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Headnotes:

A requirement for a fee to be paid when a power of attorney is presented to public authorities, including courts, is not unconstitutional. The fact that such a fee is not paid once the document has been stamped, allowing for a ten day period for completion, does not have a significant impact on the trial period, when other requirements are taken into consideration.

Summary:

I. Emirdag Peace Court asked the Constitutional Court to assess the compliance with the Constitution of Article 27.3 of Law no. 1136 on Lawyers (as amended by Law no. 4667).

Article 27 of Law no. 1136 stipulates that a fee is payable, when a power of attorney is presented to public authorities. The fee is charged by placing a stamp on the paper presented. Under Article 27, if a power of attorney is presented with no stamp, the authorities do not have to accept it. Ten days will be allowed for payment and if this is not forthcoming, the power of attorney will not be processed. The Emirdag Court suggested that this procedure would slow down court trials, and lengthen trial periods.

II. The Court found that in the Turkish legal system, representation by advocate is optional apart from certain exceptional cases. A power of attorney is a legal act that may be realised by the unilateral will of a client. In this way, the client confers powers of representation upon his attorney. Moreover, Article 396 of the Law of Obligations allows for the removal or resignation of an attorney, both at the client's behest or that the attorney's.

The last paragraph of Article 141 of the Constitution states that it is the duty of the judiciary to conclude trials as quickly as possible and at minimum cost. The ten day period required by Article 27 is not a condition which has to be satisfied before a case is submitted; rather, it is proof that a fee has been paid. If it is viewed against the background of the other conditions which have to be fulfilled to bring a case to court, the ten day period is in line with the Constitution, and does not have a significant impact on the trial period.

In addition, the requirement for a stamp on powers of attorney was introduced in order to fund the expenses of trainee advocates. This has ensured a balance between individual and public interest, which is a condition of the rule of law. The contended provision was also designed to ensure the social security of trainee advocates. It was not found to be unconstitutional in this regard, and the case was unanimously rejected.