



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

1959 · 50 · 2009

SECOND SECTION

CASE OF TEVFİK OKUR v. TURKEY

(Application no. 2843/05)

JUDGMENT

STRASBOURG

29 September 2009

FINAL

29/12/2009

This judgment may be subject to editorial revision.

In the case of Tefvik Okur 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. 2843/05) 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 Tefvik Okur (“the applicant”), on 3 December 2004. The applicant was represented by Mr C. Çalış, a lawyer practising in Ankara. The Turkish Government (“the Government”) were represented by their Agent.

2. On 23 September 2008 the Court declared the application partly inadmissible and decided to communicate the complaints 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 principal public prosecutor’s written opinion 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

3. The applicant, was born in 1970 and lives in Nevşehir, was a civil servant working for the Turkish Armed Forces at the time of the events giving rise to this application.

4. On 10 September 2003 the Supreme Disciplinary Council of the Ministry of Defence decided to dismiss the applicant from service for

misconduct in office following his criminal conviction by a martial law court.

5. The applicant subsequently requested the annulment of the dismissal decision from the Supreme Military Administrative Court.

6. In its reply to the submissions of the applicant, the Ministry of Defence stated that the applicant had been dismissed in accordance with the relevant provisions of Law no. 657 on Civil Servants and the regulation on disciplinary councils and superiors concerning civil servants employed in the Turkish Armed Forces (*Türk Silahlı Kuvvetlerinde Görevli Devlet Memurları Disiplin Kurulları ve Disiplin Amirleri Yönetmeliği*). The Ministry of Defence also submitted certain documents and information to the Supreme Military Administrative Court, which were classified as “secret documents” under Article 52 (4) of Law no. 1602 on Supreme Military Administrative Court. These documents were not disclosed to the applicant.

7. On 24 June 2004 the Supreme Military Administrative Court rejected the applicant’s request. The written opinion submitted by the principal public prosecutor to the Supreme Military Administrative Court during the proceedings was not communicated to the applicant.

8. On 16 September 2004 the Supreme Military Administrative Court dismissed the applicant’s rectification request.

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 § 1 OF THE CONVENTION

10. 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 principal public prosecutor attached to this court.

A. Admissibility

11. The Government asked the Court to dismiss the complaint regarding the non-communication of the written opinion of the principal public

prosecutor for failure to exhaust domestic remedies under Article 35 § 1 of the Convention. The Government maintained in this regard that the applicant had not brought this complaint to the attention of the Supreme Military Administrative Court nor had he replied to the opinion of the principal public prosecutor when it was read out during the hearing.

12. The Court observes that it dismissed a similar preliminary objection in the case of *Miran v. Turkey* (no. 43980/04, § 12, 21 April 2009). It sees no reason to do otherwise in the present case and therefore rejects the Government's objection.

13. The Court notes that the application 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

1. Lack of access to classified documents

14. The Government contended that the reason for the applicant's dismissal from service was clearly stated in the judgment of the Supreme Military Administrative Court and that the documents submitted under Article 52 (4) of Law no. 1602 had no significance for the outcome of the proceedings.

15. 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; *Miran*, cited above, §§ 13 and 14; *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. The Court notes particularly that the Government's allegations concerning the insignificance of the secret documents submitted to the Supreme Military Administrative Court makes their non-disclosure to the applicant all the more unjustifiable in terms of fairness of the proceedings.

16. 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.

2. Non-communication of the principal public prosecutor's written opinion

17. 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.

18. The Court points out that it has previously examined similar complaints and found a violation of Article 6 § 1 of the Convention (see *Meral v. Turkey*, no. 33446/02, §§ 32-39, 27 November 2007, and *Miran*, cited above, §§ 15-18). 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.

19. 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. APPLICATION OF ARTICLE 41 OF THE CONVENTION

A. Damage and costs and expenses

20. The applicant claimed 50,000 euros (EUR) in respect of pecuniary damage, which was the total amount of salaries he would have received until his retirement but for his dismissal, and EUR 25,000 for non-pecuniary damage. The applicant also claimed EUR 5,000 for costs and expenses, without submitting any documents in support of his claim.

21. The Government contested these claims.

22. 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

23. 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 remainder of the application admissible;
2. *Holds* that there has been a violation of Article 6 § 1 of the Convention;
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* [unanimously] 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