

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

SECOND SECTION

CASE OF YİVLİ v. TURKEY

(Application no. 12723/11)

JUDGMENT

STRASBOURG

14 November 2017

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



In the case of Yivli v. Turkey,

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

Julia Laffranque, *President,*
Jon Fridrik Kjølbro,
Stéphanie Mourou-Vikström, *judges,*
and Hasan Bakırcı, *Deputy Section Registrar,*

Having deliberated in private on 17 October 2017,

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

PROCEDURE

1. The case originated in an application (no. 12723/11) 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, Mr İmdat Yivli ("the applicant"), on 3 December 2010.

2. The applicant was represented by Mr H. İşler, a lawyer practising in Ankara. The Turkish Government ("the Government") were represented by their Agent.

3. On 22 September 2015 the complaints concerning the alleged independence and impartiality of the Supreme Military Administrative Court, the fairness of the proceedings before that court on account of the applicant's inability to access the classified documents submitted by the Ministry of Defence, and the non-communication of the written opinion of the public prosecutor were communicated to the Government and the remainder of the application was declared inadmissible pursuant to Rule 54 § 3 of the Rules of Court.

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

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1979 and lives in Hatay.

6. The applicant was an officer in the Army. Based on classified investigation reports, his contract was terminated. He had no access to the classified reports. On 8 June 2009 the applicant initiated proceedings

against the Ministry of Defence with the Supreme Military Administrative Court to have annulment of the impugned decision.

7. Relying on the classified investigation reports, and the written opinion of the public prosecutor, which were not communicated to the applicant, on 16 March 2010 the Supreme Military Administrative Court dismissed the applicant's case. On 18 May 2010 the applicant's request for rectification was also rejected by the Supreme Military Administrative Court. The final decision was notified on the applicant on 8 June 2010.

II. RELEVANT DOMESTIC LAW

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

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 6 OF THE CONVENTION

9. Relying on Article 6 § 1 of the Convention, the applicant complained that he had been denied a fair hearing by an independent and impartial tribunal since the two military officers who sat on the bench of the Supreme Military Administrative Court remained under the hierarchy of the military authorities and did not enjoy the same judicial guarantees as the other military judges. He further complained about the lack of fairness in the proceedings before the Supreme Military Administrative Court on account of his inability to have access to the classified documents submitted by the Ministry of Defence to that court in the course of the proceedings and the non-communication to him the written opinion of the public prosecutor submitted to the trial court.

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

1. Admissibility

10. 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. In this connection, they maintained that the applicant failed to lodge a motion, requesting the disqualification of the military judges.

11. The applicant did not comment on that argument.

12. The Court observes that the establishment and composition of the Supreme Military Administrative Court was expressly prescribed by the Constitution and law. Accordingly, any objection filed by the applicant regarding 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, *mutadis mutandis*, *Satık v. Turkey* (no. 2), no. 60999/00, § 39, 8 July 2008, and *Yavuz v. Turkey* (dec.), no. 29870/96, 25 May 2000).

13. 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

14. 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 finds no particular circumstances which would require it to depart from its findings in the above-mentioned judgment.

15. 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 the complaints regarding access to the classified documents and the non-communication of the written opinion of the public prosecutor

16. The applicant complained about the fairness of the proceedings before the Supreme Military Administrative Court on account of his inability to have access to the classified documents submitted by the Ministry of Defence and the non-communication of the written opinions of the public prosecutor.

17. The Court notes that these complaints are linked to the one examined above and must therefore likewise be declared admissible.

18. Having regard to its finding of a violation of the applicant's right to a fair hearing by an independent and impartial tribunal, the Court considers that it is not necessary to examine these complaints (see, among other authorities, *Incal v. Turkey*, 9 June 1998, § 74, *Reports of Judgments and Decisions* 1998-IV; *Ükünç and Güneş v. Turkey*, no. 42775/98, § 26, 18 December 2003; and *Yeltepe v. Turkey*, no. 24087/07, § 33, 14 March 2017).

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

19. The applicant did not submit a claim for just satisfaction. Accordingly, the Court considers that there is no call to award him any sum on that account.

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 the lack of independence and impartiality of the Supreme Military Administrative Court;

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

Done in English, and notified in writing on 14 November 2017, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Hasan Bakırcı Deputy Registrar	Julia Laffranque President