



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

1959 · 50 · 2009

SECOND SECTION

CASE OF DİKEL v. TURKEY

(Application no. 8543/05)

JUDGMENT

STRASBOURG

29 September 2009

FINAL

29/12/2009

This judgment may be subject to editorial revision.

In the case of Dikel 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. 8543/05) 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 Mehmet Dikel (“the applicant”), on 14 February 2005. The applicant was represented by Mr A. M. Kocaoğlu and Mr S. S. Kocaoğlu, lawyers practising in Ankara. The Turkish Government (“the Government”) were represented by their Agent.

2. On 5 November 2007 the Court decided to give notice of the application to the Government. It also decided to rule on the admissibility and merits of the application at the same time (Article 29 § 3).

THE FACTS

3. The applicant was born in 1972 and lives in Mersin.

4. The applicant was discharged from the Turkish Armed Forces in 2003 due to a medical condition and the Retired Civil Servants’ Fund (*Emekli Sandığı*) granted him simple disability benefits.

5. Subsequently, the applicant lodged a request with OYAK, the pension fund of the armed forces, for full and permanent disability benefits.

6. On 25 July 2003 OYAK rejected the applicant’s request, holding that he did not qualify for such benefits under the relevant law (Article 26 of Law no. 205). The applicant requested the annulment of this decision from the Supreme Military Administrative Court.

7. On 10 June 2004 the Supreme Military Administrative Court held a hearing where it rejected the applicant's request. The written opinion of the principal public prosecutor submitted to the Supreme Military Administrative Court was not communicated to the applicant. No classified documents or information had been submitted by the administration to the Supreme Military Administrative Court as evidence during the proceedings.

8. The applicant requested the rectification of this judgment. On 30 September 2004 the Supreme Military Administrative Court dismissed the applicant's rectification request.

THE LAW

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

9. The applicant complained that the written opinion of the principal public prosecutor submitted to the Supreme Military Administrative Court had not been communicated to him in breach of the equality of arms principle safeguarded under Article 6 § 1 of the Convention.

10. The Court notes that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention and that it is not inadmissible on any other grounds. It must therefore be declared admissible.

11. As regards the merits of this complaint, the Government argued that the applicant had the opportunity of examining the case file, which included the written opinion of the public prosecutor, prior to the hearing. They further claimed that, although the opinion of the public prosecutor had been read during the hearing at the Supreme Military Administrative Court, the applicant had not replied to this opinion, nor had he raised this complaint before the domestic authorities.

12. The Court points out that it has previously considered complaints similar to that made by the applicant, where it dismissed similar preliminary objections of the Government 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 v. Turkey*, no. 43980/04, §§ 15-18, 21 April 2009). 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.

13. 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. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

14. The applicant alleged a number of violations of his rights enshrined in Articles 6 § 1, 17 and 18 of the Convention. He complained, in the first place, 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 and officers and that this court had acted as a first and only instance court. He further maintained that he had not had access to the classified documents submitted by the administration to the Supreme Military Administrative Court. Lastly, he alleged violations of Articles 17 and 18 of the Convention.

15. 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 lack of access to classified documents, see *Yavuz Selim Karayığit v. Turkey* (dec.), no. 45874/05, 23 September 2008).

16. 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

17. The applicant claimed 100,000 euros (EUR) as pecuniary damage, which reflected the amount of disability benefits he would have received from OYAK had his request for full and permanent benefits been granted. He also claimed EUR 25,000 in respect of non-pecuniary damage and 14,250 Turkish liras (TRY) (approximately EUR 7,150) for the costs and expenses incurred before domestic courts and the Court. The applicant did not submit any justification as regards the alleged costs and expenses. The Government contested these claims.

18. 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. As to the alleged non-pecuniary damage, the Court considers that it is sufficiently compensated by the finding of a violation of Article 6 § 1 in paragraphs 9-12 above (see *Meral*, cited above, § 58). As regards costs and expenses, the Court makes no award under this head as the applicant failed to substantiate his claims.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Declares* admissible the complaint under Article 6 § 1 of the Convention concerning the non-communication of the written opinion of the principal public prosecutor to the applicant during the proceedings before the Supreme Military Administrative Court;
2. *Declares* inadmissible the remainder of the application;
3. *Holds* that there has been a violation of Article 6 § 1 of the Convention;
4. *Holds* that the finding of a violation constitutes in itself sufficient compensation for any non-pecuniary damage;
5. *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