CASE OF AKIN ŞAHİN v. TURKEY

(Application no. 9871/05)

JUDGMENT

STRASBOURG

14 September 2010

This judgment will become final in the circumstances set out in Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of Akın Şahin 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,
Nona Tsotsoria,
Işıl Karakaş, *judges,*
and Stanley Naismith, *Section Registrar,*

Having deliberated in private on 24 August 2010,

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

PROCEDURE

1. The case originated in an application (no. 9871/05) 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 Akın Şahin ("the applicant"), on 28 December 2004. The applicant was represented by Mr M. An, 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 § 1).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

3. The applicant, a former lieutenant, was born in 1975 and lives in Istanbul.

4. After being expelled from the armed forces for disciplinary and ethical reasons, mainly on account of his excessive indebtedness and his failure to discharge his debts, the applicant brought an action before the Supreme Military Administrative Court against the Ministry of Defence for the annulment of the expulsion order.

5. An action for fraud was subsequently filed against the applicant before the criminal courts.

6. The Ministry of Defence submitted certain documents and information to the Supreme Military Administrative Court regarding the applicant's expulsion, 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.

7. On 11 November 2003 the Supreme Military Administrative Court held a hearing, which the applicant attended, and on 30 March 2004 it rejected the applicant's case. The court refused to hear the applicant's witnesses, holding that the witness statements would not make any difference to the applicant's position in the circumstances of the present case and that the examination could be sufficiently conducted on the basis of the documents in the case file.

8. On 6 July 2004 the Supreme Military Administrative Court dismissed the applicant's rectification request.

II. RELEVANT DOMESTIC LAW

9. 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 OF THE CONVENTION

10. The applicant complained under Article 6 § 3 (b) 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.

11. The Court notes that this complaint 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.

12. As regards the merits of this complaint, 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.

13. The Court considers in the first place that this complaint should be examined under Article 6 § 1 of the Convention in its civil limb. The Court further 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 v. Turkey*, no. 43980/04, §§ 13 and 14, 21 April 2009; 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.

14. 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.

II. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

15. The applicant complained under Article 6 § 1 of the Convention that he had been denied a fair hearing by an independent and impartial tribunal as the Supreme Military Administrative Court had been composed of military judges and officers. He maintained under Article 6 § 3 (a) and (d) of the Convention that this court had refused to hear his witnesses and under Article 6 § 2 that it had failed to postpone the proceedings pending the outcome of the criminal case filed against him. Lastly, he claimed that his expulsion from the armed forces on account of his debts violated Article 1 of Protocol No. 4.

16. 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 complaint regarding his proposed witnesses, see *Perna v. Italy* [GC], no. 48898/99, § 29, ECHR 2003-V; as regards the complaint under 6 § 2, see, *mutatis mutandis*, *Tamay and Others v. Turkey* (dec.), no. 38287/04, 13 May 2008).

17. 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

18. The applicant claimed 300,000 euros (EUR) in respect of pecuniary damage and EUR 100,000 for non-pecuniary damage. As for the costs and expenses, the applicant claimed EUR 10,000 for his legal representation before the Court. He submitted a fee agreement executed with his representative in support of his claim but did not provide a time sheet demonstrating the hours spent by his representative on the case.

19. The Government contested these claims as being unsubstantiated and fictitious.

20. 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 does 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; *Topal*, cited above, § 23).

21. 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 are reasonable as to quantum. In the present case, regard being had to the documentation in its possession and the above criteria, the Court considers it reasonable to award the applicant the sum of EUR 2,000 for costs and expenses.

22. 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 complaint under Article 6 § 1 of the Convention concerning the applicant's lack of access to the classified documents submitted to the Supreme Military Administrative Court admissible and the remainder of the application inadmissible;

2. *Holds* that there has been a violation of Article 6 § 1 of the Convention;

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 2,000 (two thousand 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 14 September 2010, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Stanley Naismith Françoise Tulkens
Registrar President

AKIN ŞAHİN v. TURKEY JUDGMENT