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

SECOND SECTION

DECISION

Application no. 1047/07
Mehmet Mevlüt ASLAN
against Turkey

The European Court of Human Rights (Second Section), sitting on 16 December 2014 as a Committee composed of:

Nebojša Vučinić, *President,*
Paul Lemmens,
Egidijus Kūris, *judges,*

and Abel Campos, *Deputy Section Registrar,*

Having regard to the above application lodged on 19 December 2006,

Having regard to the observations submitted by the respondent Government and the observations in reply submitted by the applicant,

Having deliberated, decides as follows:

THE FACTS

1. The applicant, Mr Mehmet Mevlüt Aslan, is a Turkish national, who was born in 1983 and lives in Diyarbakır. He was represented before the Court by Ms R. Efe Tanrıkulu, a lawyer practising in Diyarbakır. The Turkish Government ("the Government") were represented by their Agent.

A. The circumstances of the case

2. In 2003, when the applicant was a conscript in the army, he suffered from lumbar disc herniation. Subsequently, he was treated in Gümüşsuyu Military Hospital and on 3 May 2004 underwent a hemi-laminectomy and discectomy operation (*hemipartiel laminektomi ve diskektomi*). Despite the treatment he received, the applicant's health problem did not improve and even deteriorated after his discharge from the Army.

3. The applicant applied to the Ministry of Defence and requested treatment alleging that the lumbar disc herniation he suffered occurred as a

result of his military service. On 5 December 2005, the Ministry of Defence rejected the applicant's request on the basis that there was no direct relation between the military service and the lumbar disc herniation he had suffered.

4. On 9 December 2012, the applicant went to the Diyarbakır State Hospital. According to the medical report issued on the same day, the applicant was diagnosed as suffering a 40 % disability. According to the applicant's submissions, the doctor who examined him in the Diyarbakır State Hospital verbally stated that his disability was a result of medical negligence conducted by the military doctors.

5. On 13 February 2006 the applicant applied to the Ministry of Defence for compensation in respect of his disability. He alleged that, on account of medical negligence, his lumbar disc herniation deteriorated and he had sustained pecuniary damage as he was not able to continue working.

6. Following tacit dismissal of the claim by the administrative authorities, the applicant, being convinced that his disability was caused by medical negligence, initiated compensation proceedings before the Supreme Military Administrative Court. He sought a total of 100,000 Turkish liras (TRY) (60,000 euros (EUR) at the time) in compensation for both pecuniary and non-pecuniary damage.

7. The applicant also requested legal aid for the court fees. On 17 May 2006 the Supreme Military Administrative Court decided that the applicant did not fulfil the prerequisite to be eligible for legal aid because he did not submit any document to prove his indigence, which was required under Article 465 of the Code of Civil Procedure (CCP). On 23 May 2006 and 29 June 2006 respectively, the applicant was notified that he had to pay TRY 1,409 (approximately EUR 767) in court fees within one month in order for the proceedings to continue, and that failure to do so would result in the discontinuation of the proceedings.

8. The applicant failed to pay the court fees. On 13 September 2006 the Supreme Military Administrative Court decided to discontinue the proceedings.

B. Relevant domestic law and practice

9. Article 56 of Law no. 1602 on Supreme Military Administrative Courts provides that when a Military Supreme Administrative Court determines a legal aid request, it should apply the relevant provisions of the Code of Civil Procedure (CCP).

10. Article 465 of the CCP states that a request for legal aid may only be granted if the claimant submits evidence in support of his or her case.

11. According to Article 468 of the CCP, in order to determine whether or not the person applying for legal aid has sufficient means, he or she shall be required to submit a statement of his or her means, another certificate indicating whether or not the individual owns any property and an

attestation regarding how much, if any, tax he or she had paid. These certificates should be obtained from the appropriate domestic authorities.

12. Article 469 of the CCP provides that decisions regarding legal aid are final and cannot be appealed against.

COMPLAINT

13. The applicant complained that the refusal to grant him legal aid in connection with his compensation case had infringed his right to access to a court. He invokes Articles 2, 6 § 1 and 13 of the Convention.

THE LAW

14. The applicant complained that the refusal to grant him legal aid in connection with his compensation case had infringed his right of access to a court under Article 6 § 1 and by referring to his inability to initiate compensation proceedings he further invoked a violation of Articles 2 and 13 of the Convention.

15. The Government did not dispute that the applicant was in a poor financial situation. However, the Government pointed out that court fees were required in order to ensure the proper administration of justice and prevent vexatious applications. In their observations, the Government stated that the applicant failed to submit the required evidence to prove his indigence which was a legal prerequisite to be eligible for legal aid. They maintained that the applicant had not qualified for legal aid, as he had not provided the certificate of indigence required according to Article 465 of the CCP.

16. The Court notes that the main reason for the dismissal of the applicant's legal aid request was his non-compliance with domestic law and procedures. The applicant therefore failed to exhaust available domestic remedies due to his own failure in observing the procedural requirements (see *Nold v. Germany*, no. 27250/02, § 88, 29 June 2006, and *Bingölbalı and others v. Turkey* (dec.), no 18443/08, 28 June 2011). The applicant cannot be assumed to have initiated the domestic proceedings properly in the absence of a certificate displaying his indigence.

17. Accordingly, the Court declares the application inadmissible for non-exhaustion of domestic remedies under Article 35 § 1 of the Convention.

For these reasons, the Court, unanimously,

Declares the application inadmissible.

Abel Campos
Deputy Registrar

Nebojša Vučinić
President