

## 28.03.2002, E.2001/5, K.2002/42

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**Subject** : Municipalities, Finance, Limits and restrictions, Access to courts, Taxpayer / Fee, payment / Action, against municipality, conditions.

### Headnotes:

The requirement to pay half of the municipal participation fees before bringing an action against a municipality is unconstitutional in so far as it restricts the freedom to protect fundamental rights.

### Summary:

The Ninth Chamber of the Council of State (the High Administrative Court) applied to the Constitutional Court claiming that the last paragraph of Article 89.a of the Law on Municipal Revenues was contrary to the Constitution.

The challenged provision provides: "In order to bring an action against municipal participation fees, it is compulsory to pay half of the fees".

Article 36 of the Constitution provides: "Everyone has the right to litigate either as plaintiff or defendant and the right to a fair trial before the courts through lawful means and procedures. No court shall refuse to hear a case within its jurisdiction". The right to litigate has a characteristic of a fundamental right and it is one of the most efficient guarantees of the enjoyment of other fundamental rights and freedoms. The most efficient and guaranteed way of defending oneself is to exercise one's rights to go before the courts. To ensure individuals the right to litigate before the courts constitutes a precondition of a fair trial. Moreover, in the judgements of the European Court of Human Rights on fair trial it was found that fair, public and expeditious characteristics of judicial proceedings are of no value at all if there are no judicial proceedings (judgment of *Golder v. United Kingdom*, 21.02.1975, paragraph 36).

The challenged provision requires taxpayers to pay half of the imposed participation fees to the municipality in question before bringing an action. It is understood that the reasoning of the challenged provision is that municipalities must be able to collect the fees as soon as possible in order to accomplish their projects without delay, to minimise the number of cases and to alleviate the burden on the courts. However, according to Article 13 of the Constitution, fundamental rights and freedoms may be restricted only by law and for the reasons mentioned in the relevant without infringing upon their essence. In Article 36 of the Constitution,

the freedom to claim rights is regulated but no reasons of restriction are mentioned in that article. For these reasons, the last paragraph of Article 89.a of the Law on Municipal Revenues is contrary to Constitution.

The aforementioned provision was struck down. Judge Ersoy had a dissenting opinion.

Supplementary information:

Case no. E.2001/5, K.2002/42.