



**REPUBLIC OF TURKEY**  
**CONSTITUTIONAL COURT**

**SECOND SECTION**

**DECISION**

Application Number: 2012/1034

Date of Decision: 20/3/2014

## SECOND SECTION

### DECISION

**President** : Alparslan ALTAN  
**Members** : Engin YILDIRIM  
                  Celal Mümtaz AKINCI  
                  Muammer TOPAL  
                  M. Emin KUZ  
**Rapporteur** : Selami ER  
**Applicant** : Vesim PARLAK  
**Counsel** : Att. Mehmet PARLAK

#### I. SUBJECT OF APPLICATON

1. The applicant asserted that the principle of equality, the right to a fair trial and the freedom of work and contract were violated by stating that, in the case that he filed with the request for a decision on his reemployment, the reasoned decision delivered for the dismissal of the case was approved by the Supreme Court of Appeals without the decision having been notified to him, that although the reasoned decision was sent to other plaintiffs, it was not sent to him.

#### II. APPLICATION PROCESS

2. The application was lodged on 7/12/2012 via the 1st Civil Court of First Instance of Kars. As a result of the preliminary examination of the petition and annexes thereof as conducted in terms of administrative aspects, it was found out that there was no deficiency that would prevent referral thereof to the Commission.

3. It was decided by the First Commission of the Second Section on 12/6/2013 that the examination of admissibility be conducted by the Section and the file be sent to the Section.

4. In accordance with the interim decision of the Second Section dated 26/6/2013, it was decided that the examination of admissibility and merits of the application be carried out together.

5. The facts and cases which are the subject matter of the application and a copy of the application were sent to the Ministry of Justice for its opinion on 27/6/2013, the opinion letter of the Ministry of Justice dated 27/8/2013 was notified to the counsel of the applicant on 13/9/2013. The counsel of the applicant submitted his statements against the response of the Ministry of Justice on 25/9/2013 within its legal period.

#### III. FACTS AND CASES

##### A. Facts

6. As expressed in the application form and the annexes thereof, the facts are summarized as follows:

7. The work contract of the applicant was terminated by his employer public bank in which he worked as a security officer based on the decision of the disciplinary board dated 24/2/2011 and this matter was notified to the applicant on 27/6/2011.

8. The applicant filed a case with a request for reemployment before the administrative court on 4/8/2011, the 2nd Administrative Court of Erzurum delivered a decision of lack of competence through its decision numbered M.2011/1309, D.2011/1229 and on the ground that labour courts were competent.

9. Thereupon, the applicant filed a case with a request for reemployment before the 19th Labour Court of Ankara on 29/12/2011.

10. The 19th Labour Court of Ankara decided on the dismissal of the case at its first hearing dated 13/7/2012 where the parties were also present, but did not explain its justification.

11. After the court delivered a decision of dismissal, the applicant filed a request for appeal via a "*pending petition*" on 13/7/2012 on which the decision was delivered and stated that he would submit a reasoned appeal petition indicating the reasons for appeal after the reasoned decision was notified to him.

12. Later on, the Court explained the justification of its decision of dismissal dated 13/7/2012 and numbered M.2011/1315, D.2012/643 in the way that it was necessary to file a case within a foreclosure period of one month following the notification of the decision of dismissal from work in the cases of reemployment, that the application to the wrong legal remedy was filed after the expiry of the foreclosure period of one month even if a case filed for the wrong legal remedy interrupted the period.

13. The 22nd Civil Chamber of the Supreme Court of Appeals which examined the appeal application before the notification of the reasoned decision of the Labour Court to the applicant approved the decision of the court of first instance through its decision dated 8/10/2012 and M.2012/18729, D.2012/21425. The decision became final on the same date.

14. The finalized decision was notified to the applicant on 8/11/2012.

## **B. Relevant Law**

15. Paragraphs one and three of article 20 of the Labour Code dated 22/5/2013 and numbered 4857 with the side heading "*Objection to the notification of termination and the procedure thereof*" are as follows:

*"The worker whose working contract has been terminated can lodge a case at the labor court within one month starting from the date of communication of the termination with the claim that no reason was expressed in the termination notification or the reason that has been expressed is not a valid one..."*

...

*The case is finalized in two months as per the serial trial procedure. In event of appeal of the decision that has been taken by the court, the Supreme Court makes a final decision within one month."*

16. The related parts of article 7 of the Code of Administrative Procedure dated 6/1/1982 and numbered 2577 with the side heading of *"Period for filing a case"* are as follows:

*"The period for filing a case shall be sixty days in the Council of State and in the administrative courts and thirty days in the tax courts in cases where no specific period is shown in special laws.*

*2. These periods shall run on the date;*

*a) after the written notification is made as for administrative disputes,*

*...*

*"*

17. Paragraph (1) of article 447 of the Code of Civil Procedure dated 12/1/2011 and numbered 6100 with the side heading of *"Provisions regarding the trial procedure in other codes"* is as follows:

*"In circumstances where other codes refer to the oral or accelerated trial procedure, the provisions of this Code regarding the simple trial procedure shall be applied."*

18. Article 321 of the Code numbered 6100 with the side heading *"Judgment"* is as follows:

*"(1) After the completion of the investigation, the court receives the last statements of the parties and pronounces its decision by stating that the trial has been concluded. No additional period is provided to the parties to make statements.*

*(2) The pronouncement of the decision takes place with the court's explanation of all matters relating to the judgment with their justifications. However, in compulsory circumstances, the judge may pronounce the decision by only having the summary of the judgment written in the minutes so long as s/he has the reason of this situation included in the minutes as well. In this case, the reasoned decision needs to be drafted and notified within a month at the latest."*

19. Former article 8 of the Code of Labour Courts dated 30/3/1950 and numbered 5521 before it was amended by the Code dated 2/3/2005 and numbered 5308 is as follows:

*"Final decisions of the labour court can be appealed within eight days following the date of pronouncement.*

20. Provisional article 1 added into the Code of Labour Courts numbered 5521 through the Code numbered 5308 is as follows:

*"Appeal applications filed on the decisions issued prior to the date when the regional courts of appeal will start their duties to be announced in the Official Gazette as per provisional article 2 of the Code on the Establishment, Duties and Authorities of Judicial Courts of First Instance and Regional Courts of Appeal dated 26/9/2004 and numbered 5235 shall be concluded by the Supreme Court of Appeals until they become final. In relation to these decisions, the provisions of the Code of Labour Courts as regards appeal which were in force prior to the amendment made by this Code shall apply."*

#### **IV. EXAMINATION AND JUSTIFICATION**

21. The individual application of the applicant dated 7/12/2012 and numbered 2012/1034 was examined during the session held by the court on 20/3/2014 and the following were ordered and adjudged:

##### **A. Claims of the Applicant**

22. The applicant claimed that the principle of equality and the right to a fair trial and the freedom of work and contract were violated by stating that, in the case that he filed with the request for a decision on his reemployment, the reasoned decision delivered by the court of first instance for the dismissal of the case was approved by the Supreme Court of Appeals without the decision having been notified to him, that for this reason he could not put forth his justified reasons for appeal before the Supreme Court of Appeals, that if he had put forth the reasons for appeal, the case could have been finalized in his favor and he could have returned to his work, that although the reasoned decision was sent to other plaintiffs, it was not sent to him and requested that the violation be determined and removed together with its consequences.

##### **B. Evaluation**

###### **1. In Terms of Admissibility**

23. While the complaint of the applicant as to the effect that the right to a fair trial was violated on the ground that the reasoned decision delivered by the court of first instance for the dismissal of the case was approved by the Supreme Court of Appeals without the decision having been notified to him, that for this reason he could not put forth his justified reasons for appeal before the Supreme Court of Appeals is not clearly devoid of basis, any of other reasons for inadmissibility is not present for this complaint either. For this reason, it is necessary to deliver a decision of admissibility as regards this part of the application.

###### **2. Examination in Terms of Merits**

24. The applicant asserts that the delivery of the approval decision by the Supreme Court of Appeals before he received the reasoned decision of the court of first instance violated the right to a fair trial and that he could have returned to his work by winning the case if this violation had not existed, that therefore the freedom of work and contract was also violated, that at the same time the handling of the cases of other plaintiffs by the Supreme Court of Appeals after the notification of the reasoned decision of their cases to them in contrary to his case violated the principle of equality.

25. In the opinion letter of the Ministry of Justice, it was stated that one of the guarantees included in the principle of fair trial was the principle of the equality of arms, that as per this principle it was necessary not to put one of the parties to a case at a weaker position against the other one, that in the concrete application the decision was approved in the appeal process of the Supreme Court of Appeals before the notification of the reasoned decision to the applicant, that in the event that a right of applicants was not violated within the scope of individual application, the Constitutional Court did not have any obligation to review the material mistakes of courts, that in the concrete application the reasoned decision was not notified to the defendant as well as the applicant, that therefore there was no problem in terms of the equality of arms; that it was clear that the applicant had been deprived of presenting the reasons for appeal to the Supreme Court of Appeals, that however the claims and opinions of the applicant as regards the case could be understood by the Supreme Court of Appeals which

was the appeal authority from the case petition and the statements recorded in the hearing minutes, that it was necessary to consider these matters while evaluating the claims of the applicant.

26. In the statement of the applicant against the opinion of the Ministry of Justice, it was stated that it was not possible to accept the opinion of the Ministry of Justice, because the defendant did not have any legal benefit in the notification of the reasoned decision to the defendant as he only appealed the case himself, that it was not possible for a person to whom the reasoned decision was not notified without his negligence to defend himself in this way and that this could not be accepted in a state of law.

27. Although the applicant claimed that the approval of the decision by the Supreme Court of Appeals before the notification of the reasoned decision of the court of first instance to him in his case which is the subject of the application in contrary to other cases was contrary to the principle of equality and that the case could have been concluded in his favor and he could have returned to his work if he had put forth the reasons for appeal, he did not mention on the basis of which reason or for which reason stipulated in paragraph one of article 10 of the Constitution a separate treatment was applied. As the complaint of the applicant in relation to the freedom of work and contract includes the claim that the case would have been concluded in his favor if he had been tried in a fair way and is not directly related to the freedom of work and contract, it is not deemed necessary to separately examine it. The applicant generally stated in his application petition that the right to a fair trial was violated, he did not separately mention the equality of arms. Moreover, as the appeal examination was conducted without the decision of the court of first instance having been notified to the applicant as well as the defendant, it cannot be mentioned that the applicant was put at a weaker position when compared to the defendant or that he was subjected to different conditions from those of the defendant in terms of procedural rights.

28. In this case, as the essence of the complaint of the applicant is the claim that the delivery of a decision by the Supreme Court of Appeals before the reasoned decision was notified to him and he could not put forth his oppositions in the appeal petition according to this justification violated the right to a reasoned decision within the scope of the right to a fair trial, the application will be examined in terms of the right to a reasoned decision.

29. Paragraph one of Article 36 with the side heading "*Freedom to claim rights*" of the Constitution is as follows:

*"Everyone has the right to make claims and defend themselves either as plaintiff or defendant and the right to a fair trial before judicial bodies through the use of legitimate ways and means."*

30. Paragraph four of article 141 of the Constitution with the side heading of "*Publicity of hearings and the need for verdicts to be justified*" is as follows:

*"All types of verdicts of all courts are written together with their justification."*

31. The relevant section of article 6 of the Convention with the side heading of "*Right to a fair trial*" is as follows:

*In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law."*

32. Under paragraph one of article 36 of the Constitution, the right of everyone to be able to apply to judicial organs as plaintiffs and defendants and, as a natural consequence of this, their right to claim, defense and fair trial are guaranteed. Beyond having the quality of a fundamental right per se, the freedom to claim rights guaranteed by the aforementioned article is one of the most effective guarantees which enables the due enjoyment of other fundamental rights and freedoms and their safeguarding. Therefore, it is clear that article 141 of the Constitution which stipulates the necessity of the decisions of all sorts of courts to be written together with their justifications needs to be observed in determining the scope of the freedom to claim rights (App. No: 2013/307, 16/5/2013, § 30).

33. The right to a reasoned decision guaranteed in article 141 of the Constitution requires that the legal justification relied upon by the court decisions be shown at a sufficient clarity in the decisions. Nevertheless, there is no obligation to discuss all claims of the parties in a detailed way in the justification of court decisions. While the details of a justification varies depending on the quality of the case, it is clear that it is obligatory to have a legal justification that will form the basis of the judgment part of the decision even if it is short and summarized.

34. While the fact that decisions are justified ensures that the parties to a case find out the basis of the court decision and that they have confidence in the judiciary in general, it is also one of the most important factors that make it possible for the parties to resort to an effective remedy. While it will not be possible to effectively resort to a legal remedy against a decision whose justification is not known, it cannot be expected that an examination to be conducted in the aforementioned legal remedy to be effective either.

35. In the incident which is the subject of the application, the work contract of the applicant was terminated by the employer public bank and the applicant firstly filed a case before the administrative court with a request for reemployment, but the administrative court dismissed the case on the ground that labour courts were competent.

36. With the provisions of article 1 of the Code numbered 4603, public banks were removed from the status of a state economic enterprise and transferred to the status of a private law legal person, with article 5 thereof it was provided that Decrees in the Force of Law numbered 233 and 399 would not apply for these banks. This situation led to many disputes in terms of the status of the personnel of public banks and the place of jurisdiction. Although the situation was made clear through the regulations which were made later on, for example, through the provisions such as the fact that labour courts were competent in disputes that will occur between those who work in banks in accordance with the Labour Code numbered 4857 and the banks as stipulated in subparagraph 5 of article 3 of the Code numbered 4603 added through article 7/c of the Code numbered 5230, positive or negative disputes of competence continued to exist between judicial and administrative jurisdictions in

terms of the cases whose subject was the work disputes of the personnel of public banks. In these disputes of competence, the Court of Jurisdictional Disputes decides that judicial jurisdiction is competent in terms of the work disputes of the personnel of public banks (See. the Court of Jurisdictional Disputes, M.2013/135, D.2013/508, 8/4/2013; M.2013/1519, D.2013/1697, 11/11/2013).

37. The applicant filed a case before the Labour Court after the decision of lack of competence of the administrative court. The Court decided on the dismissal of the case at the preliminary examination hearing dated 13/7/2012 where the counsel of the parties were present and the short decision was notified to the counsels of the parties. In the short decision, only the fact that the case was dismissed was stated, no explanation showing the justification of dismissal was made.

38. The applicant appealed the decision via a pending petition on 13/7/2012 within the appeal period of 8 days starting with pronouncement stipulated in the Code numbered 4857 and stated in his aforementioned petition that he would present the justified reasons for appeal as regards the court decision when the reasoned decision of the court of first instance was notified to him. However, the file was sent to the Supreme Court of Appeals without the reasoned decision having been notified to the parties and the 22nd Civil Chamber of the Supreme Court of Appeals approved the decision of the court of first instance through its decision dated 8/10/2012, the decision became final on the same date. In this case, in contrary to the opinion of the Ministry of Justice, it is not possible to understand on what ground the applicant appealed the decision of the court of first instance in the examination conducted by the Supreme Court of Appeals.

39. In practice, at labour courts, as the appeal period of 8 days starts with pronouncement, some courts do not notify the reasoned decision to the parties while some other courts notify the reasoned decision to the parties in any case. This situation leads to the fact that parties are obliged to file an appeal application without knowing the justification of courts in some cases as in the concrete application and that, in terms of an appeal examination, the examination is conducted without knowing the appeal justifications of the parties to the case. It cannot be said that people who do not know the justification of the decision of a court of first instance duly exercise the right to appeal and that an appeal authority which does not know the appeal reasons of the parties conducts the appeal examination in a sound way. An appeal application and an appeal examination which are conducted as mentioned above give rise to the holding of a trial which is not in compliance with the right to a fair trial in the context of the right to a reasoned decision.

40. As a matter of fact, the ECtHR, in an examination that it conducted as regards an applicant who was obliged to file an appeal application in a criminal case without the reasoned decision having been notified to him due to a short appeal period of five days,

reached to the conclusion that the right to a fair trial had been violated in the application in question by stating that the contracting states enjoyed a freedom of choice to ensure that their judicial systems comply with article 6, that moreover the national courts are obliged to indicate with sufficient clarity the grounds on which they based their decision, that the fact that people could exercise the right to appeal that they had was, inter alia, dependent on this condition, that its task was to examine whether the methods preferred by the states in this respect led to results which were compatible with article 6 or not (See. *Hadjianatassiou v. Greece*, App. No: 12945/87, 16/12/1992, § 33).

41. In the incident which is the subject of the application, due to the fact that the appeal application that the applicant filed via a pending petition within an appeal period of 8 days was approved by the Supreme Court of Appeals without the notification of the reasoned decision of the court of first instance to the applicant, as the applicant filed the appeal application without knowing the justification of the court and the Supreme Court of Appeals conducted an appeal examination without receiving the appeal oppositions of the applicant, it is clear that a trial which was compliant with the right to a reasoned decision was not conducted and that the right to a reasoned decision was violated.

42. Due to the aforementioned reasons, it should be decided that the applicant's right to a fair trial guaranteed by Article 36 of the Constitution was violated.

### **C. In Terms of Article 50 of the Code Numbered 6216**

43. The applicant requested that the existence of a violation be determined and that this violation be removed together with its consequences by stating that, in the case that he filed with the request for a decision on his reemployment, the reasoned decision delivered for the dismissal of the case was approved by the Supreme Court of Appeals without the decision having been notified to him and that the right to a reasoned decision was violated.

44. In the opinion of the Ministry of Justice, no evaluation was made as regards the removal of the consequences of the violation.

45. Paragraphs (1) and (2) of article 50 of the Code numbered 6216 with the side heading of "*Decisions*" are as follows:

*"(1) At the end of the examination on merits, it shall be decided that the right of the applicant has been violated or has not been violated. In the event that a decision of violation is delivered, what needs to be done for the removal of the violation and its consequences shall be adjudged. However, legitimacy cannot be reviewed, no decision with the quality of an administrative act and action cannot be delivered.*

*(2) If the determined violation arises out of a court decision, the file shall be sent to the relevant court for holding the retrial in order for the violation and the consequences thereof to be removed. In cases where there is no legal interest in holding the retrial, the compensation may be adjudged in favor of the applicant or the remedy of filing a case before the general courts may be shown. The court, which is responsible for holding the retrial, shall deliver a decision over the file, if possible, in a way that will remove the violation and the consequences thereof that the Constitutional Court has explained in its decision of violation."*

46. As the violation determined in the case which is the subject matter of the application arises out of the delivery of a decision of approval by the Supreme Court of Appeals at the stage of appeal without the reasoned decision of the court of first instance having been notified to the applicant and there is legal benefit in providing the applicant with

an opportunity of filing an appeal application by knowing the justification of the decision of the court of first instance and in a way that he can present his claims against this justification, it should be decided that the file be sent to the relevant court in order provide the applicant with the opportunity of filing an appeal application for the removal of the violation and its consequences in accordance with paragraphs (1) and (2) of the Code numbered 6216.

47. It should be decided that the trial expenses of 1,672.50 TL in total composed of the fee of 172.50 and the counsel's fee of 1,500.00 TL which were made by the applicant and determined in accordance with the documents in the file be paid to the applicant.

## **V. JUDGMENT**

In the light of the reasons explained, it is **UNANIMOUSLY** decided on 20/3/2014 that;

**A.** The claim of the applicant as to the fact that the right to a reasoned decision was violated is **ADMISSIBLE**,

**B.** The right to a fair trial enshrined in Article 36 of the Constitution **WAS VIOLATED**,

**C.** The other requests of the applicant be **DISMISSED**,

**D.** The trial expenses of 1,672.50 TL in total composed of the fee of 172.50 and the counsel's fee of 1,500.00 TL, which were made by the applicant be **PAID TO THE APPLICANT**,

**E.** The payments be made within four months from the date of application of the applicants to the State Treasury following the notification of the judgment; if there happens to be a delay in payment, legal interest be accrued for the period elapsing from the date when this duration ends until the date of payment,

**F.** The decision be **SENT** to the relevant court in order for the violation and the consequences thereof to be removed.

President  
Alparslan ALTAN

Member  
Engin YILDIRIM

Member  
Celal Mümtaz AKINCI

Member  
Muammer TOPAL

Member  
M. Emin KUZ