



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

1959 · 50 · 2009

SECOND SECTION

CASE OF YAVUZ SELİM KARAYİĞİT v. TURKEY

(Application no. 45874/05)

JUDGMENT

STRASBOURG

27 October 2009

FINAL

27/01/2010

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 Yavuz Selim Karayiğit v. Turkey,

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

Françoise Tulkens, *President*,

Ireneu Cabral Barreto,

Vladimiro Zagrebelsky,

Dragoljub Popović,

Nona Tsotsoria,

Işıl Karakaş,

Kristina Pardalos, *judges*,

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

Having deliberated in private on 6 October 2009,

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

PROCEDURE

1. The case originated in an application (no. 45874/05) 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 Yavuz Selim Karayiğit (“the applicant”), on 6 December 2005. The applicant was represented by Mr V. Erek, 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 complaint concerning 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 1977 and lives in Osmaniye.

4. While performing his compulsory military service, the applicant sustained a serious knee injury, which led to his eventual discharge.

5. The applicant subsequently lodged a request with the Retired Civil Servants' Fund (*Emekli Sandığı*) to receive disability benefits in connection with his knee injury.

6. On 15 September 2003 the Retired Civil Servants' Fund rejected the applicant's request. On 21 November 2003 the applicant applied to the Supreme Military Administrative Court for the annulment of this decision.

7. On 23 September 2004 the Supreme Military Administrative Court held a hearing where it heard the principal public prosecutor, who presented his written opinion on the merits of the case which had been previously submitted to the court on 7 July 2004, and the parties. The written opinion of the principal public prosecutor had not been communicated to the applicant prior to the hearing.

8. On 10 February 2005 the Supreme Military Administrative Court rejected the applicant's request. The applicant sought the rectification of this judgment.

9. On 26 May 2005 the Supreme Military Administrative Court dismissed the applicant's rectification request, which decision was served on the applicant on 8 June 2005.

II. RELEVANT DOMESTIC 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).

THE LAW

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

11. 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.

12. 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.

13. As regards the merits of this complaint, the Government contended that, unlike in criminal proceedings, the principal public prosecutor in administrative proceedings was not a party to the case and his or her opinion had no influence on the decision of the administrative court. The Government also argued that the principle of equality of arms had not been infringed in the instant case as the applicant had had the option of examining the case file and the written opinion of the principal public prosecutor prior to the hearing, as well as the further opportunity of replying to this opinion during the hearing.

14. The Court observes that it has already examined and dismissed similar preliminary objections by the Government in previous cases and found a violation of Article 6 § 1 of the Convention (see *Meral v. Turkey*, no. 33446/02, §§ 32-39, 27 November 2007; *Miran v. Turkey*, no. 43980/04, §§ 9-18, 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.

15. 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

16. 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 remainder of the application admissible;
2. *Holds* that there has 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 during the proceedings before the Supreme Military Administrative Court.

Done in English, and notified in writing on 27 October 2009, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Françoise Elens-Passos
Deputy Registrar

Françoise Tulkens
President