



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

SECOND SECTION

CASE OF EYÜP KAYA v. TURKEY

(Application no. 17582/04)

JUDGMENT

STRASBOURG

23 September 2008

FINAL

23/12/2008

This judgment may be subject to editorial revision.

In the case of Eyüp Kaya v. Turkey,

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

Françoise Tulkens, *President*,

Antonella Mularoni,

Ireneu Cabral Barreto,

Danutė Jočienė,

Dragoljub Popović,

Nona Tsotsoria,

Işıl Karakaş, *judges*,

and Sally Dollé, *Section Registrar*,

Having deliberated in private on 2 September 2008,

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

PROCEDURE

1. The case originated in an application (no. 17582/04) 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 Eyüp Kaya (“the applicant”), on 26 April 2004.

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

3. On 18 September 2007 the Court decided to give notice of the application to the Government. It also decided to examine the merits of the application at the same time as its admissibility (Article 29 § 3).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

4. The applicant was born in 1980 and lives in Van.

5. On 29 August 2000 the applicant was admitted to the military service.

6. On 7 September 2001 he went to see a doctor at the Sivas Military Hospital for an eye-sight problem. His medical report stated that he had - 6, 25 of myopia (nearsightedness), +0,25 of hyperopia (farsightedness) and – 6,75 of anisometropia amblyopia (difference in refractive error between the two eyes leading to reduced vision in one eye) on his left eye. The report noted that the applicant had complained that he had had the problem on his

left eye since childhood. Accordingly, the applicant was discharged from the military as he was no longer eligible for service.

7. On 17 March 2003, the applicant applied to both, the Retired Civil Servant's Fund for a pension and to the Compensation Commission at the Ministry of the Interior for compensation. Both requests were rejected.

8. On 21 May 2003 the applicant obtained a certificate from the office of the headman (*muhtarlık*) attesting his indigence.

9. On 5 June 2003, the applicant brought an action against the Ministry of the Interior before the Supreme Military Administrative Court requesting compensation of 30,000,000,000 Turkish liras (TRL)¹. In his petition the applicant alleged, *inter alia*, that he had no such eye problems prior to his service in the army. He further referred to the doctrine of "social risk", which did not require the establishment of any causal link between the harmful action and the loss. The applicant also requested legal aid to cover the payment of the court fees.

10. On 24 July 2003 the Supreme Military Administrative Court, after examining the case file and hearing the observations of the rapporteur, dismissed the applicant's request for legal aid on the ground that the case was not well-founded.

11. On 25 July 2003, the Supreme Military Administrative Court notified the applicant that he was required to pay a court fee which was TRL 476,970,000 (approximately 292 euros).

12. In the meantime, on 19 August 2008, the applicant was examined by doctors at Van State Hospital. The latter confirmed that the applicant had strong myopic degeneration (-8 degrees) in his left eye amounting to 37 % of loss of sight.

13. On 12 November 2003, the court discontinued the proceedings on the ground that the applicant failed to pay the necessary court fees.

14. On 20 December 2003 the applicant was notified of this decision.

II. RELEVANT DOMESTIC LAW AND PRACTICE

15. The relevant domestic law and practice in force at the material time are outlined in the *Bakan v. Turkey* judgment (no. 50939/99, §§ 36-40, 12 June 2007).

16. Court fees are based on a percentage (0, 13 %) of the value of the claim in question.

17. In June 2003, the minimum wage in force was 306,000,000 Turkish liras (approximately EUR 187) a month.

¹ Approximately 18,000 euros at the material time

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 6 OF THE CONVENTION

18. The applicant complained, in substance, that he was denied access to a court on account of the domestic court's refusal to grant him legal aid. The applicant 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

19. 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.

B. Merits

20. The Government provided explanation as regards the legal aid system in Turkey and, in particular, the calculation of the court fees. They maintained that, in the instant case, the domestic court did not decide on the issue as to whether the applicant was unable to pay the court fees since his request for legal aid had been refused on the ground that he did not submit evidence to support his allegations. In this connection, the Government pointed out that the applicant, who allegedly did not have sufficient means to meet the court fees, had enough means to pay for a lawyer.

21. The applicant did not submit any observations on the merits of the complaint.

22. The Court refers to the general principles established in its case-law concerning access to a tribunal within the meaning of Article 6 § 1 of the Convention and, more specifically, the requirement to pay court fees (see, in particular, *Kreuz v. Poland*, no. 28249/95, §§ 52-57, ECHR 2001-VI and the further references therein, and *Mehmet and Suna Yiğit v. Turkey*, no. 52658/99, §§ 33-34, 17 July 2007).

23. It notes that the applicant, in view of the value of its claim, was required to pay TRL 476,970,000 as court fees. While the amount, in itself, cannot be considered excessive, the Court accepts that the applicant, who had obtained a certificate attesting to his indigence, did not have sufficient means to pay them. In this connection, contrary to the Government's assertions, the Court considers that the mere fact that the applicant had hired

a lawyer to pursue the compensation proceedings does not mean that he had the means to pay the court fees (see *Mehmet and Suna Yiğit*, cited above, § 37). However, the applicant's request for legal aid was refused by the domestic court on the ground that he did not have a well-founded case, an assessment on the merits of the case, which resulted in the applicant desisting from his claim and in his case never being heard by a court.

24. The Court observes that it has already examined the 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, in particular, *Bakan v. Turkey*, no. 50939/99, §§ 74-78, 12 June 2007, *Amaç and Okkan v. Turkey*, nos. 54179/00 and 54176/00, § 66, 20 November 2007, and *Mehmet Hüsni Tunç v. Turkey*, no. 20400/03, § 29, 21 February 2008).

25. The Court has examined the present case and finds no particular circumstances which would require it to depart from its findings in the aforementioned cases.

26. Consequently, the Court concludes that there has been a disproportionate restriction on the applicant's right of access to a court. There has accordingly been a violation of Article 6 § 1 of the Convention.

II. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

27. The applicant further complained under Articles 3, 4, 13 and 14 of the Convention that he lost a significant amount of his sight because of the heavy forced labour he had undertaken during his military service. He further maintained that there were no effective remedies to sue the liable persons and that he was discriminated against because of his Kurdish origin.

28. The applicant submitted neither an explanation nor documentation in support of his allegations under these heads. It follows that this part of the application must also be rejected as being manifestly ill-founded within the meaning of Article 35 §§ 3 and 4 of the Convention.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

29. Article 41 of the Convention provides:

"If the Court finds that there has been a violation of the Convention or the Protocols thereto, and if the internal law of the High Contracting Party concerned allows only partial reparation to be made, the Court shall, if necessary, afford just satisfaction to the injured party."

A. Damage

30. The applicant claimed, in total, 200,000 euros (EUR) in respect of pecuniary and non-pecuniary damages.

31. The Government contested the amount.

32. The Court does not discern any causal link between the violation found and the pecuniary damage alleged; it therefore rejects this claim.

33. The Court considers that the finding of violation constitutes in itself sufficient compensation for any non-pecuniary damage suffered by the applicant (see, *mutatis mutandis*, *Ertuğrul Kılıç v. Turkey*, no. 38667/02, § 28, 12 December 2006).

B. Costs and expenses

34. The applicant also claimed, in total, EUR 55,000 for the costs and expenses incurred before the Court.

35. The Government contested the amounts.

36. The Court finds that since the applicant submitted no justification as regards costs and expenses, as required by Rule 60 of the Rules of Court, it makes no award under this head.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Declares* the complaint under Article 6 § 1 of the Convention 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 23 September 2008, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Sally Dollé
Registrar

Françoise Tulkens
President