

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

SECOND SECTION

CASE OF BAŞTÜRK v. TURKEY

(Application no. 11318/10)

JUDGMENT

STRASBOURG

16 May 2017

This judgment is final but it may be subject to editorial revision.

COUNCIL OF EUROPE
CONSEIL DE L'EUROPE

In the case of Baştürk v. Turkey,

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

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

Having deliberated in private on 25 April 2017,

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

PROCEDURE

1. The case originated in an application (no. 11318/10) 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, Ms Songül Baştürk ("the applicant"), on 2 February 2010.

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

3. On 22 September 2015 the application was communicated to the Government.

4. The Government objected to the examination of the application by a Committee. After having considered the Government's objection, the Court rejects it.

THE FACTS

5. The applicant was born in 1978 and lives in Şanlıurfa.

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

7. On 22 July 2008 the applicant was dismissed from her post of officer in the army due to non-compliance with disciplinary rules and immoral behavior.

8. On 14 August 2008 the applicant brought an action before the Supreme Military Administrative Court and requested the annulment of her dismissal.

9. On 16 June 2009 the Supreme Military Administrative Court dismissed the applicant's case taking into account "secret documents" submitted by the Ministry of Defence. These documents were not disclosed to the applicant.

10. On 29 September 2009 the applicant's request for rectification was rejected by the same court.

RELEVANT DOMESTIC LAW

11. A description of the domestic law at the material time can be found in *Yavuz v. Turkey* ((dec.), no. 29870/96, 25 May 2000; and *Tanışma v. Turkey,* no. 32219/05, §§ 29-47, 17 November 2015.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 6 OF THE CONVENTION

12. Without relying on any Article of the Convention, the applicant complained that she had been denied a fair hearing by an independent and impartial tribunal since the two military officers who sit on the bench remain under the hierarchy of the military authorities and do not enjoy the same judicial guarantees as the other military judges. She further complained about the lack of fairness in the proceedings before the Supreme Military Administrative Court on account of her inability to have access to the classified documents submitted by the Ministry of Defence to that court in the course of the proceedings.

A. Concerning the independence and impartiality of the Supreme Military Administrative Court

1. Admissibility

13. The Government argued under Article 35 of the Convention that the applicant's complaint in respect of the independence and impartiality of the Supreme Military Administrative Court must be rejected for failure to exhaust domestic remedies. They maintained in this connection that the applicant failed to lodge a motion for the disqualification of the military judges.

14. The applicant did not comment on that argument.

15. The Court observes that the establishment and composition of the Supreme Military Administrative Court was expressly prescribed by constitution and law. Accordingly, any challenge by the applicant to the composition of the court for the simple reason that the judges sitting on the bench were members of the army would have been doomed to failure (see, *Yavuz v. Turkey* (dec.), no. 29870/96, 25 May 2000; and *mutadis mutandis, Satık v. Turkey (no. 2)*, no. 60999/00, § 39, 8 July 2008).

16. Thus, such a request before the national authorities would not have remedied the situation complained of. It follows that this objection should be dismissed. The Court also considers that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention, nor is it inadmissible on any other grounds. It must therefore be declared admissible.

2. Merits

17. The Court considers that this complaint should be examined under Article 6 § 1 of the Convention which reads as follows:

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

18. The Court reiterates that it has already examined a similar grievance in the case of *Tanışma v. Turkey* (no. 32219/05, §§ 68-84, 17 November 2015) and found a violation of Article 6 § 1 of the Convention. It has examined the present case and finds no particular circumstances which would require it to depart from its findings in the above-mentioned judgment.

19. There has therefore been a violation of Article 6 § 1 of the Convention on account of the lack of independence and impartiality of the Supreme Military Court.

B. Concerning access to the classified documents

20. The applicant complained about the fairness of the proceedings before the Supreme Military Administrative Court on account of her inability to have access to the classified documents submitted by the Ministry of Defence.

21. The Court notes that this complaint is linked to the one examined above and must therefore likewise be declared admissible.

22. Having regard to its finding of a violation of applicant's right to a fair hearing by an independent and impartial tribunal, the Court considers that it is not necessary to examine the other complaints under Article 6 of the Convention relating to the fairness of the proceedings before the domestic courts (see, among other authorities, *Ükünç and Güneş v. Turkey*, no. 42775/98, § 26, 18 December 2003; and *Sürer v. Turkey*, no. 20184/06, § 47, 31 May 2016).

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

23. The applicant claimed 60,000 euros (EUR) in respect of pecuniary damage and EUR 20,000 in respect of non-pecuniary damage. She further

claimed EUR 3,000 for costs and expenses but did not submit any invoice or any other documents in support of that claim.

24. The Government submitted that the applicant's just satisfaction claims as well as her claims for legal fees were excessive and unfounded.

25. As regards the pecuniary damage, the Court notes that it cannot speculate as to what the outcome of the proceedings compatible with Article 6 § 1 would have been. Accordingly, it considers that no award can be made to the applicant under this head. As regards non-pecuniary damage, ruling on an equitable basis, the Court awards the applicant EUR 6,000.

26. As for the costs and expenses, the Court reiterates that according to its case-law, an applicant is entitled to the reimbursement of costs and expenses only in so far as it has been shown that these have been actually and necessarily incurred and are reasonable as to quantum. In the present case, the applicant has not substantiated her claim for costs and expenses. Accordingly, the Court makes no award under this head.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Declares* the application admissible;

2. *Holds* that there has been a violation of Article 6 § 1 of the Convention on account of independence and impartiality of the Supreme Military Administrative Court;

3. *Holds* that it is not necessary to consider the applicant's other complaints under Article 6 of the Convention;

4. *Holds*
   (a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, EUR 6,000 (six thousand euros), plus any tax that may be chargeable to the applicant, in respect of non-pecuniary damage, to be converted into the currency of the respondent State at the rate applicable at the date of settlement;
   (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amount at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

5. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 16 May 2017, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Hasan Bakırcı	Nebojša Vučinić
Deputy Registrar	President