

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

SECOND SECTION

CASE OF ERÇİN v. TÜRKİYE

(Application no. 44621/19)

JUDGMENT

Art 3 (substantive) • Inhuman or degrading treatment • Court unable to establish responsibility on the part of the Government for the applicant's epileptic fit during his military service and his ensuing health complications • Deficiencies in his conscription could not, in and of themselves, give rise to such responsibility • Timely and comprehensive efforts taken to cater for the applicant's medical needs after the fit and hospital treatment provided, with his eventual discharge from military service
Art 6 § 1 (civil) • Very essence of right of access to a court impaired • Lack of weighty reasons justifying the imposition of legal fees exceeding and thus absorbing the total amount of non-pecuniary compensation awarded to the applicant
Art 6 § 1 (civil) • Lack of independence and impartiality of the Supreme Military Administrative Court • Military officers on the bench did not enjoy adequate constitutional safeguards as military judges

Prepared by the Registry. Does not bind the Court.

STRASBOURG

9 June 2026

FINAL

09/09/2026

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



In the case of Erçin v. Türkiye,

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

Arnfinn Bårdsen*, President*,
Saadet Yüksel,
Jovan Ilievski,
Oddný Mjöll Arnardóttir,
Gediminas Sagatys,
Juha Lavapuro,
Hugh Mercer*, judges*,

and Dorothee von Arnim, *Deputy Section Registrar,*

Having regard to:

the application (no. 44621/19) against the Republic of Türkiye 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 Hikmet Erçin ("the applicant"), on 17 July 2019;

the decision to give notice to the Turkish Government ("the Government") of the complaints concerning the applicant's conscription despite his health condition, his right of access to a court and the alleged lack of independence and impartiality of the Supreme Military Administrative Court and to declare inadmissible the remainder of the application;

the parties' observations;

Having deliberated in private on 19 May 2026,

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

INTRODUCTION

1. The case concerns the applicant's conscription despite his health condition and the alleged failure of the authorities to transfer him to a hospital following his admission to military service. It also concerns the fairness of the domestic proceedings before the Supreme Military Administrative Court – namely, the applicant's complaints concerning the imposition of fees exceeding the amount awarded to him in compensation and the alleged lack of independence and impartiality of the domestic court. The applicant relied on Articles 1, 3, 5 and 6 of the Convention.

THE FACTS

2. The applicant was born in 1992 and lives in Şanlıurfa. He was represented by Ms N. Paşa, a lawyer practising in Izmir.

3. The Government were represented by their Agent at the time, Mr Hacı Ali Açıkgül, former head of the Department of Human Rights of the Ministry of Justice of the Republic of Türkiye.

4. The facts of the case may be summarised as follows.

I. THE BACKGROUND TO THE CASE

5. According to a medical report issued by the Harran University Research and Training Hospital on 21 December 2004, the applicant suffers from epilepsy, has a disability rate of 65% and continually takes medication. He asserts that he is illiterate.

6. On 26 September 2011 the applicant registered with the Siverek Military Directorate ("the Military Directorate") to complete the procedure for compulsory military service. On the same day he was transferred to Siverek community health centre, where he underwent a medical check as part of his pre-enlistment examination. There, he filled in an information form in respect of his health status – allegedly with the help of a third person. When filling in the information form, the applicant responded to the questions on whether he had any health issues and medical reports in the affirmative; to the questions regarding whether he used any medicines, had any concerns about his health and had been hospitalised in the previous three years in the negative. During the ensuing medical examination, the applicant did not submit his medical report of 21 December 2004 (see paragraph 5 above) to the doctor examining him. At the end of the examination, the doctor (a certain S.O.) drew up a report which concluded that the applicant was fit for military service. That conclusion was recorded in the form of an abbreviation: "A.E." (*askerliğe elverişli* – "fit for military service"). The applicant signed a standard pre-worded statement at the end of the report which read: "I declare that the information in the attached information form is correct and that I do not object to the medical conclusion reached."

7. On 26 August 2012 the applicant joined the Manisa Kırkağaç Gendarmerie Command and started his compulsory military service. On 27 August 2012 he underwent the standard initial medical examination. The doctor examining him completed a form entitled "Soldier's Physical Fitness Card", selecting the option "unfit for sports" and adding in handwriting "epilepsy – transfer to neurology". According to the applicant's submissions, he requested medication for epilepsy from the Gendarmerie Command's infirmary; however, his request was refused.

8. On 2 September 2012 the applicant suffered an epileptic fit. According to the records held at the Gendarmerie Command, he lost consciousness and fell while climbing the stairs. An ambulance was called to the scene of the incident, as it was considered that the applicant might have hit his head and the right side of his body on the floor when he fell. The applicant was first taken to the regimental infirmary by ambulance. When he gained consciousness a few minutes later, he stated that he did not have with him his medication for epilepsy but had not informed any of his superiors of that fact. He also stated that he had not experienced any other epileptic fits since his conscription.

9. The applicant was immediately referred and admitted as an inpatient to a State hospital where he was put in Neurology Intensive Care Unit due to an increase in his epileptic seizures. On 4 September 2012 he was transferred to another hospital in Izmir, where he was kept in the intensive care unit until 12 September 2012. Later the applicant's treatment continued in the Neurology Service of the same hospital. On 21 September 2012 the applicant underwent surgery on his throat and arm for shortness of breath and blockage of blood vessels. On 22 September 2012 he was taken out of the Neurology Service and was placed in Otorhinolaryngology Polyclinic. Between that date and 16 May 2013, he was an inpatient in the hospital for extended periods of time and went through several surgical operations on his throat.

10. On 1 July 2013 a medical report was issued by a medical board at the GATA Military Hospital which stated that the applicant was unfit for military service. He was subsequently discharged from the army.

II. CRIMINAL INVESTIGATION INTO THE APPLICANT'S COMPLAINTS

11. On 25 February 2013 the applicant lodged a criminal complaint with the Siverek Public Prosecutor's Office, requesting the opening of criminal proceedings against those responsible for the medical negligence that had led to his epileptic fit and injury.

12. On 6 June 2013 the Siverek public prosecutor heard the applicant as a complainant. The applicant stated that when he had first registered with the Military Directorate, he had informed the officials that he was epileptic and should not be conscripted. He had then been examined at a health centre. Following a six-month delay, he had registered once again with the Military Directorate and had asked them to transfer him to the Diyarbakır Military Hospital. However, he had not been transferred to the hospital and had had to join the Manisa Gendarmerie Command, where he had not been given his medicine regularly. He had had an epileptic fit, had had to stay in intensive care and had undergone eight operations (see paragraphs 8 and 9 above). Had he been transferred to the Diyarbakır Military Hospital before his conscription, none of the ensuing incidents would have occurred. That is why he wished to lodge a complaint against the officials at the Military Directorate.

13. Subsequently, the Siverek public prosecutor separated the file regarding Dr S.O. (see paragraph 6 above) from that regarding the other officials at the Military Directorate. The investigation regarding Dr S.O. continued to be carried out by the Siverek public prosecutor; the file regarding the other officials was transferred to the Military Prosecutor's Office.

A. Investigation against Dr S.O.

14. On 13 July 2013 the Siverek public prosecutor transferred the file regarding Dr S.O. to the Governorship of Siverek ("the Governorship"), pursuant to Law no. 4483 on the prosecution of civil servants and other public officials ("Law no. 4483").

15. As part of the Governorship's preliminary investigation, on 23 August 2013, a doctor, who had been assigned as the investigator, took Dr S.O.'s statement. Dr S.O. maintained that on 26 September 2011 he had asked the applicant whether he had a chronic illness or whether he took any medicine on a regular basis; the applicant had not made any statement that he suffered from any such illness or regularly took any medicine. Dr S.O. stated that no medical report had been submitted to him by the applicant's relatives either (see paragraph 6 above). He had carried out the physical and neurological examination of the applicant and had not determined any indications of pathological problems. Epilepsy was a disease that could not be established by physical or neurological examination and could not be determined unless it was indicated by the person in question. Dr S.O. stated that during a medical examination of conscripts, when a conscript mentioned that he suffered from chronic diseases or any issue that needed a specialised doctor's attention, he would be routinely transferred to the relevant specialised hospital department. Dr S.O. also stated that an examination of the records would show that another person who had complained of a back problem on the same day as the applicant's examination had been transferred to the hospital's orthopaedics department.

16. On 26 August 2013 the investigating doctor prepared a preliminary investigation report, which mainly reiterated Dr S.O.'s statements and concluded that there was no need for the Governorship to authorise Dr S.O.'s prosecution.

17. On 18 September 2013, on the basis of the preliminary investigation report, the Governorship issued a decision not to authorise the prosecution of Dr S.O.

18. On 18 December 2013 the Gaziantep Administrative Court of Appeal upheld an objection lodged by the applicant against that decision and annulled it. The Court of Appeal found that the Governorship had failed to establish whether the medical report recording the applicant's disability (see paragraph 5 above) had been registered in the Military Directorate's records, as asserted by the applicant (see paragraph 12 above). The court also found that if the report had indeed been registered, the Governorship had been obliged to clearly set out in its decision whether Dr S.O. had been able to gain access to the Military Directorate's records and the reasons for his failure to take account of the medical report.

19. On 12 March 2014 the Governorship decided once again not to authorise Dr S.O.'s prosecution, reiterating the grounds on which it had relied in its previous decision (see paragraphs 16 and 17 above).

20. On 19 June 2014 the Siverek public prosecutor issued a decision not to prosecute Dr S.O., pursuant to Law no. 4483 (see paragraph 14 above). He stated that the Governorship had issued a decision not to authorise Dr S.O.'s prosecution and that that decision had become final, given the fact that the applicant had not lodged an objection against it. On 11 August 2014 the Siverek Magistrate's Court rejected an objection lodged by the applicant against the public prosecutor's decision.

B. Investigation into the officials' actions at the Military Directorate

21. On an unspecified date the Diyarbakır military prosecutor initiated an investigation into the applicant's claims. Within that context, the applicant gave a statement to the Diyarbakır military prosecutor, maintaining that he had been given the information form at the Military Directorate but that he had taken it to the health centre without any understanding of its purpose. He had had the form filled in by a third person (see paragraph 6 above) and had taken it to Dr S.O., who had signed it without asking him any questions. He had not objected at the time to the report finding him fit for military service. However, ten days later, he had realised that he had forgotten to submit the medical report regarding his disability and had handed it in at the Military Directorate.

22. During the course of the investigation, the Diyarbakır military prosecutor also obtained an expert report, which concluded that the officials concerned had not been at fault.

23. On 12 November 2013 the Diyarbakır military prosecutor decided not to prosecute the officials concerned. He found that the applicant had responded in the negative to the questions in the information form regarding any medications he had taken, had not objected to the report concluding that he had been fit for military service, and had not proved that he had submitted to the Military Directorate at a later point the medical report showing his disability. Accordingly, the procedure followed in conscripting him for military service had been in line with the law and the officials concerned had not been negligent or at fault.

24. On 31 January 2014 the Diyarbakır Military Court dismissed an objection lodged by the applicant against the Diyarbakır military prosecutor's decision. In doing so, the Military Court stated that during the investigation, documents from various directorates had been obtained in order to establish whether the applicant was illiterate, as he had claimed (see paragraph 5 above). It had been found that there was nothing to indicate that he was literate. He had filled in the form at the health centre with the help of a third person, and the signature on the form did not belong to him; accordingly, the

officials at the Military Directorate (who had simply given him the information form and had not taken part in the filling of the form) had not been at fault.

III. COMPENSATORY PROCEEDINGS BEFORE THE SUPREME MILITARY ADMINISTRATIVE COURT

25. On 16 July 2013 the applicant brought an action against the Ministry of Defence and the Gendarmerie General Command in the Supreme Military Administrative Court ("Military Administrative Court"), seeking 20,000 Turkish liras (TRY) in respect of compensation for pecuniary damage and TRY 100,000 in respect of compensation for non-pecuniary damage. He argued that even though he had informed the officials at the Military Directorate of his medical condition, he had been found fit for military service. Following his conscription, it had been determined that he suffered from epilepsy; nevertheless, he had not been supplied with the medicine that he had needed to treat that condition. He had eventually suffered an epileptic fit, which had led to serious complications. He argued that the State administration had been guilty of a "service fault" (*hizmet kusuru* – that is, it had acted unsatisfactorily in the provision of a public service); it was therefore liable for compensation.

26. Both the Ministry of Defence and the Gendarmerie General Command were represented by lawyers whose addresses were indicated as those of the defendant administrative bodies.

27. By a decision of 31 July 2013, the applicant was granted legal aid.

28. On 17 September 2014 the Military Administrative Court allowed the applicant's claim in part. After summarising the relevant legislation governing the determination of fitness for military service, the court stated that before deciding on a person's eligibility for military service, further tests and examinations – if required – should be carried out regarding any health issues indicated by the person concerned. In filling in the information form of 26 September 2011, the applicant had failed to mention his medical report showing that he was 65% disabled, and he had not objected to the finding that he was fit for military service. However, he had also responded in the affirmative to the questions posed in the same information form regarding whether he had had any health problems and any medical reports (see paragraphs 5 and 6 above). Furthermore, according to the applicant, during that procedure, the authorities had not taken account of the submissions that he had made about his epilepsy. Accordingly, the State administration's failure to carry out further tests and examinations to establish whether he had been fit for military service constituted a "service fault".

29. As for the applicant's claims regarding the authorities' alleged negligence following his conscription, the Military Administrative Court stated that the applicant's epilepsy had been diagnosed immediately after his

admission to military service and that the period between the decision to transfer him to a hospital and his actual transfer had been very short (see paragraphs 7-9 above) – particularly so given the fact that one day during that period (30 August 2012) had been a public holiday. The applicant had not informed the authorities of the medicine he had been using; however, after his condition had been detected, the authorities had provided him with everything that he had required. Accordingly, there had been no "service fault" during the period following the applicant's conscription.

30. The Military Administrative Court decided not to award the applicant any compensation for pecuniary damage as he had not shown that he had worked before or after his military service and had not substantiated the expenses allegedly incurred by his family members in accompanying him during his hospitalisation. It awarded him TRY 3,000 (approximately 1,052 euros (EUR) at the exchange rate in force at the relevant time) in respect of non-pecuniary damage, finding that he must have suffered some harm caused by his being conscripted despite his epilepsy, even though his time as a conscript had been very short. In respect of legal fees, it ruled that the State administration was to pay the applicant TRY 1,500 (approximately EUR 526); however, it also ruled that the applicant was to pay the State administration TRY 3,900 (approximately EUR 1,368). In calculating the latter amount, the domestic court ruled that – in accordance with point 10 of the Scale of Minimum Advocates' Fees – the applicant was to pay the State administration (i) TRY 2,400 (approximately EUR 842) for his failed claims for compensation for pecuniary damage (calculated by the application of a statutory rate to the amount claimed under that head, pursuant to Article 14 of Legislative Decree no. 659 and Article 12 of the Scale of Minimum Advocates' Fees), and (ii) a fixed fee of TRY 1,500 (approximately EUR 526) for his unsuccessful claims for compensation for non-pecuniary damage.

31. On 3 June 2015 another chamber of the Military Administrative Court rejected a request lodged by the applicant for a rectification of the judgment, finding that the judgment had been in accordance with the relevant law.

IV. PROCEEDINGS BEFORE THE CONSTITUTIONAL COURT

32. On 5 March 2014 the applicant lodged an individual application with the Constitutional Court, complaining of a violation of the prohibition of ill-treatment of conscripts on account of the authorities' alleged negligence regarding his medical condition and the judicial authorities' decisions regarding his criminal complaint and administrative action. He also complained of a violation of his right to a fair trial in the light of the alleged lack of independence and impartiality of the Military Administrative Court. Lastly, he argued that that court's ruling (obliging him to pay legal fees that were higher than the compensation awarded to him) had breached his right of

access to a court. In 2015 he lodged two other individual applications, raising similar complaints.

33. By a decision of 23 January 2019, the Constitutional Court joined all three applications lodged by the applicant and then rejected them. In respect of the applicant's complaint regarding the prohibition of ill-treatment, the Constitutional Court stated at the outset that the case concerned the State's positive obligation to take foreseeable measures with regard to the applicant's medical condition and to establish an effective judicial mechanism capable of providing redress for the harm suffered by him. It noted that it was in dispute between the parties whether the applicant had informed the authorities at the Military Directorate of his medical condition. While the applicant had made contradictory remarks in that regard, according to his statement to the Diyarbakır military prosecutor, he had deposited the medical report regarding his condition with the Military Directorate ten days after his initial examination. Accordingly, it could not be said that the applicant had not been given the opportunity to submit the relevant documents or that the authorities had failed to examine them. That said, although the applicant had informed the authorities of his medical condition immediately after his admission to military service and the doctor examining him had referred him to a hospital, he had only been transferred to a hospital after he had had an epileptic fit (see paragraphs 7-9 above). The Military Administrative Court had acknowledged the "service fault" and had awarded the applicant TRY 3,000 in compensation for non-pecuniary damage (see paragraph 30 above). Consequently, the applicant could no longer be considered to be a victim of the alleged violation of the prohibition of ill-treatment.

34. As for the alleged violation of the applicant's right of access to a court on account of the imposition of legal fees exceeding the compensation awarded to him, the Constitutional Court stated that the payment of legal fees to the State administration's lawyers when actions were dismissed was regulated by law. Moreover, under an amendment to Law no. 1602 on Military Administrative Courts that came into effect in April 2013 – that is, before the applicant had brought his action in the Military Administrative Court – it had become possible to increase the amount of the initial monetary claim during court proceedings. As legal fees were calculated on the basis of the amount indicated in the statement of claim, it had been open to the applicant to lodge a lower claim when bringing the action in question and then to increase his claim during the proceedings, which would have led to the imposition of lower legal fees. The applicant had chosen of his own free will not to follow that course. Accordingly, the legal fees imposed on him had not been disproportionate. The Constitutional Court concluded that the applicant's complaint regarding his right of access to a court had been inadmissible as manifestly ill-founded.

35. As regards the alleged lack of independence and impartiality of the Military Administrative Court, the Constitutional Court referred to its

previous decisions on the matter and concluded that there was nothing to cause prejudice to the independence and impartiality of the courts in question. That complaint had also been inadmissible as manifestly ill-founded.

RELEVANT LEGAL FRAMEWORK

I. LAW NO. 1111 ON MILITARY SERVICE

36. The relevant provisions of Law no. 1111 on military service, which was repealed on 26 June 2019 with the entry into force of Law no. 7179 on military recruitment, read as follows:

Section 1

"Every male who is a national of the Republic of Turkey is obliged to perform military service, in accordance with the provisions of this Law."

Section 10

"The principles governing liability for compulsory military service and the circumstances under which this obligation shall be considered to have been fulfilled are set out below:

...

(8) Persons who, pursuant to the Turkish Armed Forces Health and Fitness Regulation (Regulation no. 86/11092 of 24 November 1986 – *Türk Silahlı Kuvvetleri Sağlık Yeteneği Yönetmeliği*), are physically unfit for military service shall be exempted from military service.

..."

Section 14

"The procedure whereby conscripts undergo medical examinations in order to determine whether they are fit for military service, and whereby their educational status, professions and qualifications are established, is referred to as the 'pre-enlistment examination' (*yoklama*).

...

The medical examinations of conscripts shall be carried out in accordance with the procedures and principles laid down in the Turkish Armed Forces Health and Fitness Regulation.

..."

Section 28

"Those who have undergone the pre-enlistment examination shall be classified either as fit for military service or unfit for military service. Those who are unfit for military service shall not be conscripted.

..."

II. TURKISH ARMED FORCES HEALTH AND FITNESS REGULATION

37. The relevant provision of the Turkish Armed Forces Health and Fitness Regulation, as in force at the material time, provided as follows:

Section II - Medical examinations of conscripts

Article 5

"Pursuant to the Military Service Law, medical examinations of conscripts shall be conducted, in the places where the military recruitment office is situated, primarily by the family physician with whom the conscript is registered ... or, if none is available, by a single physician at the nearest official public-health institution or military hospital, in accordance with the following procedure:

(1) The conscript's mental and physical condition and internal organs shall be carefully examined; [his] pulse and blood pressure shall be measured; [and his] height and weight shall be determined while [he is] unclothed. Chest capacity during inhalation and exhalation and any diseases or defects detected upon examination shall be recorded. A written declaration shall be obtained from the conscript, in accordance with [the guide entitled] "Information Form on Health Status to be Applied to Conscripts During Pre-Enlistment Examinations", stating whether he has any known illness or [health] defect and whether he has any health complaints ... . Copies of any medical documents in the conscript's possession concerning any illness or defect that he has declared shall also be collected and kept together with the declaration at the military recruitment office.

(2) Conscripts in respect of whom no decision can be reached on account of an illness or defect declared or a disorder detected by the physical examination, and who need to be kept under observation, evaluated by a specialist physician, or assessed through further investigations such as laboratory or imaging tests, shall, if examined by a family physician or a single physician at an official public-health institution, be referred to the nearest military hospital. If the conscript was examined by a single physician at a military hospital, he shall be referred to the relevant specialist.

(3) The authority empowered to issue medical reports containing a decision to ... defer clearance or a declaration of unfitness for military service shall be the medical board of the military hospital....

(4) No advanced examinations (such as laboratory or imaging tests) shall be required for the detection or screening of illnesses or defects not declared by the conscript or not detected by signs or symptoms [noted] during [the conscript's] physical examination. A finding of fitness for military service as a result of such examinations shall not [be taken to] indicate that the conscript was in perfect health on the date of examination, and any illness or defect that is discovered after [the conscript in question] is [accepted for military service] shall not, by itself, constitute proof or an indication that it arose during military service.

..."

III. DOMESTIC LAW AND PRACTICE REGARDING THE SUPREME MILITARY ADMINISTRATIVE COURT

38. The domestic law and practice regarding the Supreme Military Administrative Court prior to 2017 was summarised in *Tanışma v. Turkey*

(no. 32219/05, §§ 29-50, 17 November 2015). With the entry into force of Law no. 6771 of 21 January 2017, Article 157 of the Constitution, which regulated the Supreme Military Administrative Court, was repealed and the following paragraph was added to Article 142 of the Constitution:

> "... No military courts other than disciplinary courts may be formed. However, when a state of war [prevails] military courts ... with jurisdiction to try offences committed by military personnel in the course of performing their duties may be formed."

39. Article 46 of the now repealed Law no. 1602 on the Supreme Military Administrative Court, which was in force at the material time, read, in so far as relevant, as follows:

> **Notification and Reply**
>
> **Article 46**
>
> "...
>
> The parties may not assert any rights [that are] based on defences [raised] or second applications lodged after the expiry of the prescribed time-limit. [Additional sentence added on 11 April 2013:] However, in actions for compensation (*tam yargı davaları*), the amount indicated in the statement of claim may be increased once only, until the final judgment is rendered, without regard to time-limits or other procedural rules, provided that the corresponding court fee is paid ..."

IV. SCALE OF MINIMUM ADVOCATES' FEES

40. The relevant provisions of the Scale of Minimum Advocates' Fees in force at the time of the proceedings instituted by the applicant read as follows:

> **Article 10**
>
> "(1) In actions for compensation for non-pecuniary damage, an advocate's fee shall be determined on the basis of the amount awarded, in accordance with Part Three of the Scale.
>
> (2) In the event that an action is dismissed in part, the fee to be awarded to the opposing party's counsel, as calculated under Part Three of the Scale, may not exceed the fee [to be paid to] the claimant's counsel.
>
> ...
>
> (4) Where an action for compensation for non-pecuniary damage is brought together with a claim for compensation for pecuniary damage or with other claims that may be assessed in monetary terms, the advocate's fee relating to such compensation for non-pecuniary damage shall be awarded as a separate item."
>
> **Article 12**
>
> "(1) If the subject matter of the legal services listed in Part Two, Section Two of the Scale is money or a matter that can be assessed in monetary terms, the advocate's fee ... shall be determined in accordance with Part Three of the Tariff.
>
> (2) However, the fee awarded may not exceed the amount accepted or dismissed."

PART THREE

Fees Payable for Legal Services Rendered Before Judicial Authorities and in respect of Enforcement or Bankruptcy Proceedings Regarding Matters Involving Money or Matters That Can Be Assessed in Monetary Terms

"(1) For the first TRY 30,000.00 – 12%

..."

41. Article 14 of Legislative Decree no. 659 of 26 September 2011 read, in so far as relevant, as follows:

Article 14

"(1) ... in judicial and administrative ... proceedings and hearings conducted by ... legal advisors and lawyers acting in their capacity as the representatives of the administrative bodies ..., in the event that such actions are concluded in favour of the administrative bodies, an advocate's fee shall be awarded to the administrative bodies on the basis of the amount [provided by] the relevant legislation.

...

(3) Payments to lawyers whose services are procured fall outside the scope of this Article."

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

42. The applicant complained that the negligence of State authorities before and following his conscription had caused serious harm to his health and had violated the prohibition of ill-treatment. By finding him fit for military service despite his health condition, and failing to transfer him to a hospital and provide him with his medicine following his conscription, the State authorities had caused him to suffer an epileptic fit, which had led to further deterioration of his health. He argued that despite these deficiencies, the authorities had failed to provide redress for the damage caused to him. The applicant relied on Articles 1, 3 and 5 of the Convention.

43. The Court, being the master of the characterisation to be given in law to the facts of the case (see *Radomilja and Others v. Croatia* [GC], nos. 37685/10 and 22768/12, §§ 110-26, 20 March 2018) considers that the applicant's complaint falls to be examined only under Article 3 of the Convention, which reads as follows:

"No one shall be subjected to torture or to inhuman or degrading treatment or punishment."

A. Admissibility

1. The parties' submissions

44. The Government argued that the applicant could no longer be considered to be a victim of the alleged violation. They stated that the Military Administrative Court had found that the authorities' failure to refer the applicant for further tests during the procedure followed prior to his conscription had constituted a "service fault" (see paragraph 28 above). The Military Administrative Court had also concluded that the applicant must have suffered some harm owing to his conscription and had awarded him TRY 3,000 in respect of non-pecuniary damage (see paragraph 30 above). Referring to the relevant case-law of the Court, the Government submitted that the domestic court had recognised a violation of the applicant's rights and had afforded him appropriate and sufficient redress. As regards the amount of the redress provided to the applicant, they stated that if a State had introduced a compensatory remedy, the Court had to leave a wider margin of appreciation to that State in order to allow it to organise the remedy in a manner consistent with its own legal system and traditions and consonant with the standard of living in the country concerned. The domestic courts could make awards on the basis of the amounts awarded at domestic level – even if that resulted in amounts that were lower than those awarded by the Court in similar cases.

45. The applicant contested the Government's submissions without raising any specific arguments regarding his victim status.

2. The Court's assessment

(a) General principles

46. The Court reiterates that it falls, firstly, to the national authorities to redress any violation of the Convention. In this regard, the question of whether an applicant can claim to be the victim of the violation alleged is relevant at all stages of the proceedings under the Convention (see *Scordino v. Italy (no. 1)* [GC], no. 36813/97, § 179, ECHR 2006-V, and *Gäfgen v. Germany* [GC], no. 22978/05, § 115, ECHR 2010). A decision or measure favourable to the applicant is not, in principle, sufficient to deprive him of his status as a "victim" for the purposes of Article 34 of the Convention unless the national authorities have acknowledged (either expressly or in substance) and then afforded redress for the breach of the Convention (see *Gäfgen*, cited above, § 115, with further references). As to the redress which is appropriate and sufficient in order to remedy a breach of a Convention right at national level, the Court has generally considered this to be dependent on all the circumstances of the case, having regard, in particular, to the nature of the Convention violation at stake (ibid., § 116).

47. In the case of a breach of Articles 2 and 3 of the Convention – which rank as the most fundamental provisions of the Convention – compensation for the non-pecuniary damage arising from the breach should in principle be part of the range of available remedies (see *Shestopalov v. Russia*, no. 46248/07, § 58, 28 March 2017, with further references). The question of whether the applicant received compensation for the damage caused by the treatment contrary to Article 3 (comparable to just satisfaction, as provided for under Article 41 of the Convention) is an important indicator for assessing whether the breach of the Convention was redressed (see *Kopylov v. Russia*, no. 3933/04, § 143, 29 July 2010, and *Shestopalov*, cited above, § 58).

48. In assessing the amount of compensation awarded by a domestic court, the Court considers, on the basis of the material in its possession, what it would have done in the same position (ibid., § 59, with further references). Even if the method of calculation provided for in domestic law does not correspond exactly to the criteria established by the Court, an analysis of the relevant case-law should enable domestic courts to award sums that are not unreasonable in comparison with the awards made by the Court in similar cases (see *Scordino*, § 213, and *Shestopalov*, § 61, both cited above).

(b) Application of those principles to the present case

49. The Court notes that, in the action for compensation lodged by the applicant (see paragraph 25 above), the Military Administrative Court concluded that the State authorities' failure to carry out further tests and examinations regarding the health issues indicated by the applicant constituted a "service fault" (see paragraph 28 above). In finding that the State authorities were responsible for harm caused to the applicant as a result of their omissions in the provision of public service, the Military Administrative Court referred to the applicant's conscription (albeit only for a brief period) despite his health condition, without establishing any connection between his conscription and the epileptic fit, which had occurred on 2 September 2012, a few days after the beginning of his compulsory military service (see paragraphs 7-8 above). The domestic court further found that the fact that the applicant had not been transferred to a hospital immediately after his diagnosis on 27 August 2012 did not constitute a fault on the part of the State administration, given that the period between his diagnosis and his transfer to hospital on 2 September 2012 had been very short (especially given the one-day public holiday that fell between those dates – see paragraph 29 above).

50. The Court notes that, in the present application, the applicant complained that the deficiencies in the pre-conscription procedure leading to his conscription, as well as the failure of the domestic authorities to transfer him to a hospital and provide his medicine following his conscription had led to him having an epileptic fit during his military service (see paragraph 42 above). Without prejudice to its own assessment regarding the State authorities' compliance with their positive obligations, the Court considers

that – in view of the scope of the applicant's complaint and in the absence of any clear assessment by the Military Administrative Court regarding any link between the authorities' alleged failures and the epileptic fit experienced by him during his military service – it cannot definitively conclude that the domestic court's findings constituted a recognition of the violation alleged by the applicant – even in substance. Moreover, even assuming that there was such recognition, the Court considers for the following reasons that the redress provided by that court was not sufficient and therefore not capable of removing the applicant's victim status.

51. The Court observes that the Military Administrative Court awarded the applicant EUR 1,052 in respect of non-pecuniary damage. However, it also ruled that the applicant was to pay the State administration EUR 1,368 in legal fees. Although it further awarded the applicant EUR 526 in legal fees (see paragraph 30 above), the Court notes that that amount cannot be taken into account in calculating the total sum received by the applicant, as it was not accorded to the applicant himself, but his lawyer (see *Musa Tarhan v. Turkey*, no. 12055/17, § 85, 23 October 2018). Accordingly, given the fact that the legal fees imposed on him exceeded the compensation awarded for non-pecuniary damage, in substance the applicant was not afforded any redress. In any event, regardless of the negation of the compensation for non-pecuniary damage awarded to the applicant by virtue of the imposition of liability for higher legal fees – a matter which will be examined by the Court in relation to the applicant's right of access to a court (see paragraph 83-91 below) – the Court considers that the main award of EUR 1,050 still fell substantially short of the amounts awarded by the Court in similar cases (see, *mutatis mutandis*, *Taştan v. Turkey*, no. 63748/00, § 38, 4 March 2008; *Akkoyunlu v. Turkey*, no. 7505/06, § 52, 13 October 2015; and *Placì v. Italy*, no. 48754/11, § 87, 21 January 2014; see also, *Shestopalov*, cited above, § 62, and *Avcıoğlu v. Türkiye*, no. 59564/16, § 88, 17 October 2023, in both of which the Court concluded that the awards made by the domestic courts had been less than that which it generally awarded in similar cases, thereby not constituting sufficient redress).

52. In this regard, the Court notes, in particular, that in *Akkoyunlu* (cited above, § 52), it awarded the applicant EUR 15,000 in respect of non-pecuniary damage for the finding of a violation of Article 3 of the Convention on account of the domestic authorities' failure to provide the applicant during his military service with prompt and appropriate medical assistance for an eye problem from which he had been suffering; that failure had led to the loss of sight in his eye. In the considerably earlier case of *Taştan v. Turkey* (cited above, § 38), the Court found a violation of Article 3 owing to the applicant's conscription at the age of 71 and forced participation in military activities and awarded him EUR 5,000. In *Placì v. Italy* (cited above, § 87), in which the Court found a violation of Article 3 on account of the military authorities' failure to detect the applicant's vulnerability in a timely manner and the

repeated punishments imposed on him during his time in the army, the applicant was awarded EUR 40,000 in non-pecuniary damage.

53. In view of the foregoing, the Court finds that the applicant can still claim to be a victim of the alleged violation under Article 3 of the Convention and dismisses the Government's objection of loss of victim status.

(c) Conclusion regarding admissibility

54. The Court notes that this complaint is neither manifestly ill-founded nor inadmissible on any other grounds listed in Article 35 of the Convention. It must therefore be declared admissible.

B. Merits

1. The parties' submissions

55. The applicant argued that although he had informed the doctor at the health centre that he was epileptic, the doctor had nevertheless issued a report finding him fit for military service. Moreover, although his condition had been diagnosed the day after his admission to the Gendarmerie Command (see paragraph 7 above), he had not been transferred to a hospital as requested by the doctor examining him and had not received his medicine. The combination of those omissions had led to his epileptic fit, which had resulted in serious complications that had required extensive surgeries exacerbating his disability (see paragraphs 8-9 above). He further argued that the authorities had failed to initiate criminal proceedings against those responsible (see paragraphs 11-24 above) and that the compensation proceedings had not afforded him any redress.

56. The Government referred to the Court's case-law and stated that in the event that an applicant failed to inform the authorities that he or she was suffering from an illness, the State authorities' judgment on the applicant's fitness for military duty and his or her conscription could not be questioned. They submitted that this had indeed been the situation in the present case. During the medical examination of 26 September 2011, the applicant had not submitted the report detailing his epilepsy and had signed a statement that he did not oppose the conclusion of that medical examination that he was fit for military service (see paragraph 6 above).

57. As regards the period following the applicant's admission to the Gendarmerie Command, the Government stated that his epilepsy had been diagnosed immediately after his conscription and that he had suffered an epileptic attack shortly afterwards. During his stay at the Gendarmerie Command, the applicant had not actually engaged in any activity regarding his military service and he had not been involved in any military exercise at the time that he had suffered the epileptic attack. The applicant's epileptic seizure had not been caused by any military activity or occupation.

Summarising the extensive surgeries undergone by the applicant, the Government submitted that he had been provided with all necessary medical care. He had eventually been discharged from the army on health grounds (see paragraph 10 above) and had thus not actually served in the army in practice.

58. The Government concluded that had the applicant informed the authorities of his condition, they would have taken the necessary measures at that stage, as they had done following the applicant's diagnosis and epileptic fit.

2. The Court's assessment

(a) General principles

59. The Court reiterates that States have an obligation to take measures designed to ensure that individuals within their jurisdiction are not subjected to torture or inhuman or degrading treatment or punishment. These measures should afford effective protection, in particular, to vulnerable persons (such as military conscripts) and include reasonable steps aimed at preventing ill-treatment of which the authorities had or ought to have had knowledge (see *Placì*, cited above, § 49).

60. It is generally for a State to determine the standards of health and fitness for potential conscripts, having regard to the fact that the role of the armed forces differs among States. However, conscripts should be physically and mentally equipped for challenges related to the particular characteristics of military life and for the special duties and responsibilities incumbent on members of the army. While completing military service may not be in any way overwhelming for a healthy young person, it could constitute an onerous burden on an individual lacking the requisite stamina and physical strength owing to the poor state of his health. Accordingly, given the practical demands of military service, States must introduce an effective system of medical supervision for potential conscripts in order to ensure that their health and well-being will not be put in danger and their human dignity will not be undermined during military service. State authorities – in particular drafting military commissions and military medical commissions – must carry out their responsibilities in such a manner that persons who are not eligible for military service on health grounds are not registered and consequently admitted to serve in the army (see *Kayankin v. Russia*, no. 24427/02, § 87, 11 February 2010, and *Placì*, cited above, § 50).

61. The positive obligation inherent under Article 3 of the Convention was held to impose a duty on the Contracting States to ensure that a person should be able to perform his military service in conditions which are compatible with respect for human dignity, that the procedures and methods of military training do not subject him to distress or suffering of an intensity exceeding the unavoidable level of hardship inherent in military discipline

and that, given the practical demands of such service, his health and well-being are adequately secured by, among other things, providing him with the medical assistance he requires (see *Chember v. Russia*, no. 7188/03, § 50, ECHR 2008, and *Baklanov v. Ukraine*, no. 44425/08, § 65, 24 October 2013).

62. The State has a primary duty to put in place rules geared to the level of risk to life or limb that may result not only from the nature of military activities and operations, but also from the human element that comes into play when a State decides to call up ordinary citizens to perform military service. Such rules must require the adoption of practical measures aimed at the effective protection of conscripts against the dangers inherent in military life and appropriate procedures for identifying shortcomings and errors liable to be committed in that regard by those in charge at different levels (see *Chember*, cited above, § 50).

63. Conscripts are entirely in the hands of the State, and events that occur in the army lie wholly, or in large part, within the exclusive knowledge of the authorities. Accordingly, the State is under an obligation to account for any injuries or health problems allegedly resulting from acts or omissions on the part of the military authorities (see *Beker v. Turkey*, no. 27866/03, §§ 41-42, 24 March 2009, and *Akkoyunlu*, cited above, § 34).

(b) Application of those principles to the present case

64. As noted above, in the compensation proceedings brought by the applicant against the State administration, the Military Administrative Court acknowledged a fault in the provision of public service relating to the deficiencies in the procedure followed at the health centre (see paragraph 28 above). Before reaching that conclusion, the Military Administrative Court also pointed to the applicant's failure during the examination on 26 September 2011 to mention the medical report establishing his disability, as well as the fact that he had not objected to the finding that he was fit for military service (ibid.). While it is true that during the investigation against the officials at the Military Directorate, the Diyarbakır Military Court found the applicant's claim regarding his illiteracy to be substantiated and concluded that the signature on the information form did not belong to him (see paragraph 24 above), the Court notes that those findings could only be established at a later stage, following the applicant's submissions to that effect, and that the domestic authorities carrying out the pre-conscription procedure could not be expected to verify the authenticity of the signatures given by future conscripts in such forms and reports. Accordingly, the domestic authorities could not be criticised for having considered the applicant's approval to the report finding him fit for military service as genuine and having relied on that submission in conscripting him. Nevertheless, the Court cannot but note that in the same form, the applicant also responded to the question on whether he had any health issues and medical reports in the affirmative (see paragraph 6 above). As concluded by

the Military Administrative Court (see paragraph 28 above), that submission should have prompted the officials concerned to carry out further tests and examinations in order to establish whether the applicant had been fit for military service. However, those tests and examinations had not been performed.

65. In that connection, the Court also observes that the applicant stated that he had submitted his 2004 medical report establishing his disability to the health centre some ten days after the medical examination of 26 September 2011 (see paragraph 21 above). During the preliminary investigation against Dr S.O., the Gaziantep Administrative Court of Appeal overturned the Governorship's decision, ordering the latter to establish whether the report could be found in the Military Directorate's records and whether Dr S.O. could have had access to it (see paragraph 18 above). The Court notes that that order appears to have been left unaddressed, as the subsequent decisions contain no information regarding that matter (see paragraphs 19-20 above).

66. The Court accordingly considers that, as established by the Military Administrative Court, the applicant's conscription despite his medical condition was a result of the failure of the relevant State authorities to carry out a comprehensive medical examination prior to finding him fit for military service. It finds that such an examination would have allowed the authorities to determine in due time the applicant's ineligibility for military service.

67. That said, the Court considers – in view of the specific nature of the authorities' failure to carry out a comprehensive medical examination and the applicant's own shortcomings in that regard (see paragraph 64 above) – that the deficiencies in the applicant's conscription cannot, in and of themselves, give rise to a responsibility on the part of the Government for his epileptic attack and ensuing health complications. Therefore, it remains for the Court to determine whether any failure on the part of the authorities following the applicant's conscription – viewed alone or taken together with the deficiencies in his conscription – could form the basis of such responsibility.

68. In so far as the applicant's complaint concerns the military authorities' failure to transfer him to a hospital in time, the Court notes that the doctor carrying out the medical examination immediately after the applicant's admission to the Gendarmerie Command diagnosed his epilepsy and requested his transfer to a neurology clinic (see paragraph 7 above). In doing so, the doctor did not specify anything regarding the timing or the modalities of the applicant's consultation with a neurologist or imply in any way that that transfer needed to be carried out urgently. Nor did he indicate that the applicant needed to be provided with any particular medicine or make a note of any information provided by the applicant in that respect.

69. In assessing the applicant's complaint regarding that matter, the Military Administrative Court found that the period between the determination of the diagnosis on 27 August 2012 and the applicant's

eventual transfer to the hospital on 2 September 2012 had been so short that it had not constituted a "service fault". In that finding, the court also took account of the one-day public holiday on 30 August 2012, which had fallen within the period concerned (see paragraph 29 above). The Court observes that the applicant's eventual transfer to the hospital was not carried out by the military authorities pursuant to the doctor's initial instruction to that effect, but because the applicant had suffered an epileptic fit (see paragraphs 8 and 9 above). Nevertheless, it cannot speculate on when he would have been transferred to the neurology clinic had he not suffered an epileptic fit, nor assume that the authorities would have failed to carry out that transfer. In this regard the Court takes account of the Government's submission that the applicant was not engaged in any military activities during his stay at the Gendarmerie Command and that the applicant's epileptic fit was not caused by any military activity or occupation (see paragraph 57 above). Accordingly, in view of the brevity of the five-day period between 27 August and 2 September 2012 (excluding the public holiday in between) – and given the fact that the doctor did not indicate any urgency regarding the applicant's transfer to a neurology clinic – the Court finds that the military authorities cannot be considered to have failed in their positive obligation to provide the applicant with timely care simply on account of the fact that the transfer was not carried out during that period.

70. As for the applicant's allegations regarding the authorities' failure to provide him with medication for his epilepsy following his conscription (see paragraph 7 above) – allegations which were raised by him during the course of the criminal investigation and the proceedings before the Military Administrative Court (see paragraphs 12 and 25 above) – the Court notes that no supporting documents or any findings have been issued to that effect by the domestic authorities. The Military Administrative Court stated that the applicant had not informed the authorities of the medicine he had been using; it added, however, that he had been provided with everything that he had required after his condition had been detected (see paragraph 29 above). The Court finds no reason to depart from that finding and observes that at no stage did the applicant provide any information regarding the treatment that he had received before his conscription. In the information form that he filled in prior to his conscription, the applicant responded in the negative to the question regarding whether he used any medicines (see paragraph 6 above); during the ensuing proceedings he did not advance any arguments challenging that information. The form filled in by the doctor carrying out the applicant's initial medical examination following his conscription did not contain any information in that respect either (see paragraphs 7 and 68 above). Moreover, when asked about his medication immediately after his epileptic fit, the applicant stated that he did not have it with him in the barracks but had not informed any of his superiors of that fact (see paragraph 8 above). Be that as it may, in the present case the applicant failed to adduce any evidence

identifying the specific medical treatment required for his condition during his seven-day stay at the Gendarmerie Command. Nor did he provide evidence capable of enabling the Court to conclude that the absence of such treatment, in and of itself, caused his epileptic seizure or, on the balance of probabilities, materially increased the risk thereof to a degree sufficient to establish legally relevant causation. In view of the above, the Court cannot ascribe any weight to his allegations regarding the authorities' failure this respect.

71. Furthermore, the Court takes account of the Government's submission that the applicant was not engaged in any military activities during his stay at the Gendarmerie Command or at the time of his epileptic fit (see paragraph 57 above) and also points to the indication given by the doctor after the applicant's initial medical examination to the effect that he could not engage in sports (see paragraph 7 above). The applicant did not assert at any stage before the domestic authorities or the Court that he had had to perform any physical exercise during the five-day period between his diagnosis and the epileptic fit, or argue that the conditions in the military (or any punishment or treatment that he had been subjected to) could have triggered the latter (contrast *Placì*, cited above, § 55). The Court therefore considers that there is nothing in the present case to demonstrate that the State authorities failed to ensure that the applicant's health and well-being would not be put in danger (compare *Kayankin*, cited above, § 92, and contrast *Placì*, cited above, § 58; for the relevant principles, see paragraphs 59-62 above).

72. It is true that the applicant must have suffered distress on account of his epileptic fit and the ensuing complications that he experienced at the hospital. Nevertheless, in view of all of the above-noted elements concerning the period following the applicant's conscription, the Court is unable to clearly establish that the alleged failures on the part of the authorities played a role in his suffering. In that regard, it also takes note of the authorities' timely and comprehensive efforts to cater for the applicant's medical needs following his epileptic fit and the treatment provided to him at a State hospital, as well as his eventual discharge from military service (see paragraphs 9-10 above; compare *Kayankin*, § 92, in which the applicant was discharged from the army as soon as it was established that he was not fit for military service). Moreover, as regards the ensuing health complications, the Court notes that the applicant did not submit any arguments or documents which could allow it to definitively conclude that those complications, for which he had to undergo surgical operations, had resulted from the epileptic fit of 2 September 2012 (see paragraph 9 above).

73. It follows that there has been no violation of Article 3 of the Convention.

II. ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION IN RESPECT OF THE APPLICANT'S RIGHT OF ACCESS TO A COURT

74. The applicant complained that the legal fees imposed on him by the Military Administrative Court had exceeded the amount of non-pecuniary compensation awarded to him, thereby violating his right of access to a court. He relied on Article 6 § 1 of the Convention, which, in so far as relevant, 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..."

A. Admissibility

75. The Government did not raise any grounds of inadmissibility.

76. The Court notes that this complaint is neither manifestly ill-founded nor inadmissible on any other grounds listed in Article 35 of the Convention. It must therefore be declared admissible.

B. Merits

1. The parties' submissions

77. The applicant argued that there had been a breach of his right of access to a court in that the Military Administrative Court had ordered him to pay the legal fees of the administration, which had exceeded the compensation for non-pecuniary damage awarded to him.

78. Referring to the relevant case-law of the Court, the Government stated that financial limitations could be imposed in the interests of the fair administration of justice and that the requirement to pay fees in respect of proceedings before the civil courts could not be regarded as constituting a restriction of the right of access to a court that was incompatible *per se* with Article 6 § l of the Convention. They noted that the Military Administrative Court had granted legal aid to the applicant (see paragraph 27 above) and that he had been able to bring his action without paying any court fees. After summarising Article 14 of Legislative Decree no. 659 (see paragraph 41 above) and the findings of the Military Administrative Court in the applicant's case (see paragraph 30 above), they concluded that the applicant had not been placed in a disadvantageous position by the imposition of the legal fees at issue. The amount of the fees imposed had had a legal basis and had been a result of the applicant's unjustifiably inflated claim for compensation. The applicant must have foreseen that excessive compensation claims might result in the imposition of lawyer's fees that were in proportion to the claims dismissed by the court.

2. The Court's assessment

(a) General principles

79. The Court reiterates that the right of access to a court is not absolute but may be subject to limitations; such limitations are permitted by implication, since the right of access by its very nature calls for regulation by the State – regulation that may vary in time and in place according to the needs and resources of the community and of individuals. The limitations applied must not restrict the access left to the individual in such a way or to such an extent that the very essence of the right is impaired. Furthermore, a limitation will not be compatible with Article 6 § 1 of the Convention if it does not pursue a legitimate aim and if there is not a reasonable relationship of proportionality between the means employed and the aim sought to be achieved (see *Zubac v. Croatia* [GC], no. 40160/12, § 78, 5 April 2018, and *Nalbant and Others v. Turkey*, no. 59914/16, § 32, 3 May 2022, with further references).

80. As regards the costs of proceedings, the Court has already concluded that the "loser pays" rule and the related rule requiring one party to pay the other party's costs (including advocates' fees) in proportion to their success in the proceedings – the value of which will depend on the value of the claim – discourages potential litigants from lodging inflated claims with the courts. These rules could therefore be viewed as constituting a restriction that hinders the right of access to a court (see *Klauz v. Croatia*, no. 28963/10, § 81, 18 July 2013).

81. By discouraging ill-founded litigation and excessive costs, these rules generally pursue the legitimate aim of ensuring the proper administration of justice and protecting the rights of others (ibid, § 84; see also *Cindrić and Bešlić v. Croatia*, no. 72152/13, § 96, 6 September 2016). Accordingly, they cannot be regarded as incompatible *per se* with Article 6 § 1 of the Convention (see *Klauz*, cited above, § 82). However, the level of the costs assessed in the light of the particular circumstances of a given case is a material factor in determining whether or not a person enjoyed the right of access to a court (see *Stankov v. Bulgaria*, no. 68490/01, § 52, 12 July 2007; *Klauz*, cited above, § 82; and *Čolić v. Croatia*, no. 49083/18, § 44, 18 November 2021).

82. The Court has considered it excessive (and therefore an impairment to the very essence of the right of access to a court) where high court fees were not justified by the applicant's financial situation but were instead calculated on the basis of a set statutory percentage of the sum at stake in the proceedings in question (see *Nalbant and Others*, cited above, § 36, with further references).

(b) Application of those principles to the present case

83. The Court notes that at the end of the compensation proceedings brought by the applicant, the Military Administrative Court allowed the applicant's claims in part and awarded him an amount corresponding to EUR 1,052 in respect of non-pecuniary damage. The domestic court went on to declare the applicant liable for the legal fees of the State administration, calculating a total amount of EUR 1,368 (EUR 842 for the applicant's rejected claims for compensation for pecuniary damage calculated on the basis of a set statutory percentage, and a fixed fee of EUR 526 for his claims for compensation for non-pecuniary damage) (see paragraph 30 above). Although the domestic court also awarded the applicant EUR 526 in legal fees, the Court notes that that amount cannot be taken into account in the calculation of the total amount paid to the applicant, because, as it has already found in *Musa Tarhan* (cited above, § 85), the beneficiary of the sum awarded under that head was not the applicant but his lawyer (see also paragraph 51 above). Accordingly, the legal fees imposed on the applicant well exceeded the amount awarded to him in respect of non-pecuniary damage and there was a restriction on the applicant's right of access to court (see, *mutatis mutandis*, *Čolić*, cited above, § 45). It remains to be established whether such restriction pursued a legitimate aim and if there was a reasonable relationship of proportionality between the means employed and the aim sought to be achieved (see the case-law quoted in paragraph 79 above, and *Čolić*, cited above, § 45).

84. The Court accepts that in the Turkish legal system, the "loser pays" rule and the imposition of the other party's legal fees in proportion to the rejected part of the claim in question pursue the same legitimate aim as that established in *Klauz* and *Cindrić and Bešlić* (both cited above) – that is, to ensure the proper administration of justice by discouraging potential litigants from lodging inflated claims with the courts and to avoid unreasonably high litigation costs (see paragraph 81 above).

85. As to the proportionality between that legitimate aim and the means employed, the Court reiterates that if there are no weighty reasons to justify the negation of compensation awarded to a party by very high fees – as is the situation in the present case – such a situation makes litigation pointless and renders that party's right to a court merely theoretical and illusory (see *Čolić*, cited above, § 46).

86. The Court notes that (as also pointed out by the Government – see paragraph 78 above) during the proceedings before the Military Administrative Court, the applicant was granted legal aid (see paragraph 27 above). At the end of the proceedings, the domestic court calculated the State administration's legal fees by adding the fixed fee due in respect of the applicant's rejected claims regarding non-pecuniary damage to the amount it calculated by applying the statutory rate to the applicant's failed claims in respect of pecuniary damage (see paragraphs 30 and 83 above). Nevertheless,

in declaring the applicant liable for the fee due in respect of his unsuccessful claims, the domestic court did not take any account of the applicant's financial situation and the legal aid that it had granted earlier in the proceedings.

87. Moreover, even assuming that the applicant's claim in respect of pecuniary damage was excessive and that he failed to submit documents proving that he had actually incurred the damage claimed, the Court considers that his conduct during the proceedings in question cannot justify the negation of the compensation awarded to him (see, *mutatis mutandis*, *Klauz*, cited above, § 93). In this connection, given that the Military Administrative Court upheld the applicant's action in part and established a "service fault" on the part of the State administration, it cannot be argued that the applicant's action for damages was ill-founded and thus unwarranted. Furthermore, the Ministry of Defence and the Gendarmerie General Command, as defendants, were both represented by their respective lawyers and not by lawyers whose services were procured pursuant to Article 14 § 3 of Legislative Decree no. 659 (see paragraphs 26 and 41 above). Accordingly, there is nothing to show in the present case that the State incurred any additional costs on account of the fact that the applicant set his claim for damages too high (see, *mutatis mutandis*, *Klauz*, cited above, § 95). Nor is there any indication in the case file or in the findings of the domestic court that the applicant behaved in such a way as to cause the State administration to incur unnecessary costs (see *Musa Tarhan*, cited above, § 80).

88. Consequently, neither of the two main reasons for sanctioning the procedural misconduct of lodging inflated claims – namely, to discourage unwarranted litigation and unreasonably high litigation costs – were applicable in the present case (see, *mutatis mutandis*, *Klauz*, cited above, § 95).

89. In this connection, the Court cannot agree with the Constitutional Court's finding that the applicant could have avoided the imposition of the legal fees calculated by the application of the statutory rate had he initially claimed a lower amount and subsequently increased that amount during the course of the proceedings (see paragraph 34 above). Although it is true that the applicant brought his action in the Military Administrative Court following the entry into force of the legal provision allowing for an increase during proceedings of the amount claimed (see paragraph 39 above; and contrast *Čolić*, cited above, § 54), he could not be reproached for having lodged his full claim from the start, rather than initially claiming a sum lower than that which he actually sought. To conclude otherwise would be to encourage potential litigants to abuse the system in order to avoid paying the other party's legal fees and would run counter to the very purpose of the "loser pays" rule (see paragraph 84 above) and the related method of calculating legal fees in proportion to the rejected part of the claim in question.

90. In view of the foregoing, the Court concludes that given the circumstances of the present case, there were no weighty reasons that could justify the imposition of the legal fees that absorbed the total amount awarded to the applicant. That restriction therefore impaired the very essence of the applicant's right of access to a court.

91. It follows that there has been a violation of Article 6 § 1 of the Convention.

III. ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION IN RESPECT OF THE LACK OF INDEPENDENCE AND IMPARTIALITY OF THE MILITARY ADMINISTRATIVE COURT

92. The applicant complained that the Supreme Military Administrative Court had lacked independence and impartiality.

93. The Government contested the applicant's submissions, arguing that military officers sitting on the bench were provided with constitutional protection from external interference in carrying out their duties.

94. The Court notes that it examined a similar complaint in the case of *Tanışma v. Turkey* (no. 32219/05, §§ 74-84, 17 November 2015) and held that the Supreme Military Administrative Court could not be regarded as an independent and impartial tribunal, since the two military officers sitting on the bench did not enjoy adequate constitutional safeguards as military judges. There is nothing in the present case that would justify the Court departing from that finding.

95. The Court therefore declares this complaint admissible and concludes that there has been a violation of Article 6 § 1 of the Convention under this head as well (see *Taşçı v. Turkey*, no. 43868/06, §§ 12-14, 10 October 2017, and *B.I. v. Turkey*, no. 18308/10, §§ 54-56, 11 December 2018).

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

96. Article 41 of the Convention provides:

> "If the Court finds that there has been a violation of the Convention or the Protocols thereto, and if the internal law of the High Contracting Party concerned allows only partial reparation to be made, the Court shall, if necessary, afford just satisfaction to the injured party."

A. Damage

97. The applicant claimed EUR 2 million in respect of pecuniary damage and EUR 2 million in respect of non-pecuniary damage.

98. The Government contested that claim, finding it unsubstantiated and excessive.

99. The Court notes that the applicant failed to submit any documents in support of the alleged pecuniary damage. It therefore rejects this claim.

However, having regard to the nature of the violation found, it awards the applicant, on an equitable basis, EUR 2,000 in respect of non-pecuniary damage, plus any tax that may be chargeable.

B. Costs and expenses

100. The applicant also claimed EUR 120,000 for the costs and expenses incurred before the Court.

101. The Government contested that claim.

102. According to the Court's case-law, an applicant is entitled to the reimbursement of costs and expenses only in so far as it has been shown that these were actually and necessarily incurred and are reasonable as to quantum. In the present case, the applicant did not submit any documents in proof of the alleged costs and expenses he had incurred. The Court therefore rejects the applicant's claim under this head (compare *Bülent Bekdemir v. Türkiye*, no. 42881/18, § 73, 17 June 2025).

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Declares* the application admissible;

2. *Holds* that there has been no violation of Article 3 of the Convention;

3. *Holds* that there has been a violation of Article 6 § 1 of the Convention on account of a breach of the applicant's right of access to a court;

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

5. *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 2,000 (two thousand euros), plus any tax that may be chargeable, 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;

6. *Dismisses* the remainder of the applicants' claim for just satisfaction.

Done in English, and notified in writing on 9 June 2026, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Dorothee von Arnim Deputy Registrar	Arnfinn Bårdsen President