both pecuniary and non-pecuniary damages, submitting the medical records from the Van Military Hospital in support of his claims. He also requested legal aid for the court fees, presenting a certificate from the office of the headman (*muhtar*) attesting to his poverty.

8. On 28 October 2008 the Supreme Military Administrative Court rejected the applicant's legal aid request, after having stated that pursuant to the Code on Civil Procedure, a legal aid request must be supported by proof that the case is well-founded and that the plaintiff does not have the means to pay the required court fees. The court concluded that the requirements were not met in the applicant's case.

9. On 31 October 2008 the court informed the applicant that he was to pay a total of TRY 2,384 (approximately EUR 1,300) in court fees within thirty days for the proceedings to be continued.

10. On 4 February 2009 the Supreme Military Administrative Court decided to discontinue the compensation proceedings because the applicant had not paid the necessary court fees.

II. RELEVANT DOMESTIC LAW AND PRACTICE

11. The relevant domestic law in force at the material time are outlined in the *Kaba v. Turkey* judgment (no. 1236/05, §§ 9-12, 1 March 2011).

12. In February 2009, the minimum wage in force was TRY 666 (approximately EUR 320) a month.

THE LAW

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

13. The applicant complained, in substance, that he had been denied access to a court on account of the domestic court's refusal to grant him legal aid. He invoked Article 6 § 1 of the Convention, which, in so far as relevant, provides:

“In the determination of his civil rights and obligations ..., everyone is entitled to a fair ... hearing ... by [a] ... tribunal ...”

A. Admissibility

14. The Government argued that the applicant had failed to exhaust domestic remedies within the meaning of Article 35 § 1 of the Convention in that he had not appealed against the first-instance court's judgment dated 4 February 2009.

15. The Court reiterates that it has already examined and dismissed the Government's preliminary objection in similar cases, holding that the applicants could not be expected to lodge successful appeals against the judgments discontinuing their cases, as decisions regarding legal aid are final under Article 469 of the Code on Civil Procedure (see *Cığırhun Öner v. Turkey*, no. 33612/03, § 29, 20 May 2008; *Serin v. Turkey*, no. 18404/04, § 24, 18 November 2008; and *Sabri Aslan and Others v. Turkey*, no. 37952/04, § 22, 15 December 2009). It finds no particular circumstances in the instant case requiring it to depart from its findings in the above-mentioned cases. It therefore rejects the Government's preliminary objection.

16. The Court notes that this complaint 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

17. The Government stated that in domestic law there were two types of court fees. The first type was a fixed amount established by the Ministry of Finance at the end of each year, and it was published in the Official Gazette. The second type was calculated on the basis of the value of the litigation and varied in each case. They further pointed out that court fees were required in order to ensure the proper administration of justice and prevent vexatious applications. In their observations the Government contended that the decisions regarding legal aid had been made by the judges on the basis of the case file and that there was no obligation for them to grant it under the domestic law. They argued that in the instant case the applicant had failed to submit the documents attesting to his poverty. In this respect, they stated that the applicant had been represented by a lawyer during the domestic proceedings and thus could have sought legal assistance as regards the documents that would have supported his legal aid request. The Government therefore concluded that the domestic court's refusal to grant legal aid had not impaired the essence of the applicant's right of access to court.

18. The Court reiterates that the Convention is intended to guarantee practical and effective rights. This is particularly so of the right of access to court in view of the prominent place held in a democratic society by the

right to a fair trial. It is central to the concept of a fair trial, in civil as in criminal proceedings, that a litigant is not denied the opportunity to present his or her case effectively before the court and that he or she is able to enjoy equality of arms with the opposing side (see *Steel and Morris v. the United Kingdom*, no. 68416/01, § 59, ECHR 2005-II).

19. The right of access to court is not, however, absolute and may be subject to restrictions, provided that these pursue a legitimate aim and are proportionate. Article 6 § 1 leaves to the State a free choice of the means to be used towards this end but, while the Contracting States enjoy a certain margin of appreciation in that respect, the ultimate decision as to the observance of the Convention's requirements rests with the Court (see *Kreuz v. Poland*, no. 28249/95, § 53, ECHR 2001-VI, and *Mehmet and Suna Yiğit v. Turkey*, no. 52658/99, § 33, 17 July 2007). The institution of a legal aid scheme constitutes one of those means. It may therefore be acceptable to impose conditions on the grant of legal aid on the basis, *inter alia*, of the financial situation of the litigant or his or her prospects of success in the proceedings (see *Steel and Morris*, cited above, §§ 60-62 and *Wieczorek v. Poland*, no. 18176/05, § 37, 8 December 2009). The question whether the provision of legal aid is necessary for a fair hearing must be determined on the basis of the particular facts and circumstances of each case and will depend, *inter alia*, upon the importance of what is at stake for the applicant in the proceedings, the complexity of the relevant law and procedure and the applicant's capacity to represent him or herself effectively.

20. The Court notes that the court fees that the applicant was required to pay were calculated on the basis of the value of the litigation and amounted to TRY 2,384 while the monthly minimum wage was TRY 666 at the time. Although the Government argued that the applicant had failed to submit documents attesting to his poverty, the Court observes that he submitted a certificate proving his poor financial situation in support of his legal aid request before the Supreme Military Administrative Court. It is clear from that certificate delivered by the office of the headman that the applicant has no income and that he is in a poor financial situation (see paragraph 7 above). Nevertheless, his legal aid request was rejected by the Supreme Military Administrative Court, which did not indicate a specific reason in its decision but merely referred to the relevant legislation.

21. The Court observes that it has already examined similar grievances in the past and has found a violation of Article 6 § 1 of the Convention on the ground, *inter alia*, that the legal aid system in Turkey fails to offer individuals substantial guarantees to protect them from arbitrariness (see *Bakan v. Turkey*, no. 50939/99, §§ 74-78, 12 June 2007; *Mehmet and Suna Yiğit v. Turkey*, cited above, §§ 31-39; *Eyüp Kaya v. Turkey*, no. 17582/04, §§ 22-26, 23 September 2008; and *Kaba*, cited above, §§ 19-25). The Court has also examined the present case and finds no

particular circumstances which would require it to depart from its findings in the aforementioned cases. It considers that the refusal of the applicant's legal aid request deprived him of the possibility of submitting his case before a tribunal and concludes that in the instant case there has been a disproportionate restriction on the applicant's right of access to a court.

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

II. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

23. Relying upon Article 3 of the Convention, the applicant complained about the alleged degrading treatment he had been subjected to during his military service.

24. The Government contested that argument.

25. The Court notes that this complaint is linked to the one examined above and must therefore likewise be declared admissible.

26. The Court further notes that the main Convention question raised in the instant application was the applicant's right of access to a court, pursuant to Article 6 § 1 of the Convention. Having found a violation of this provision (see paragraphs 17-20 above), the Court considers that there is no need to make a separate ruling on the applicant's complaint under Article 3 of the Convention. In reaching this decision the Court has particular regard to the fact that the applicant's compensation claim was not examined by the Supreme Military Administrative Court and that the Court cannot determine the issue as a first instance court itself (see *Mehmet and Suna Yiğit*, cited above, § 43).

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

27. The applicant did not submit a claim for just satisfaction. Accordingly, the Court considers that there is no call to award him any sum on that account.

28. The Court further reiterates that the most appropriate form of redress for a violation of Article 6 § 1 would be to ensure that the applicant, as far as possible, is put in the position in which he would have been had this provision not been disregarded (see *Mehmet and Suna Yiğit*, cited above, § 47). The Court finds that this principle applies in the present case as well. Consequently, it considers that the most appropriate form of redress would be to quash or otherwise set aside the Supreme Military Administrative Court's decision dated 4 February 2009 (see paragraph 10 above) and restart the proceedings, in accordance with the requirements of Article 6 § 1 of the Convention, should the applicant so request (see *mutatis mutandis*, *Şirin v. Turkey*, no. 47328/99, § 30, 15 March 2005).

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Declares* the application admissible unanimously;
2. *Holds* that there has been a violation of Article 6 § 1 of the Convention;
3. *Holds* that there is no need to examine the complaint under Article 3 of the Convention;

Done in English, and notified in writing on 10 January 2012, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Françoise Elens-Passos
Deputy Section Registrar

Françoise Tulkens
President