



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

1959 · 50 · 2009

SECOND SECTION

CASE OF İLTER v. TURKEY

(Application no. 43554/04)

JUDGMENT

STRASBOURG

29 September 2009

FINAL

29/12/2009

This judgment may be subject to editorial revision.

In the case of İlter 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. 43554/04) 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 Nazım İlter (“the applicant”), on 3 November 2004. The Turkish Government (“the Government”) were represented by their Agent.

2. On 11 February 2008 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, who is a retired non-commissioned officer, was born in 1959 and lives in Osmaniye.

4. On 29 June 2002 the applicant attempted to enter the social facilities of the Osmaniye Gendarmerie Commandership, which was a right granted to him under Article 664 § 4 of the Internal Service Regulation of the Turkish Armed Forces (“the Internal Service Regulation”) as a retired non-commissioned officer. He was, however, not admitted on the basis of an order of the Turkish General Staff, prohibiting him from entering any

social facilities of the Armed Forces. The applicant was not provided any further information as to the reason for this prohibition.

5. The applicant subsequently filed an action against the Ministry of Defence with the Supreme Military Administrative Court and requested the annulment of the order of the Turkish General Staff. The applicant emphasised that he was not able to duly defend himself against the impugned decision due to his lack of access to the secret information and documents relied on by the Turkish General Staff.

6. In its reply, the Ministry of Defence stated that the applicant had been banned from using the said facilities for engaging in activities proscribed under Article 664 § 4 (c) of the Internal Service Regulation. It submitted certain classified documents in support of its decision.

7. On 22 April 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.

8. On 16 September 2004 the Supreme Military Administrative Court rejected the applicant's rectification request

II. RELEVANT DOMESTIC LAW

9. Article 664 § 4 of the Internal Service Regulation of the Turkish Armed Forces provides that:

“Commissioned officers, military personnel and non-commissioned officers, together with persons who have retired [from such positions], are natural members of the social facilities (*orduevi*)... of the army.”

10. Article 664 § 4 (c) of the Internal Service Regulation of the Turkish Armed Forces further provides that:

“In the event that retired members or a member of their families are found to engage in activities involving religious fundamentalism and retrogression (*irtica*) or secession of the national territory, or to make statements and carry out activities against the Turkish Armed Forces, their entry to the social facilities ... of the army shall be prohibited by the Turkish General Staff temporarily or permanently.”

11. A description of the relevant domestic law concerning proceedings before Supreme Military Administrative Court can be found in the decision of *Karayiğit v. Turkey* ((dec.), no. 45874/05, 23 September 2008).

THE LAW

I. ALLEGED VIOLATION OF ARTICLES 6, 9, 10 AND 11 OF THE CONVENTION

12. The applicant complained under Article 6 § 3 (b) of the Convention that he had not been able to access, and therefore contest, the classified documents and information submitted by the Ministry of Defence to the Supreme Military Administrative Court. He further maintained that although he had not been informed of the exact reason for the decision of the Turkish General Staff, this measure had allegedly been based on an action or statement proscribed by Article 664 § 4 (c) of the Internal Service Regulation and thus had violated his rights under Articles 9, 10 and 11 of the Convention.

A. Admissibility

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

B. Merits

1. Lack of access to classified documents (Article 6 of the Convention)

14. The Court considers in the first place that this complaint should be examined under Article 6 § 1 of the Convention in its civil limb. The Court further 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 v. Turkey*, no. 43980/04, §§ 13 and 14, 21 April 2009; and *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.

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.

2. Articles 9, 10 and 11 of the Convention

16. The Court considers that the main legal question raised by the instant application is whether the applicant's request for the annulment of the

banning order had been rejected by way of a fair hearing within the meaning of Article 6 of the Convention. Having already replied to this question in the negative (see paragraph 15 above), the Court is of the opinion that there is no need to give a separate ruling on this complaint (see *Güner Çorum*, cited above, § 35, and *Topal*, cited above, § 20).

II. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

17. The applicant complained under Article 6 § 1 of the Convention that he had been denied a fair hearing by an independent and impartial tribunal as the Supreme Military Administrative Court had been composed of military judges. He further argued under Article 14 of the Convention and Article 1 of Protocol No. 12 that the prohibition of his access to the army's social facilities, while other retired officers could benefit from this right, had amounted to discrimination. Lastly, he contended under Article 2 of Protocol No. 7 that there was no appeal against the decisions of the Supreme Military Administrative Court.

18. 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, in the light of all the material in its possession, and in so far as the matters complained of are within its competence (see *Yavuz and Others v. Turkey* (dec.), no. 29870/96, 25 May 2000, and *Yavuz Selim Karayigit v. Turkey* (dec.), no. 45874/05, 23 September 2008). It follows that these complaints 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

19. 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.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Declares* the complaint under Article 6 of the Convention concerning the applicant's lack of access to classified documents submitted to the Supreme Military Administrative Court and the complaint under Articles 9, 10 and 11 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 on account of the applicant's lack of access to classified documents submitted to the Supreme Military Administrative Court;
3. *Holds* that there is no need to examine separately the complaint under Articles 9, 10 and 11 of the Convention.

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