



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

1959 · 50 · 2009

SECOND SECTION

CASE OF CİHANGÜL v. TURKEY

(Application no. 44292/04)

JUDGMENT

STRASBOURG

29 September 2009

FINAL

29/12/2009

This judgment may be subject to editorial revision.

In the case of Cihangül v. Turkey,

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

Françoise Tulkens, *President*,

Ireneu Cabral Barreto,

Vladimiro Zagrebelsky,

Danutė Jočienė,

András Sajó,

Nona Tsotsoria,

Işıl Karakaş, *judges*,

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

Having deliberated in private on 8 September 2009,

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

PROCEDURE

1. The case originated in an application (no. 44292/04) 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 Erol Cihangül (“the applicant”), on 25 October 2004. The applicant was represented by Mr O. Çelen, a lawyer practising in Ankara. The Turkish Government (“the Government”) were represented by their Agent.

2. On 29 November 2007 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 § 3).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

3. The applicant was born in 1980 and lives in Istanbul. On 5 March 2003 he was expelled from a military academy as he was found unsuitable to be a student there following a secret security investigation conducted on him and his family. The applicant was not notified of the specific reasons for his expulsion.

4. Subsequently, the applicant asked the Supreme Military Administrative Court to annul the expulsion decision. During the proceedings, he did not have access to the classified documents and

information submitted by the Ministry of Defence to the Supreme Military Administrative Court in support of its decision to expel him from the military academy.

5. On 25 February 2004 the Supreme Military Administrative Court rejected the applicant's request. It stated that information and documents the confidentiality of which was required and necessitated for the performance of military service could not be disclosed to the applicant. The court further emphasised that it was not bound by the classification made by the administration and that it made its own assessment as to whether the confidentiality of the documents was justified in each case. The written opinion submitted by the public prosecutor to the Supreme Military Administrative Court during the proceedings was not communicated to the applicant.

6. The applicant subsequently requested the rectification of the Supreme Military Administrative Court's decision, arguing that his inability to access the results of the security investigation due to their allegedly confidential nature precluded him from duly defending himself.

7. On 20 May 2004 the Supreme Military Administrative Court rejected the applicant's rectification request.

II. RELEVANT LAW

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

THE LAW

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

9. The applicant complained under Article 6 § 1 of the Convention that the principle of equality of arms had been infringed on account of his lack of access to the classified documents and information submitted by the Ministry of Defence to the Supreme Military Administrative Court and the non-communication to him of the written opinion of the public prosecutor submitted to this court.

A. Admissibility

10. Relying mainly on the jurisprudence of *Pellegrin v. France* ([GC], no. 28541/95, ECHR 1999-VIII), the Government argued that Article 6 § 1

of the Convention was not applicable in the instant case on account of the special relationship that existed between the applicant and the State.

11. The Court notes that it has recently revised its case-law concerning the applicability of Article 6 § 1 to disputes between the State and civil servants in its *Vilho Eskelinen and Others v. Finland* judgment ([GC], no. 63235/00, § 62, ECHR 2007-IV). Having regard to the new criteria adopted in the aforementioned case, the Court notes that the Government failed to demonstrate, first, that the applicant did not have a right of access to a court under national law and, secondly, that any exclusion of the rights under Article 6 for the applicant was justified by the subject matter of the dispute. In these circumstances, the Court considers that Article 6 § 1 is applicable in the instant case and it therefore dismisses the Government's preliminary objection (see *Miran v. Turkey*, no. 43980/04, §§ 9-12, 21 April 2009, and *Topal v. Turkey*, no. 3055/04, §§ 12-15, 21 April 2009).

12. The Court further notes that these complaints are not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention and that they are not inadmissible on any other grounds. This part of the application must therefore be declared admissible.

B. Merits

13. As regards the applicant's complaint concerning the non-communication of the principal public prosecutor's written opinion, the Government argued that the applicant had the opportunity of examining the case file, which included the written opinion of the principal public prosecutor, at any time. They further argued that the opinion of the principal public prosecutor had no effect on the decision of the court in administrative proceedings. As for the complaint concerning lack of access to classified documents, the Government argued that such confidentiality was required for public interest reasons.

14. The Court 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; *Meral v. Turkey*, no. 33446/02, §§ 32-39, 27 November 2007; *Miran*, cited above, §§ 13-18; *Topal*, cited above, §§ 16 and 17). The Court finds no particular circumstances in the instant case which would require it to depart from this jurisprudence.

15. 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 and the non-communication of the written opinion of the principal public prosecutor to the applicant.

II. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

16. The applicant complained, in the first place, that he had been denied a fair hearing by an independent and impartial tribunal in violation of Article 6 § 1 as the Supreme Military Administrative Court had been composed of military judges and that it had acted as a first and only instance court. He further maintained under this provision that the decision of the Supreme Military Administrative Court had lacked reasoning and that it had not been possible to know in advance which chamber of this court would examine the case. Lastly, he alleged a violation of Articles 13, 17 and 18 of the Convention.

17. 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 complaint concerning the lack of appeal procedure against decisions of the Supreme Military Administrative Court and the impossibility of knowing which chamber of this court will examine a case, see *Yavuz Selim Karayigit v. Turkey* (dec.), no. 45874/05, 23 September 2008).

18. 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

A. Damage and Costs and Expenses

19. The applicant claimed 30,000 euros (EUR) as pecuniary damage for the loss of income he had been deprived of during the time he spent at the military academy and subsequent to his expulsion while he was looking for a job. He also claimed EUR 20,000 for non-pecuniary damage and EUR 3,000 for costs and expenses. The applicant did not submit any justification in support of his claims, all of which the Government contested.

20. The Court does not discern any causal link between the violation found and the pecuniary damage alleged (see *Kingsley v. the United Kingdom* [GC], no. 35605/97, § 40, ECHR 2002-IV). It therefore rejects this claim. The Court considers, however, that the applicant must have suffered non-pecuniary damage which the findings of a violation of the Convention in the present judgment do not suffice to remedy. Ruling on an equitable basis, in accordance with Article 41, 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). As regards the costs and expenses, the Court makes no award under this head as the applicant failed to substantiate his claims.

B. Default interest

21. 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 complaints under Article 6 § 1 of the Convention concerning the applicant's lack of access to classified documents submitted to the Supreme Military Administrative Court and the non-communication to the applicant of the written opinion of the principal public prosecutor 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 and the non-communication to the applicant of the written opinion of the principal public prosecutor;
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, EUR 6,500 (six thousand five hundred euros), plus any tax that may be chargeable, in respect of non-pecuniary damage, to be converted into Turkish liras at the rate applicable at the date of settlement;
 - (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amount 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 29 September 2009, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Françoise Elens-Passos
Deputy Registrar

Françoise Tulkens
President