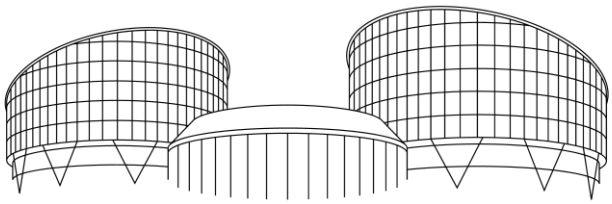

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

SECOND SECTION

CASE OF KARAARSLAN v. TURKEY

(Application no. 4027/05)

JUDGMENT

STRASBOURG

27 July 2010

FINAL

27/10/2010

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

In the case of Karaarslan v. Turkey**,**

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

Françoise Tulkens, *President,*
Ireneu Cabral Barreto,
Danutė Jočienė,
Dragoljub Popović,
András Sajó,
Işıl Karakaş,
Guido Raimondi, *judges,*
and Stanley Naismith, *Section Registrar,*

Having deliberated in private on 6 July 2010,

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

PROCEDURE

1. The case originated in an application (no. 4027/05) 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 Utku Karaarslan ("the applicant"), on 3 December 2004. The applicant was represented by Mr C. Çalış, a lawyer practising in Ankara. The Turkish Government ("the Government") were represented by their Agent.

2. On 13 May 2009 the President of the Second Section decided to give notice of the application to the Government. It was also decided to examine the merits of the application at the same time as its admissibility (Article 29 § 3).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

3. The applicant was born in 1970 and lives in Ankara.

4. The applicant was dismissed from his job at military facilities following disciplinary proceedings instituted by the Supreme Disciplinary Board of the Ministry of Defence against him for misconduct in office. He subsequently lodged an application with the Supreme Military Administrative Court against the Ministry of Defence for the annulment of his dismissal.

5. The Ministry of Defence submitted certain documents and information to the Supreme Military Administrative Court regarding the applicant's dismissal, which were classified as “secret documents” under Article 52 (4) of Law no. 1602 on the Supreme Military Administrative Court. These documents were not disclosed to the applicant.

6. On 1 July 2004 the Supreme Military Administrative Court held a hearing where it rejected the applicant's request. The written opinion submitted by the principal public prosecutor to this court during the proceedings was not communicated to the applicant.

7. On 23 September 2004 the Supreme Military Administrative Court dismissed the applicant's rectification request.

II. RELEVANT DOMESTIC LAW

8. A description of the relevant domestic law can be found in the decision of *Karayiğit v. Turkey* ((dec.), no. 45874/05, 23 September 2008).

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION

9. The applicant complained under Article 6 § 1 of the Convention that the principle of equality of arms had been infringed on account of his lack of access to the classified documents and information submitted by the Ministry of Defence to the Supreme Military Administrative Court and the non-communication to him of the written opinion of the principal public prosecutor attached to this court.

A. Admissibility

10. The Government asked the Court to dismiss the complaint regarding the non-communication of the written opinion of the principal public prosecutor for failure to exhaust domestic remedies under Article 35 § 1 of the Convention. The Government maintained in this regard that the applicant had not brought this complaint to the attention of the Supreme Military Administrative Court, nor had he requested the written opinion of the principal public prosecutor from this court.

11. The Court observes that it dismissed a similar preliminary objection in the case of *Miran v. Turkey* (no. 43980/04, § 12, 21 April 2009). It sees no reason to do otherwise in the present case and therefore rejects the Government's objection.

12. The Court notes that this part of the application is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. It further notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

1. Lack of access to classified documents

13. The Government contended that the applicant had been aware of the content of the documents submitted to the Supreme Military Administrative Court under Article 52 (4) of Law no. 1602.

14. The Court notes that it has previously considered similar complaints and found a violation of Article 6 § 1 of the Convention (see *Güner Çorum v. Turkey*, no. 59739/00, §§ 24-31, 31 October 2006; *Aksoy (Eroğlu) v. Turkey*, no. 59741/00, §§ 24-31, 31 October 2006; *Miran*, cited above, §§ 13 and 14; and *Topal v. Turkey*, no. 3055/04, §§ 16 and 17, 21 April 2009). The Court finds no particular circumstances in the instant case which would require it to depart from this jurisprudence.

15. There has accordingly been a violation of Article 6 § 1 of the Convention on account of the applicant's lack of access to the classified documents submitted to the Supreme Military Administrative Court.

2. Non-communication of the principal public prosecutor's written opinion

16. The Government argued that the applicant had the opportunity of examining the case file, which included the written opinion of the principal public prosecutor, at any time. They further argued that the opinion of the principal public prosecutor had no effect on the decision of the court in administrative proceedings and that the role of the public prosecutor in administrative proceedings differed from those in criminal proceedings.

17. The Court points out that it has previously examined similar complaints and found a violation of Article 6 § 1 of the Convention (see *Miran*, cited above, §§ 15-18). It considers that the Government have not put forward any fact or argument in the instant case which would require it to depart from its previous findings.

18. There has accordingly been a violation of Article 6 § 1 of the Convention on account of the non-communication of the written opinion of the principal public prosecutor to the applicant.

II. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

19. The applicant complained that he had been denied a fair hearing by an independent and impartial tribunal in violation of Article 6 § 1 of the Convention as the Supreme Military Administrative Court had been composed of military judges and officers and it had acted as a first and only instance. He further maintained under this provision that it had not been possible to know in advance which chamber of this court would examine the case. Lastly, he alleged violations of Articles 8, 13, 17 and 18 of the Convention on the basis of the above-mentioned facts, without further substantiation.

20. In the light of all the material in its possession, and in so far as the matters complained of are within its competence, the Court does not find that these complaints disclose any appearance of a violation of the rights and freedoms set out in the Convention or its Protocols (as regards the complaint concerning the independence and impartiality of the Supreme Military Administrative Court, see *Yavuz and Others v. Turkey* (dec.), no. 29870/96, 25 May 2000; as for the complaints concerning appeal procedures, chamber assignments and access to classified documents, see *Karayiğit* (dec.), cited above).

21. It follows that this part of the application should be rejected as being manifestly ill-founded, pursuant to Article 35 §§ 3 and 4 of the Convention.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

A. Damage and costs and expenses

22. The applicant claimed 50,000 euros (EUR) in respect of pecuniary damage and EUR 25,000 for non-pecuniary damage. He also claimed EUR 5,750 for the costs and expenses incurred before the domestic courts and the Court. That sum comprised legal representation costs (EUR 685 for legal representation during the domestic proceedings and EUR 5,000 for representation before the Court), domestic court fees (EUR 53) and translation expenses (EUR 540). Apart from submitting an invoice from the translation office, the applicant only documented a part of his expenses before the domestic courts and did not submit any proof of the costs and expenses incurred before the Court.

23. The Government contested these claims as being unsubstantiated and fictitious. They further contended that the applicant could not make any claims in respect of the costs and expenses incurred during the domestic proceedings.

24. The Court does not discern any causal link between the violation found and the pecuniary damage alleged; it therefore rejects this claim.

However, it considers that the applicant must have suffered non-pecuniary damage which the finding of a violation of the Convention in the present judgment do not suffice to remedy. Ruling on an equitable basis, it awards the applicant EUR 6,500 (see *Güner Çorum*, cited above, § 39; *Aksoy (Eroğlu)*, cited above, § 39; *Miran*, cited above, § 22; and *Topal*, cited above, § 23).

25. As for costs and expenses, 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 have been actually and necessarily incurred and were reasonable as to quantum. In the present case, regard being had to the documents in its possession and the above criteria, the Court considers it reasonable to award the applicant the sum of EUR 540 for his costs and expenses.

B. Default interest

26. The Court considers it appropriate that the default interest should be based on the marginal lending rate of the European Central Bank, to which should be added three percentage points.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Declares* the complaints under Article 6 § 1 of the Convention concerning the applicant's lack of access to classified documents submitted to the Supreme Military Administrative Court and the non-communication to the applicant of the written opinion of the principal public prosecutor admissible and the remainder of the application inadmissible;

2. *Holds* that there has been a violation of Article 6 § 1 of the Convention on account of the applicant's lack of access to classified documents submitted to the Supreme Military Administrative Court and the non-communication to the applicant of the written opinion of the principal public prosecutor;

3. *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, the following amounts to be converted into Turkish liras at the rate applicable at the date of settlement:

(i) EUR 6,500 (six thousand five hundred euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;

(ii) EUR 540 (five hundred and forty euros), plus any tax that may be chargeable to the applicant, in respect of costs and expenses;

(b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

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

Done in English, and notified in writing on 27 July 2010, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Stanley Naismith
Registrar

Françoise Tulkens
President