



REPUBLIC OF TURKEY
CONSTITUTIONAL COURT

FIRST SECTION

DECISION

APPLICATION OF THE TURKISH ASSOCIATION OF PENSIONERS

(Application Number: 2012/1035)

Date of Decision: 17/7/2014

O.G. Date-Issue: 16/10/2014-29147

FIRST SECTION

DECISION

President	: Serruh KALELİ
Members	: Zehra Ayla PERKTAŞ Burhan ÜSTÜN Nuri NECİPOĞLU Zühtü ARSLAN
Rapporteur	: Selami ER
Applicant	: The Turkish Association of Pensioners
Representatives	: Gazi AYKIRI and Ömer KURNAZ
Counsel	: Att. Zübeyde TAYMAZ

I. SUBJECT OF APPLICATON

1. The applicant alleged that her right to property was violated due to the court's decision, which was delivered in the case for preventing the use of residence as a workplace that was filed against her, as a result of the utilization of the immovable, which she is the owner of, as a branch for an association, the court considered the branch of the association as a workplace and terminated the use of the immovable as such.

II. APPLICATION PROCESS

2. The application was directly lodged with the Constitutional Court on the date of 11/12/2012. 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 First Section on 27/6/2013 that the examination of admissibility be conducted by the Section and the file be sent to the Section.

4. Pursuant to the interlocutory decision of the Second Section dated 3/2/2014, it was decided that the examination on admissibility and merits be conducted jointly and that a copy thereof be sent to the Ministry of Justice for its opinion.

5. The opinion letter of the Ministry of Justice dated 4/4/2014 was notified to the applicant on 16/4/2014. The applicant submitted her statements against the response of the Ministry of Justice on 28/4/2014 within its legal period.

III. FACTS AND CASES

A. Facts

6. As included in the application form, the annexes thereof and the relevant case file, the facts are summarized as follows:

7. The applicant purchased the independent unit located on the second floor of the building composed of three independent units at number 76, Şehit Şüleymanbey avenue, 17 Eylül Neighborhood of the subprovince of Bandırma on 25/2/2009 and started using it as a branch of the association.

8. Hayrettin KARAGÖZ, who is the owner of the first floor of the building where the applicant is located and pursues his profession as an accountant here, sent a written warning via the Office of the Second Notary Public of Bandırma on 18/1/2010 indicating that as a flat owner he did not consent to the utilization of the independent unit, of which the applicant is the owner of, as a workplace with the qualification of an association.

9. In its response delivered via the Office of the First Notary Public of Bandırma, the applicant responded that association activities were not among prohibited actions, that the sender of the written warning also used the residence as a workplace and that the association could not be considered as a workplace.

10. Hayrettin KARAGÖZ filed a case at the Civil Court of Peace of Bandırma (the Court) on the date of 17/2/2010 for the prevention of the use of the residence as a workplace.

11. The Court decided to have an on-site viewing carried out with the accompaniment of an expert. In the viewing that was carried out, it was determined that the building consisted of three separate units, all three of which, including the units used by the plaintiff and the applicant, were being used as workplaces. In its report, the expert stated an opinion to the effect that it was not possible to use the independent unit belonging to the applicant, which appeared as a residence on the title deed, as an office of the association.

12. The court dismissed this case with the decision dated 19/4/2011 and numbered M.2010/193, D.2011/619 and the justification that the plaintiff also used the independent unit in the building as a workplace in order to perform his profession as an accountant, that there was no independent unit in the building that was used as a residence, that in this case the rules of good faith covered under article 2 of the Turkish Civil Code dated 22/11/2011 and numbered 4721 did not exist in the plaintiff's filing his case.

13. The decision of the court of first instance was appealed and the 18th Civil Chamber of the Supreme Court of Appeals, which conducted the appeal examination, reversed the decision with its decision dated 2/2/2012 and numbered M.2012/316, D.2012/900 and the justification that *“as per the well-established practices of the Supreme Court of Appeals, spaces occupied by associations and their branches have the quality of being workplaces and as per the provision of article 24 of the Condominium Code the utilization of an independent unit that is registered in the title deed as residence in line with this purpose depends on the unanimous decision to be delivered by the owners of all independent units”*.

14. Addressing the case again, the Court accepted the case with its decision dated 5/6/2012 and numbered M.2012/421, D.2012/764 in line with the decision of the Supreme Court of Appeals and decided that the applicant terminate its association activities in the independent unit that was the subject of the case.

15. With the decision of the same chamber of the Supreme Court of Appeals dated 11/10/2012 and numbered M.2012/10313, D.2012/11065, the decision of the court of first

degree, which had been appealed, was approved with correction with the addition of the phrase “*that a period of 10 days be granted for the fulfillment of the requirement of the decision*”.

16. The decision of approval in question was notified to the applicant on 23/11/2012.

B. Relevant Law

17. The relevant parts of article 24 of the Condominium Code dated 23/6/1965 and numbered 634 with the side heading “*Prohibited actions*” are as follows:

“Facilities such as hospitals, dispensaries, clinics, polyclinics, pharmaceutical laboratories cannot be established in an independent unit of the main immovable that is shown in the registry to be a residence, as a place of work or trade; contracts of flat owners that are in violation of this shall be null and void; doctor's offices that do not qualify as dispensaries, clinics or polyclinics shall be outside this provision.

Entertainment and meeting places such as cinemas, theaters, coffee shops, music halls, night clubs, bars, clubs, dance halls and the like and food and nourishment places such as bakeries, restaurants, pastry shops, dairy shops and places such as manufacturing shops, paint shops, printing houses, shops, galleries and bazaars can only be opened in an independent unit of the main immovable that is shown in the registry to be a residence with a unanimous decision of the board of flat owners.

(Additional paragraph: C.N. 13/02/2011-6111 art. 190) Until a regulation is introduced in the Attorney's Code numbered 1136 pertaining to law offices and law firms, law offices and law firms in residences shall pursue their activities. This period shall be two years starting from its entry into force of this article. Until the necessary regulations are introduced in the Code on Independent Accountant Financial Advisors and Sworn-in Financial Advisors numbered 3568, this provision shall also be applied to offices that are opened by members of the profession.

Upon the request of the manager or one of the flat owners, this decision shall be annotated to the pages of all independent units in the flat ownership registry.”

18. The first paragraph of article 43 of the Attorney's Code dated 19/3/1969 and numbered 1136, which was amended with the Code dated 17/4/2013 and numbered 6460, with the side heading “*Obligation to have an office*” is as follows:

“Each attorney shall be obliged to establish an office in the region of the bar association within three months following the date of registration in the plate. (Additional sentence: C.N. 17/04/2013-6460/art. 3) According to the Condominium Law No. 634 and dated 23/6/1965, law offices may perform activities in the independent sections of the main real estate which are shown as residence without seeking the permission of the flat owners and similar conditions. (Additional sentence: C.N. 17/04/2013-6460/art. 3) In this matter, provisions to the contrary that are contained in the management plan shall not be applied. Bar associations shall determine the properties of the office.”

19. Paragraph 6 added to article 45 of the Code on Independent Accountant Financial Advisors and Sworn-in Financial Advisors dated 1/6/1989 and numbered 3568 with the side heading “*Prohibitions*” with the Code dated 17/4/2013 and numbered 6460 is as follows:

“According to the Condominium Code dated 23/6/1965 and numbered 634, independent accountant financial advisors or sworn-in financial advisors may perform activities in the independent sections of the main real estate which are shown as residence without seeking the

permission of the condominium owners and similar conditions. In this regard, provisions to the contrary that are contained in the management plan shall not be applied.”

IV. EXAMINATION AND JUSTIFICATION

20. The individual application of the applicant dated 11/12/2014 and numbered 2012/1035 was examined during the session held by the court on 17/7/2014 and the following were ordered and adjudged:

A. Claims of the Applicant

21. The applicant asserted that her right to property was violated by indicating that in the case for preventing the use of residence as workplace that was filed against her as a result of the utilization of the immovable, of which she is the owner, as a branch of the association, the court acknowledged the branch of the association as a workplace and delivered a decision terminating the use of the immovable as such, that however the person who filed the case against her also used the residence as a workplace and that therefore he did not have good faith, that article 24 of the Code numbered 634 listed workplaces as belonging to the food and entertainment sectors, that the association could not be considered as a workplace, that they did not have any disturbing activities in the independent unit they are using, that all three independent units present in the building were being used as workplaces, that the decision that was delivered obliterated her right to use the property and requested that the violation pertaining to her right to property via the court decision in question be removed.

B. Evaluation

1. In Terms of Admissibility

22. The complaint of the applicant to the effect that her right to property was violated due to the prevention of the utilization of the immovable as a branch of the association is not clearly devoid of basis, neither any other reason for inadmissibility is present for this complaint. For this reason, it is necessary to deliver a decision of admissibility as regards the application.

2. In Terms of Merits

23. The applicant asserted that her right to property was violated by indicating that her use of the immovable, of which she is the owner, as a branch of the association was prevented with the decision of the Court, that all of the independent units in the building where the immovable is located are being used as workplaces, that therefore the individual who filed the case did not have good faith, that the association could not be considered as a workplace as per article 24 of the Code numbered 634, that they did not have any disturbing activities in the building.

24. In its opinion letter, by considering the incident that is the subject of the application to be within the scope of the authority to control (regulate) the use of property and the positive liabilities of the state, the Ministry of Justice stated that the utilization of property can be regulated by codes for public benefit, that the regulation needed to bear the features of predictability and certainty, that it was understood that article 24 of the Condominium Code was applied in the present incident.

25. In her statements against the opinion letter of the Ministry of Justice, the applicant indicated that article 24 of the Condominium Code did not contain any explicit or implicit

provisions prohibiting the use of the immovable as an office by the association, that the expression “*such as*” used in the provision of the code did not include associations, that the regulation was in violation of the principle of equality and the rules of good faith, that the implementor was granted too broad of a discretionary power.

26. Article 35 of the Constitution with the side heading “*Right of Ownership*” is as follows:

“Everyone has the right to property and inheritance.

These rights may be restricted by law only for the purposes of public interest.

The exercise of the right to property cannot be contrary to public interest.”

27. Article 13 of the Constitution with the side heading “*Restriction of fundamental rights and freedoms*” is as follows:

“Fundamental rights and freedoms may only be restricted on the basis of the reasons mentioned in the relevant articles of the Constitution and by law without prejudice to their essence. These restrictions cannot be contrary to the letter and spirit of the Constitution, the requirements of the democratic social order and of the secular Republic and the principle of proportionality.”

28. Article 1 of the Additional Protocol (1) to the European Convention on Human Rights (the Convention) with the side heading “*Protection of property*” is as follows:

“Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law.

The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties.”

29. The right to property, which is guaranteed under article 35 of the Constitution as a fundamental right, is a right that grants the individual the opportunity of utilizing the item of which s/he is the owner, benefiting from and enjoying its products as s/he wishes on the condition of not infringing on the rights of others and abiding by the restrictions introduced with codes. According to the Constitution, restrictions to this right can only be introduced for public benefit and with law. It is stipulated under article 35 of the Constitution that the right to property is not an absolute right and that it can be restricted for public benefit purposes (App. No: 2013/817, 19/12/2013, §§ 28, 32).

30. Article 35 of the Constitution and article 1 of the Protocol (1) refer to the right to property with similar regulations. Both regulations contain three rules. The first sentences of both regulations grant the right to property to everyone, whereas their second sentences regulate the circumstances under which property belonging to individuals can be restricted or the circumstances under which individuals can be deprived of property (App. No: 2013/817, 19/12/2013, § 29). The third sentences of the regulations are approached differently. While paragraph two of article 1 of Protocol (1) reserves the right of states to regulate property for public benefit and implement the legal practices they deem to be necessary for the collection of taxes and other contributions as well as fines and indicates that this situation does not fall within the scope of the right to property, the last paragraph of article 35 of the Constitution includes a general principle with regard to the utilization of the right to the effect that the

exercise of the right to property cannot be in violation of the public benefit. Nevertheless, numerous articles of the Constitution grant the state the authority to regulate in matters to which they are related (App. No: 2013/817, 19/12/2013, § 30).

31. The provisions contained within the Constitution and the Convention and referred to above grant the state the authority to control the utilization of property or the right to benefit from property and to carry out regulations in this matter. The fulfillment of the principles of legality, legitimacy and proportionality is also sought in the utilization of the authority to regulate, which grants a wider discretionary power compared to restricting property (See *Depalle v. France* [BD], App. No: 34044/02, 29/03/2010, § 85). Accordingly, the authority to regulate the right to property also needs to be exercised for public benefit purposes and with law. In addition to this, the liability of paying compensation that is sought in deprivation from property as per the principle of proportionality may not be required in all cases where the authority to regulate is used depending on the circumstances of the case (See *Jahn and Others v. Germany* [BD], App. No: 46720/99 72203/01 72552/01, 30/6/2005, § 117)

32. The state may carry out the regulation by means of obliging individuals or legal entities to engage in positive actions or introducing restrictions to their activities. These kinds of regulations are accepted to fall within the discretionary authority of the state so long as they do not bear consequences that are so out of the ordinary as to render the legislation unacceptable (*Denev v. Sweden*, App. No: 12570/86, 18/1/1989; *J.A. Pye (Oxford) Ltd And J.A. Pye (Oxford) Land Ltd. v. United Kingdom*, 44302/02, 30/7/2007, § 83).

33. Indeed, the Constitutional Court rejected the request for the annulment of the provision that restricted rent increases to 25% in the first year and to 10% in following years via provisional article 7, which was added to the Code numbered 6570 with the Code numbered 4531, with the justification that “*In the event that no measures are taken by the State, it is clear that the shortage of immovable property will lead to an above normal increase in rents. Therefore, given that the phenomenon of rent is thus a social problem, the State's restriction of certain rights and freedoms with regard to the issue of rent for public benefit purposes does not violate articles 2, 13, 35 and 48 of the Constitution.*” (CC, M.2000/26, D.2000/48 D.D. 16/11/2000).

34. Even though individual application is a secondary protection mechanism that was established with a view to removing rights violations that occur as a result of interventions that are made to the fundamental rights of individuals by the state with the use of public power, in certain circumstances interventions made by private persons to the rights of each other as a result of the relations between private persons can contain responsibilities that can be attributed to the state. In these situations, the case that is made the subject of the individual application may be examined with a view to other rights that are affected as a result of the process initiated by private individuals instead of only being examined within the scope of the right to a fair trial.

35. In interventions that are made by private individuals, the ECtHR highlights the responsibility of the state with regard to articles 8, 9, 10, 11 and 14 of the Convention by notably emphasizing positive liabilities. As the responsibility of the state can emerge as a result of an intervention that is made by private individuals being a consequence of the utilization of official authorities (*James and Others v. United Kingdom*, no. 8793/79, 21 February 1986), it can also arise in circumstances whereby the administrative authorities that are needed to be resorted to in order to preserve rights stemming from private law are not utilized (*Immobiliare Saffi v. Italy*, App. No: 22774/93, 28/7/1999; *Prodan v. Moldova*, App.

No: 49806/99, 18/5/2004; *Törmala and Others v. Finland*, App. No: 41258/98, 16/3/2004) or in circumstances whereby sufficient protective codes do not exist and the individual whose rights have been violated by private individuals cannot benefit from an effective protection (*Yung, James and Webster v. United Kingdom*, App. No: 7601/76, 7806/77, 13/8/1981; *X and Y v. Netherlands*, App. No: 8978/80, 26/3/1985).

36. In addition to this, the ECtHR goes further than the decisions that are given above and emphasizes that the interpretation of domestic law and incidents by national authorities should not be clearly inharmonious with the values of the Convention and arbitrary, that national courts should prefer the interpretation that is the most harmonious with the Convention as interpreted by the ECtHR when interpreting domestic law (*Pla and Puncernau v. Andorra*, App. No: 69498/01, 13/7/2004, §46,059,062).

37. The real and effective exercise of the right to property does not only depend on the state's avoidance from intervention, but it also requires additional positive protection measures to be taken especially in circumstances where there is a direct relationship between measures through which applicants have legitimate expectations from public instances and their effective enjoyment of their property (*Öneryıldız v. Turkey*, App. No: 48939/99, 30/11/2004, § 134).

38. Within this framework, article 5 of the Constitution, which defines the fundamental objectives and duties of the state, accepts it as a requirement of the state of law to remove the obstacles that restrict the fundamental rights and freedoms of the individual and to prepare the necessary conditions for the improvement of the material and moral existence of people. In the justification of the mentioned provision of the Constitution, it is expressed that the necessity of the state to assist in the fulfillment of rights and freedoms is adopted. In numerous articles of the Constitution, reference is made to measures to be taken by the state in order to protect and fulfill the right that is the subject of the arrangement.

39. There may be responsibilities that can be attributed to the state in certain circumstances whereby the rights of individuals are tarnished as a result of interventions by private law individuals to the fundamental rights covered by the common field of protection of the Constitution and the Convention. The state needs to establish effective domestic law remedies for the protection of individuals' right to property against this kind of unjust interventions by means of enabling them to request protection by applying especially to courts against interventions that are made and the courts need to resort to a constitutional interpretation in order to protect the fundamental rights when making a choice between the clashing rights of private individuals during trials to be conducted. In this manner, the State will have fulfilled its duty by means of creating a trial environment that is in line with justice and equity through establishing an effective domestic remedy.

40. The applicant filed a complaint by indicating that there are no explicit or implicit provisions that are of the quality to prohibiting the association from using the immovable as an office, that associations are not covered by the expression “*such as*” present in the provision of the code, that moreover the arrangement is against the principle of equality and rules of good faith, that the implementor is granted a discretionary authority that is too extensive, and that the arrangement lacks legal certainty.

41. Even though the applicant's right to utilize the immovable of which it is the owner as it pleases is included within the scope of the right to property covered under article 35 of the Constitution, the state has the authority to control/regulate this utilization. In the incident that is the subject of the present application, the applicant's utilization of the property

belonging to itself as a branch of the association was prevented with a court decision as per article 24 of the Code numbered 634 through a process that was initiated by a third person who is not a public official. Even though the case that is the subject of the present application is a case between private individuals, the role of the state in the present incident consists of the control/regulation of the utilization of the property via the Code numbered 634 and the Court's fulfilling the arbitrator role in resolving the dispute. In the present application, the lawfulness of the intervention, the public benefit and proportionality of the intervention needs to be examined in order to determine whether or not the intervention that controls/regulates the utilization of the immovable belonging to the applicant violates the applicant's right to property.

42. The right to property, which is guaranteed under article 35 of the Constitution as a fundamental right, is a right that grants the individual the opportunity of utilizing the item of which s/he is the owner of, benefiting from and enjoying its products (transferring it to another person, changing its shape, spending and consuming and even destroying it) as s/he wishes on the condition of not infringing on the rights of others and abiding by the restrictions introduced with codes (M.1988/34, D.1989/26, D.D. 21/6/1989; M.2011/58, D.2012/70, D.D. 17/5/2012).

43. Articles 35 and 13 of the Constitution stipulate that the restrictions to be introduced to the right to property needs to be done for public benefit purposes and through codes. While the ECtHR acknowledges the principles, which have been developed based on case law that relies on judicial decisions that have gained consistency by interpreting conditions envisaged in code, in other words lawfulness, in a large manner (see *Malonei v. United Kingdom*, App. No: 8691/79, 2/8/1984, §§ 66-68), the Constitution provides a wider protection than the Convention by stipulating that all restrictions are to be imposed absolutely by code (App. No: 2013/817, 19/12/2013, § 31).

44. The code's text and implementation bearing as much legal certainty to allow individuals to foresee the consequences of their behaviors, in other words, the quality of the code bears as much importance as the existence of the Code in determining whether or not the condition of lawfulness is met.

45. The principles of legal security and certainty are among the preconditions of a state of law. The principle of legal security, which aims to ensure the legal security of individuals, requires legal norms to be predictable, individuals to be able to have confidence in the state in all of their acts and actions, and the state to avoid methods that would tarnish this feeling of confidence in its legal regulations. The principle of certainty refers to legal regulations being explicit, clear, understandable and implementable in a way that will not give rise to any interruption and doubt in terms of both individuals and the administration, moreover, and the inclusion of protective guarantees against arbitrary practices of public authorities. In this respect, the text of a code should be drawn up at a level that will allow individuals to foresee in a certain clarity and accuracy which legal sanction or consequence is attributed to which concrete action and case, by way of receiving legal aid when necessary. As a result, the potential effects and consequences of the code needs to be sufficiently predictable prior to its implementation (CC, M.2013/39, D.2013/65, D.D. 22/5/2013).

46. The principle of “certainty” does not only refer to legal certainty but also to the certainty of the law in a wider sense. Certainty of the law can also be ensured via the case law of courts and regulatory actions of the executive power on the condition that codes meet such qualitative requirements as being accessible, knowable and foreseeable. What is of the essence is the presence of a norm that would enable potential interlocutors to foresee the sorts

of consequences that a certain action can bear under present circumstances (CC, M.2009/9, D.2011/103, D.D. 16/6/2011).

47. With regard to the concrete incident, the intervention that is in the form of controlling/regulating the utilization of the property has legal grounds in article 24 of the Code numbered 634. Even though the applicant does not have a claim to the contrary, its complaint pertains to the point that the code is not sufficiently clear and that the code does not possess sufficient certainty due to the claim that associations should not be considered as workplaces.

48. Given that the decision of terminating the association activity in the independent unit of the immovable, which is registered in the land registry as residence, that was implemented with regard to the applicant relies on the clear provision of article 24 of the Code numbered 634 and that associations are considered as workplaces in the established case law of the Supreme Court of Appeals as expressed by the 18th Civil Chamber of the Supreme Court of Appeals in its decision dated 2/2/2012, there is no doubt that the legal grounds for the intervention are sufficiently clear. Moreover, both the mentioned provision of the Code and the case law of the Supreme Court of Appeals in this matter bears sufficient legal certainty to allow the applicant to foresee the consequences of its actions to a degree that can be considered as reasonable under present circumstances.

49. In this case, whether or not the intervention, which has legal ground, has the legitimate objective of public benefit needs to be determined.

50. In general terms, the concept of public benefit refers to social benefit that is separate from and superior to private or individual benefits. All public actions ultimately need to be oriented towards the goal of achieving public benefit. As per its nature, public benefit is a broad concept. Organs of the legislative and the executive powers possess a broad discretionary authority in determining what qualifies as public benefit by taking the needs of the society into consideration. In the event that there is a dispute with regard to public benefit, it is clear that specialized courts of first instance and courts that conduct appeal trials are in a better position to resolve the dispute. The Constitutional Court cannot intervene in the discretion of authorized public organs with regard to the determination of public benefit unless it is understood to be clearly devoid of grounds or arbitrary in the individual application examination (App. No: 2013/817, 19/12/2013, §§ 34, 35, 36).

51. Moreover, as a principle, the proving of the material facts and cases that are made the subject matter of a case before the courts of instance, the evaluation of the evidence, the interpretation and implementation of legal rules and whether the consequence reached as regards the dispute by the courts of instance is fair in terms of merits or not cannot be a subject matter of the examination of an individual application. The only exception to this is the fact that the determinations and consequences of the courts of instance contain an obvious judgment error or explicit arbitrariness in a way which disregards justice and common sense and that this matter automatically violates the rights and freedoms within the scope of the individual application. In this framework, applications with a quality of legal remedy complaint cannot be examined by the Constitutional Court in terms of merits unless there is an obvious judgment error or explicit arbitrariness (App. No: 2012/1027, 12/2/2013, § 26).

52. In the present incident that is the subject of the application, the fact that the other units of the immovable are being used for non-residence purposes does not change the condition that all flat owners need to display common consent for newly transferred immovables, nor can it be claimed that the other units of the immovable will not be used as a

residence in the future even though the immovable does not currently contain any units that are being used as a residence.

53. As per public benefit, the lawmaker can introduce various regulations with regard to immovables that are envisaged to be used as residence so as to create a suitable environment for citizens who are residents in these to continue their private and family lives, to be able to rest and for the lives of their children. These arrangements can contain conditions that prevent the utilization of places that appear as residence in the land registry as workplaces or render such utilization conditional on the consent of all flat owners in order to protect the rights of others. Arrangements and practices that are introduced in this matter cannot be examined by the Constitutional Court in terms of their merits unless they are clearly devoid of grounds or arbitrary.

54. As expressed above, even though a balance needs to be established between the public benefit that is sought to be achieved with codes and practices that regulate the utilization of property and individual interests, in other words, even though these need to be proportionate, practices such as deprivation from property do not always require the compulsory payment of compensation in order to achieve balance between the interests of the individual and the general interest of the society (§ 31).

55. In the concrete application, the applicant was asked with a court decision to terminate the utilization of the immovable, of which it is the owner, as a branch of the association as per article 24 of the Code numbered 634. While the arrangement that is introduced with regard to the applicant's utilization of its property is an arrangement that renders the utilization of the property in question as a workplace conditional on the common consent of flat owners with the aim of protecting the rights of others, the other flat owner did not allow the applicant to use the immovable, of which it is the owner, as a branch of the association. The intervention that was made to the property of the applicant does not prevent the property in question from being rented or utilized with a different kind of disposition. Taking into consideration the fact that the applicant can exercise her right to property within the restrictions that are introduced by codes, it cannot be claimed that the intervention that is the subject of the present application will lead to significant damage regarding the applicant.

56. As a result of the examination of the application, it has been concluded that the decision pertaining to the applicant's termination of association activities in the immovable, of which she is the owner, in the case regarding the prevention of the residence that is the subject of the application from being used as a workplace has legal grounds and rests on a legitimate public benefit and that there is no disproportionate practice resulting in a heavy burden on the detriment of the applicant between the individual benefit of the applicant and the general benefit of the society.

57. Due to the aforementioned reasons, it should be decided that the applicant's right to property guaranteed in Article 35 of the Constitution was not violated.

V. JUDGMENT

In light of the reasons explained, it is decided **UNANIMOUSLY** on 17/7/2014;

A. That the application is **ADMISSIBLE** with regard to the complaint pertaining to the right to property,

B. That the right to property guaranteed under Article 35 of the Constitution **WAS NOT VIOLATED**,

C. That the trial expenses made by the applicant be left on the applicant

President
Serruh KALELİ

Member
Zehra Ayla PERKTAŞ

Member
Burhan ÜSTÜN

Member
Nuri NECİPOĞLU

Member
Zühtü ARSLAN