CONSEIL DE L'EUROPE

COUNCIL OF EUROPE

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

# SECOND SECTION

# DECISION

# AS TO THE ADMISSIBILITY OF

Application no. 39080/97
by Murat ARSLAN
against Turkey

The European Court of Human Rights (Second Section) sitting on 21 September 1999 as a Chamber composed of

Mr M. Fischbach, *President*,
Mr G. Bonello,
Mr R. Türmen
Mrs V. Strážnická,
Mr P. Lorenzen,
Mr A.B. Baka,
Mr E. Levits, *Judges*,

with Mr E. Fribergh, *Section Registrar*;

Having regard to Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms;

Having regard to the application introduced on 5 November 1997 by Murat Arslan against Turkey and registered on 22 December 1997 under file no. 39080/97;

Having regard to the report provided for in Rule 49 of the Rules of Court;

Having deliberated;

Decides as follows:

## THE FACTS

The applicant, born in 1974 in Samsun, is a citizen of Turkey. He is resident in Bursa. The applicant is represented before the Court by Abdurrahman Şahin, a lawyer practising in Ankara.

### A. Particular circumstances of the case

The facts of the case, as submitted by the applicant, may be summarised as follows.

On 23 June 1995 the applicant, who was serving in the army at the time, was shot and wounded in a clash with members of the PKK. A bullet entered his neck, causing permanent damage to his spine and leaving him 90 % paralysed below the waist.

The applicant received a retirement pension. His medical expenses were covered by the State. Under Law No. 2330 he was granted compensation for non-pecuniary damage and to cover the costs of hiring a lay helper (*bakıcı*) to assist him with his daily needs. The applicant considered that the amount of the compensation was insufficient.

On 8 March 1996 he requested the Ministry of Interior to pay him additional compensation. The Ministry rejected his request. On 9 May 1996 the applicant challenged the Ministry's rejection before the 2nd Chamber of the Supreme Military Administrative Court.

The Chamber was composed of five military judges two of whom, according to the applicant, had no legal training. In assessing the overall loss which the applicant had suffered, the court deducted the amount of the retirement pension and the compensation awarded under Law No. 2330 already paid to him. The court found that only part of the fees which the applicant paid to his lay helper were to be deducted from the compensation awarded to him since he did not need her services on a twenty-four hour basis. The court appointed a legal expert and instructed him to assess what would be just compensation in the circumstances. According to the assessment of the legal expert, the applicant had already been adequately compensated.

The applicant's lawyer objected to the expert's calculations on the ground *inter alia* that the full amount of the fees paid to the helper had to be disregarded from the final calculation. On 26 February 1997 the 2nd Chamber of the Supreme Administrative Court ruled that the applicant had been sufficiently compensated bearing in mind the severity of his disability, relevant case law and comparative awards.

Under domestic law the judgments of the Supreme Military Administrative Courts are final and cannot be appealed. The applicant requested rectification of the judgment (*kararın düzeltilmesi*). In accordance with domestic law, the file was re-examined by the same five-judges of the 2nd Chamber of the Supreme Military Administrative Court which had given the judgment of 26 February 1997. On 30 April 1997 the Chamber rejected the request for rectification, holding that the request did not fall within the specified grounds for rectification.

## B. Relevant domestic law

Article 66 of the Law No. 1602 on the Supreme Military Administrative Court provides:
"Rectification of a judgment rendered by the Chamber or the Grand Chamber may be requested on one of the following grounds, only once within 15 days after it is served on the parties:

a) The judgment does not refer to the allegations and the objections which affect its merits;
b) The judgment contains provisions which contradict each other;
c) The judgment is contrary ("*aykırı*") to procedural and substantive law ("*usul ve kanuna aykırı*")".

## COMPLAINTS

The applicant complains that the Supreme Military Administrative Court neither assessed the evidence correctly nor reached a decision which was consistent with its own case law in similar cases. He contends that he was denied the right to a fair procedure as the court's decision to refuse him supplementary compensation was arbitrary. In this respect he invokes Article 6 of the Convention.

He further complains that two judges of the five-judge Chamber of the Supreme Military Administrative Court had no formal legal education. Finally, he asserts that his request for rectification of the judgment was examined and rejected by the same judges who made up the Chamber which had given the judgment. He complains that this too deprived him of his right to a fair procedure.

## THE LAW

The applicant contends that he did not receive a fair procedure in the determination of his claim for additional compensation, in breach of Article 6 of the Convention which provides in relevant part:

"1. In the determination of his civil rights ... everyone is entitled to a fair ... hearing ... by an independent and impartial tribunal established by law. ...

(...)"

The Court observes at the outset that the applicant, a civil servant, was engaged in a dispute with the Ministry of Interior over the amount of compensation to which he was entitled under Law no. 2330. That dispute was wholly pecuniary in nature. On that account the applicant can invoke the guarantees afforded by Article 6 of the Convention (see, among other authorities, the Cazenave de la Roche v. France judgment of 9 June 1998, *Reports of*

*Judgments and Decisions* 1998 § 44). The Court notes however with reference to the facts set out by the applicant that his complaints do not disclose an appearance of a violation of the guarantees of a fair procedure contained in Article 6 § 1 of the Convention.

In the first place, it notes that the decision of the 2nd Chamber of the Supreme Military Administrative Court not to award the applicant additional compensation was reached after due consideration of his submissions, in particular his argument that the full amount he paid to a lay helper should be discounted when assessing the amount to compensation to which he claimed to be justly entitled. It is not for the Court to impugn the domestic court's determination especially when the decision was based on all relevant factors including the severity of the applicant's disability and the amount already awarded to him by the authorities. There is nothing to suggest that the decision reached was manifestly unreasonable or in any way arbitrary as to call into question the adequacy of the court's consideration of the case before it (see, *mutatis mutandis*, the Garcia Ruiz v. Spain judgment of 21 January 1999, to be published in *Reports* 1999, § 28).

Secondly, the Court does not find that the decision-making process was in any way tainted by unfairness. It does not accept the applicant's challenge to the competence of the 2nd Chamber of the Supreme Military Administrative Court to adjudicate on his claim. The presence on the bench of two members who, according to the applicant, had no legal training does not call into question the fairness of the proceedings. It recalls in this connection that, for the purposes of compliance with Article 6 § 1 a "tribunal" may be composed predominantly, or even entirely, of persons who are not professional judges (see the Ettl v. Austria judgment of 23 April 1987, Series A no. 117, pp. 17-18, § 36). What is important is whether the members of the 2nd Chamber, collectively and individually, satisfied the requirements of independence and impartiality. The applicant has not disputed that this was not the case.

Nor does the Court accept the applicant's final argument that he was deprived of a fair procedure on account of the fact that there was no appeal against the decision taken by the 2nd Chamber and that the same Chamber rejected his request for rectification of the impugned judgment. It recalls in this connection that Article 6 § 1of the Convention does not compel a Contracting State to set up courts of appeal or cassation (see the Delcourt v. Belgium judgment of 17 January 1970, Series A no. 11, p. 14, § 8). Accordingly, the fact that the domestic law of the respondent State did not make provision for an appeal against the Supreme Military Administrative Court's decision does not raise an issue under Article 6 § 1, all the more so since the Court has found in the instant case that the domestic proceedings complied with the requirements of that provision.

As to the applicant's complaint concerning the composition of the Chamber which examined his request for rectifcation, the Court observes that the applicant's request was rejected by the 2nd Chamber of the Supreme Military Administrative Court on account of the fact that he failed to bring it within any of the grounds specified under domestic law. There was therefore no review of the impugned judgment from the standpoint of any of the grounds defined under the relevant law.

Having regard to the above considerations the Court considers that the application as a whole is inadmissible as being manifestly ill-founded within the meaning of Article 35 §§ 3 and 4 of the Convention.

For these reasons, the Court , by a majority,

**DECLARES THE APPLICATION INADMISSIBLE**.

Erik Fribergh
Registrar

Marc Fischbach
President