



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

1959 · 50 · 2009

SECOND SECTION

CASE OF ÇATAK v. TURKEY

(Application no. 26718/05)

JUDGMENT

STRASBOURG

6 October 2009

FINAL

06/01/2010

This judgment will become final in the circumstances set out in Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of Çatak 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,

Dragoljub Popović,

Nona Tsotsoria,

Işıl Karakaş, *judges*,

and Sally Dollé, *Section Registrar*,

Having deliberated in private on 15 September 2009,

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

PROCEDURE

1. The case originated in an application (no. 26718/05) 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 Uğur Çatak (“the applicant”), on 13 July 2005. The applicant was represented by Mr Ç. Bingölbalı, a lawyer practising in İzmir. The Turkish Government (“the Government”) were represented by their Agent.

2. On 4 March 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 was born in 1985 and lives in İzmir, was a student at a military academy. When he registered with the academy, the applicant and his father had signed a promissory note for the reimbursement of the applicant's educational expenses in the event of his leaving the school, due to expulsion or otherwise.

4. On 7 June 2004 the applicant was expelled from the military academy following a secret security investigation conducted by the Ministry of

Defence into him and his family. The applicant was not notified of the specific reasons for his expulsion.

5. On 23 July 2004 the applicant asked the Supreme Military Administrative Court to annul the expulsion decision.

6. On 23 August 2004 the Ministry of Defence made submissions to the Supreme Military Administrative Court, alleging that the applicant had been expelled in compliance with the relevant laws. The Ministry of Defence also supplied that court with the results of the security investigation which had led to the applicant's expulsion in support of its allegations. The applicant was not granted access to this information, as it was classified as secret, in accordance with Article 52 (4) of Law no. 1602 on the Supreme Military Administrative Court.

7. Following an examination of the classified documents submitted by the Ministry of Defence, on 15 December 2004 the Supreme Military Administrative Court refused to annul the expulsion decision. The court acknowledged that the security investigation conducted into the applicant and his family had revealed that his father had previously been convicted of forgery. It further held that this information justified the applicant's expulsion under the relevant laws and regulations.

8. On 18 January 2005 the applicant requested rectification of that judgment, which the Supreme Military Administrative Court rejected on 16 February 2005.

9. The Ministry of Defence subsequently filed an action with the İzmir Civil Court against the applicant for the reimbursement of his educational expenses. On 14 April 2008 the İzmir Civil Court ordered the applicant to pay the Ministry of Defence 12,355.61 Turkish liras (TRY) (approximately 6,000 euros (EUR)), plus interest running from 7 June 2004.

II. RELEVANT LAW

10. A description of the relevant domestic law can be found in the decision of *Karayığit v. Turkey* ((dec.), no. 45874/05, 23 September 2008). In particular, Article 52 of Law no. 1602 on the Supreme Military Administrative Court provides as follows:

“The Chambers ... may request the parties or the competent authorities to provide them with all documents and information concerning the cases before them ...

...

Nonetheless, the Prime Minister, the Army Commander-in-Chief or the competent Minister may refuse to submit the requested documents or information if they concern the security or superior interests of the Republic of Turkey ... on condition of disclosing the reasons.

... the confidential documents requested by the Chamber ..., as well as the [confidential] documents submitted by the Administration ...cannot be the object of an examination by the parties or their representatives ...”

THE LAW

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

11. The applicant complained that he had been denied 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, which infringed the principle of equality of arms safeguarded by Article 6 § 1 of the Convention.

12. 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 which existed between the applicant and the State. The applicant contested this argument.

13. 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* [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; *Topal v. Turkey*, no. 3055/04, §§ 12-15, 21 April 2009). It further 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. This part of the application must therefore be declared admissible.

14. As regards the merits of this complaint, 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*, 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.

II. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

16. The applicant complained under Article 6 § 1 of the Convention that he had been denied a fair trial by an independent and impartial tribunal on account of the composition of the Supreme Military Administrative Court. He maintained that the failure of the Ministry of Defence to inform him of the charges against him amounted to a breach of Article 5 § 2 of the Convention and that the terms and conditions of his expulsion from the military academy violated his rights under Article 6 § 2. He lastly complained under Article 13 of the Convention that the Supreme Military Administrative Court failed to state explicitly what means of redress against its decision were available.

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 regards the complaints under Articles 5 § 2 and 6 § 2, see, *mutatis mutandis*, *Tamay and Others v. Turkey* (dec.), no. 38287/04, 13 May 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

19. 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.”

1. Damage

20. The applicant claimed TRY 10,000 (approximately EUR 5,700) in respect of pecuniary damage on account of the educational expenses his father was asked to reimburse following his expulsion from the military academy. He also requested that the payment order of the İzmir Civil Court in the judgment of 14 April 2008 be lifted. He further claimed EUR 10,000

in respect of non-pecuniary damage. The Government contested these claims.

21. The Court notes in the first place that it may not order the lifting of a payment order under Article 41 of the Convention, but may only examine whether the applicant has suffered any recognisable pecuniary damage because of such an order.

22. The Court considers that in the present case an award of just satisfaction can only be based on the fact that the applicant did not have the benefit of the guarantees of Article 6 of the Convention. The Court cannot speculate as to the outcome of the trial had the situation been otherwise and therefore rejects the applicant's claims for pecuniary damage. The Court considers, however, that the applicant must have suffered some 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).

2. Costs and expenses

23. The applicant also claimed TRY 3,000 (approximately EUR 1,700) for legal representation and EUR 514.18 for translation costs. The applicant submitted a fee agreement with his representative and an invoice from a translation office in support of his requests.

24. The Government contested these claims.

25. According to the Court's case-law, an applicant is entitled to the reimbursement of costs and expenses only in so far as it has been shown that these have been actually and necessarily incurred and are reasonable as to quantum. In the present case, regard being had to the documentation in its possession and the above criteria, the Court considers it reasonable to award the applicant the sum of EUR 2,000 for costs and expenses.

3. Default interest

26. 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* admissible the complaint under Article 6 § 1 of the Convention concerning the lack of access to classified documents submitted by the Ministry of Defence to 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*
 - (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, the following amounts to be converted into Turkish liras at the rate applicable at the date of settlement:
 - (i) EUR 6,500 (six thousand five hundred euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;
 - (ii) EUR 2,000 (two thousand euros), plus any tax that may be chargeable to the applicant, in respect of costs and expenses;
 - (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;
5. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 6 October 2009, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Sally Dollé
Registrar

Françoise Tulkens
President