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

SECOND SECTION

DECISION

Application no. 2164/09
Kazım BARAN
against Turkey

The European Court of Human Rights (Second Section), sitting on 5 September 2017 as a Committee composed of:

Nebojša Vučinić, *President,*
Paul Lemmens,
Stéphanie Mourou-Vikström, *judges,*
and Hasan Bakırcı, *Deputy Section Registrar,*

Having regard to the above application lodged on 26 December 2008,

Having regard to the declaration submitted by the respondent Government on 17 March 2017 requesting the Court to strike the application out of the list of cases and the applicant's reply to that declaration,

Having deliberated, decides as follows:

FACTS AND PROCEDURE

1. The applicant, Mr Kazım Baran, is a Turkish national, who was born in 1940 and lives in Ankara.

2. The Turkish Government ("the Government") were represented by their Agent.

3. The applicant complained under Article 6 § 1 of the Convention about the alleged lack of fairness in the proceedings before the Supreme Military Administrative Court on account of his inability to access the classified documents submitted by the Ministry of Defence to that court in the course of the judicial proceedings.

4. The application had been communicated to the Government.

THE LAW

5. After the failure of attempts to reach a friendly settlement, by a letter of 17 March 2017 the Government informed the Court that they proposed to make a unilateral declaration with a view to resolving the issue raised by the application. They further requested the Court to strike out the application in accordance with Article 37 of the Convention.

6. The declaration provided as follows:

> "The Government hereby wishes to express by the way of unilateral declaration that the applicant's inability to access the classified documents submitted by the Ministry of Defence breached his right to a fair trial in the light of the well-established case-law of the *Cevahirli v. Turkey*, no.15067/04, 19 October 2010 and *Topal v. Turkey*, no. 3055/04, 21 April 2009.
>
> Consequently, the Government is prepared to pay the applicant 5,000 (five thousand euros) to cover any pecuniary and non-pecuniary damage. This sum will be converted into the national currency at the rate applicable on the date of payment, and will be free of any further taxes that may be applicable. It will be payable within three months from the date of notification of the decision taken by the Court pursuant to Article 37 § 1 of the European Convention on Human Rights. In the event of failure to pay this sum within the said three-month period, the Government undertakes to pay simple interest on it, from the expiry of that period until settlement, at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points. The payment will constitute the final resolution of the case."

7. By a letter of 18 April 2017, the applicant indicated that he was not satisfied with the terms of the unilateral declaration.

8. The Court reiterates that Article 37 of the Convention provides that it may at any stage of the proceedings decide to strike an application out of its list of cases where the circumstances lead to one of the conclusions specified, under (a), (b) or (c) of paragraph 1 of that Article. Article 37 § 1 (c) enables the Court in particular to strike a case out of its list if:

"for any other reason established by the Court, it is no longer justified to continue the examination of the application".

9. It also reiterates that in certain circumstances, it may strike out an application under Article 37 § 1 (c) on the basis of a unilateral declaration by a respondent Government even if the applicant wishes the examination of the case to be continued.

10. To this end, the Court has examined the declaration in the light of the principles emerging from its case-law, in particular the *Tahsin Acar* judgment (*Tahsin Acar v. Turkey* (preliminary objections) [GC], no. 26307/95, §§ 75-77, ECHR 2003-VI; see also *WAZA Sp. z o.o. v. Poland* (dec.), no. 11602/02, 26 June 2007; and *Sulwińska v. Poland* (dec.), no. 28953/03, 18 September 2007).

11. The Court has established in a number of cases, including those brought against Turkey, its practice concerning complaints about the lack of

fairness in the proceedings before the Supreme Military Administrative Court on account of his inability to access the classified documents submitted by the Ministry of Defence to that court in the course of the judicial proceedings (see, for example, *Topal v. Turkey*, no. 3055/04, §§ 12-17, 21 April 2009, and *Cevahirli v. Turkey*, no. 15067/04, §§ 10-14, 19 October 2010).

12. Having regard to the nature of the admissions contained in the Government's declaration, as well as the amount of compensation proposed the Court considers that it is no longer justified to continue the examination of the application (Article 37 § 1 (c)).

13. Moreover, in light of the above considerations, and in particular given the clear and extensive case-law on the topic, the Court is satisfied that respect for human rights as defined in the Convention and the Protocols thereto does not require it to continue the examination of the application (Article 37 § 1 *in fine*).

14. The Court considers that this amount should be converted into currency of the respondent State at the rate applicable at the date of payment, and paid within three months from the date of notification of the Court's decision issued in accordance with Article 37 § 1 of the European Convention on Human Rights. In the event of failure to settle within this period, simple interest shall be payable on the amounts in question at a rate equal to the marginal lending rate of the European Central Bank plus three percentage points.

15. Finally, the Court emphasises that, should the Government fail to comply with the terms of their unilateral declaration, the application could be restored to the list in accordance with Article 37 § 2 of the Convention (*Josipović v. Serbia* (dec.), no. 18369/07, 4 March 2008).

16. In view of the above, it is appropriate to strike the case out of the list.

For these reasons, the Court, unanimously,

Takes note of the terms of the respondent Government's declaration under Article 6 § 1 of the Convention and of the modalities for ensuring compliance with the undertakings referred to therein;

Decides to strike the application out of its list of cases in accordance with Article 37 § 1 (c) of the Convention.

Done in English and notified in writing on 28 September 2017.

Hasan Bakırcı
Deputy Registrar

Nebojša Vučinić
President