



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

SECOND SECTION

CASE OF BİÇER v. TURKEY

(Application no. 21316/05)

JUDGMENT

STRASBOURG

8 June 2010

FINAL

08/09/2010

This judgment has become final under Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of Biçer v. Turkey,

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

Françoise Tulkens, *President*,

Ireneu Cabral Barreto,

Danutė Jočienė,

András Sajó,

Nona Tsotsoria,

Işıl Karakaş,

Kristina Pardalos, *judges*,

and Sally Dollé, *Section Registrar*,

Having deliberated in private on 18 May 2010,

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

PROCEDURE

1. The case originated in an application (no. 21316/05) 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 Murat Biçer (“the applicant”), on 3 May 2005. The applicant was represented by Mr Ö. Yıldırım and Ms P. Yıldırım, lawyers practising in Kocaeli. The Turkish Government (“the Government”) were represented by their Agent.

2. On 9 January 2009 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, a former military student, was born in 1981 and lives in Yalova.

4. On an unspecified date the applicant was expelled from the naval academy in accordance with the Law of Military Academies (Law no. 4466) for failing his class twice.

5. On 1 August 2001 he brought an action before the Supreme Military Administrative Court seeking the annulment of the expulsion order.

Claiming that his exam in Mathematics 1 had not been graded correctly, he demanded the reassessment of his paper in the relevant subject.

6. On 10 July 2002 the Supreme Military Administrative Court refused the applicant's request. The court acknowledged that the reassessment of the applicant's paper by a group of three experts revealed that the paper had indeed been misgraded, yet even the modified grade did not entitle the applicant to pass his class.

7. Upon the applicant's request for rectification, on 5 March 2003 the Supreme Military Administrative Court annulled the expulsion order on account of procedural illegalities.

8. The applicant subsequently retook the exams he had previously failed, yet failed them once again, which led to the issue of a second expulsion order by the naval academy.

9. On 25 July 2003 the applicant brought another case before the Supreme Military Administrative Court for the annulment of the expulsion order. He again requested reassessment of his paper in Mathematics 1.

10. On an unspecified date an expert report was submitted to the Supreme Military Administrative Court which confirmed the accuracy of the grading of the applicant's exam paper.

11. On 29 September 2004 the Supreme Military Administrative Court held a hearing, where it dismissed the applicant's request for annulment of the expulsion order. The written opinion submitted by the principal public prosecutor to this court prior to the hearing was not communicated to the applicant.

12. On 12 January 2005 the Supreme Military Administrative Court rejected the applicant's rectification request.

II. RELEVANT DOMESTIC LAW

13. A description of the relevant domestic law can be found in the decision of *Karayigit v. Turkey* ((dec.), no. 45874/05, 23 September 2008).

THE LAW

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

14. The applicant complained, in respect of the second set of proceedings before the Supreme Military Administrative Court, that the written opinion of the principal public prosecutor submitted to this court had not been communicated to him in breach of the equality of arms principle safeguarded under Article 6 § 1 of the Convention.

15. 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.

16. 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.

17. 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.

18. The Court observes that it has already examined and dismissed similar submissions by the Government in previous cases and found a violation of Article 6 § 1 of the Convention (see, amongst others, *Miran*, cited above, §§ 15-18; *Yavuz Selim Karayığit v. Turkey*, no. 45874/05, § 15, 27 October 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.

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. ALLEGED VIOLATION OF ARTICLES 6 § 1, 8, 13, 17 AND 18 OF THE CONVENTION

20. The applicant alleged a number of violations of his rights enshrined in Articles 6 § 1, 8, 13, 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, that this court had acted as a first and only instance court and that it had not been possible to know in advance which chamber of this court would examine the case. 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 8, 13, 17 and 18 of the Convention on the basis of the above-mentioned facts, without further substantiation.

21. 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 complaints concerning appeal procedures, chamber assignments and access to classified documents, see *Yavuz Selim Karayığit* (dec.), cited above.)

22. 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. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

23. In his observations dated 3 March 2009, the applicant submitted a number of new complaints. In particular, he complained that the length of the proceedings before the Supreme Military Administrative Court had not been reasonable, that the judgment rendered by this court had been erroneous and that it had infringed his right to education. The applicant relied on Article 6 § 1 of the Convention and Article 2 of Protocol No. 1.

24. The Court finds that these complaints relate to events or decisions which intervened more than six months before being lodged with the Court on 3 March 2009, and it therefore rejects them pursuant to Article 35 §§ 1 and 4 of the Convention.

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

25. The applicant claimed 148,848.86 Turkish liras (TRY)¹ in respect of pecuniary damage: TRY 72,000² for the salaries to which he would have been entitled as a military officer, as well as TRY 76,848.86³ for his educational expenses, including the expenses he was asked to reimburse

1. Equivalent of approximately 68,420 euros (EUR) at the material time.

2. Equivalent of approximately EUR 33,095 at the material time.

3. Equivalent of approximately EUR 35,325 at the material time.

following his expulsion from the naval academy. He also claimed TRY 50,000⁴ for non-pecuniary damage and TRY 4,500⁵ for the costs and expenses incurred before the domestic courts. The applicant only submitted two fee agreements signed with the lawyers representing him during the domestic proceedings in support of his claims.

26. The Government contested these claims as speculative and fictitious, and argued that the applicant could not claim costs and expenses in respect of services rendered during domestic proceedings.

27. 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 paragraph 19 above (see *Meral*, cited above, § 58).

28. As regards costs and expenses, the Court notes that, according to its case-law, an applicant is entitled to reimbursement of such outlays only in so far as it has been shown that these have been actually and necessarily incurred and were reasonable as to quantum. In the present case, regard being had to the information in its possession and the above criteria, the Court observes that there is no evidence in the file to suggest that the applicant incurred any extra costs and expenses in the domestic courts as a result of the violation of his right to a fair hearing. The Court notes, in particular, that one of the fee agreements submitted by the applicant concerns the first set of proceedings before the Supreme Military Administrative Court, which are not related to the specific violation found in the instant case and which cannot, therefore, be taken into account. The Court further notes that no costs and expenses have been incurred under the other fee agreement, which envisaged payment only upon a favourable outcome. The Court therefore rejects this claim for domestic court costs and expenses (*Smoje v. Croatia*, no. 28074/03, § 58, 11 January 2007).

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;

4. Equivalent of approximately EUR 22,980 at the material time.

5. Equivalent of approximately EUR 2,070 at the material time.

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 8 June 2010, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Sally Dollé
Registrar

Françoise Tulkens
President