



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

**SECOND SECTION**

DECISION

Application Number: 2012/22

Date of Decision: 25/12/2012

## SECOND SECTION

### DECISION

<b>President</b>	: Alparslan ALTAN
<b>Members</b>	: Osman Alifeyyaz PAKSÜT Recep KÖMÜRCÜ Engin YILDIRIM Celal Mümtaz AKINCI
<b>Rapporteur</b>	: Salim KÜÇÜK
<b>Applicant</b>	: Mukhtar's Office of Büğdüz Village
<b>Counsel</b>	: Att. Yalçın KASAROĞLU

#### I. SUBJECT OF APPLICATON

1. The applicant asserted that its right to a fair trial was violated by indicating that during the trial and legal remedy examination stages of the case concerning the conflict regarding the summer range and pasture between the villages Büğdüz and Dodurga of Orta District of the Province of Çankırı.

#### II. APPLICATION PROCESS

2. The application was personally lodged to the Constitutional Court on 26/9/2012. Following the completion of the deficiencies that have been identified, in the preliminary examination of the petition and its annexes, it was found out that there was no deficiencies that would prevent the referral thereof to the Commission.

3. It was decided by the Third Commission of the Second Section that the admissibility examination be conducted by the Section, that the file be sent to the Section as per clause (3) of article 33 of the Internal Regulation of the Constitutional Court, since it was deemed necessary that a principle decision be taken by the Section in order for a ruling to be made regarding the application.

#### III. FACTS AND CASES

##### A. Facts

4. The facts in the petition of application are as follows:

5. The Yabanabat (Kızılcahamam) Civil Court of First Instance finalized the case arising from the conflict concerning the summer range and the pasture between the villages of Būğdüz and Dodurga in favor of the Mukhtar's Office of Būğdüz Village with its decision dated 23 October 1927 and No. M.1927/504, D.1927/770.

6. The Civil Court of First Instance of Orta that has accepted the request of the Mukhtar's Office of Dodurga Village regarding the new trial, this time, made the decision dated 8/5/1968 and No. M.1966/12, D.1968/39 in favor of the Mukhtar's Office of Dodurga Village.

7. The First Civil Chamber of the Supreme Court of Appeals, with its writ dated 30/9/1968 and No. M.1968/5939, D.1968/6083, reversed the decision of the Civil Court of First Instance of Orta that it examined on appeal regarding venue.

8. The same Chamber, upon the the request for correction of the Mukhtar's Office of Dodurga Village, approved this time, the decision of the Civil Court of First Instance of Orta with its writ dated 31/12/1968 and No. M.1968/8637, D.1968/8507.

9. Admitting the request for correction against the decision of approval of the Mukhtar's Office of Būğdüz Village, the same chamber with its writ dated 14/7/1969 and No. M.1969/3309, D.1969/4545 once again reversed the decision of the Civil Court of First Instance of Orta.

10. The Civil Court of First Instance of Orta, with its decision dated 29/4/1970 and No. M.1969/99, D.1970/56 decided that the writ of reversal of the Chamber be insisted against and this decision has been approved through the writ dated 14/6/1974 and No. M.1970/1–571, D.1974/697 of the Assembly of the Civil Chambers of the Supreme Court of Appeals.

11. Admitting the request of the Mukhtar's Office of Būğdüz Village regarding the correction of the decision, the Assembly of the Civil Chambers of the Supreme Court of Appeals this time with its writ dated 3/12/1975 and No. M.1974/1–838, D.1974/1558 revoked the decision of approval and reversed the decision of insistence of the Civil Court of First Instance of Orta.

12. Admitting also the request of the Mukhtar's Office of Dodurga Village regarding the correction of the decision, the Assembly of the Civil Chambers of the Supreme Court of Appeals with its writ dated 19/11/1976 and No. M.1976/1–1919, D.1974/2945 has approved the decision of insistence of the Civil Court of First Instance of Orta.

## **B. Relevant Law**

13. Paragraphs one and five of article 127 of the Constitution are as follows:

*“Local administrations are legal entities the principles of establishment of which are specified in the code and the decision making bodies of which are, again, shown in the code, and that shall be formed by being elected by constituents in a way to meet the common local requirements of the peoples of a province, municipality or a village.”*

...

*The central administration, within the scope of the principles and procedures that have been prescribed in the code, shall have the authority of administrative tutelage over local administrations with the aim to ensure that local services are conducted in compliance with the principle of integrity of administration, to ensure the unity of the public services, to protect the public interest and to meet local requirements as required."*

14. Article 2 of the Village Code dated 18/3/1924 and numbered 442 is as follows:

*"People who have properties that are common to all such as mosque, school, pasture, range, coppice and who live in collective or dispersed houses shall constitute a village together with their vineyards, gardens and farms."*

15. Article 16 of the Village Code numbered 442 is as follows:

*"If the revenues of the village fall short of covering the monthly and annual salaries of the monthly-salaried men of the village as well as the mandatory village works which are to be carried out within the boundaries of the village:*

*With the decision of the council of elders of the village a duty shall be raised for those who live in the village and to those who have material relations therewith, under the condition that the maximum limit thereof is not in excess of twenty lira and depending on everybody's circumstance and sustenance."*

16. Article 20 of the Village Code numbered 442 is as follows:

*"In each village there shall be a village council, a village mukhtar and a council of elders. In the village, the gathering of men and women villagers who have the authority to elect the mukhtar of the village and the members of the council of elders according to article 24 is called the village association. The village mukhtar and the members of the council of elders shall be directly elected by the village association from amongst men and women who are villagers. The village mukhtar is the head of the council of elders."*

17. Article 56 of the Village Code numbered 442 is as follows:

*"...a fine of one kurush up to one hundred kurush, depending on his circumstance, shall be charged on the villager who fails to perform obligatory tasks upon the decision of the council of elders. ...If the man who has been sentenced once again evades such task, the previous fine shall be charged as double.*

*Double the amount shall be collected from those who do not pay the duty raised by the council of elders according to article (66)".*

18. Paragraph one of article 4 of the Pasture Code dated 25/2/1998 and numbered 4342 is as follows:

*"The right of use of pastures, ranges and winter ranges shall belong to one or more than one village or municipality. Such places shall be under the judgment and disposition of the State.*

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

19. The individual application of the applicant dated 26/9/2012 and numbered 2012/22 was examined during the session held by the court on 25/12/2012 and the following were ordered and adjudged:

## **A. Claims of the applicant**

20. The applicant, indicating that as a result of the misimplementation of the procedural provisions during the trial and legal remedy examination stages of the case arising from the dispute concerning the summer range and the pasture between the Villages Būğdüz and Dodurga at the Orta District of the Province of Çankırı which is tried at the Civil Courts of First Instance of Kızılcahamam and of Orta, has claimed that its rights that have been defined in articles 36 and 138 of the Constitution have been violated.

## **B. Evaluation**

21. Paragraph three of article 148 of the Constitution is as follows:

*"Everyone can apply to the Constitutional Court with the claim that one of his/her fundamental rights and freedoms within the scope of the European Convention on Human Rights which are guaranteed by the Constitution has been violated by public force." "In order to make an application, it is conditional that ordinary legal remedies are exhausted."*

22. Paragraph (1) of article 45 of the Code on the Establishment and Trial Procedures of the Constitutional Court dated 30/3/2011 and numbered 6216 with the side heading of "*Right to individual application*" is as follows:

*"Everyone can apply to the Constitutional Court with the claim that one of his/her fundamental rights and freedoms within the scope of the European Convention on Human Rights and the additional protocols thereto, to which Turkey is a party, which are guaranteed by the Constitution has been violated by public force."*

23. The first sentence of paragraph (2) of article 46 of the Law numbered 6216 with the side heading of "*Those who have the right to individual application*" is as follows:

*(2) Public legal entities cannot make individual applications.*

24. In compliance with the paragraph three of article 148 of the Constitution and paragraph (1) of article 45 of the Code No. 6216, the right to make an individual application to the Constitutional Court has been granted to everyone who claim that any one of his/her basic rights and freedoms within the scope of the European Convention on Human Rights and, in addition, the protocols thereof to which Turkey is a party , which have been guaranteed by the Constitution has been violated by public power. Hence, real and legal persons who hold civil rights have the capacity to litigate regarding individual application.

25. In paragraph (1) of article 46 of the Code No. 6216 it has been regulated that the individual application can be made only by those an actual and personal right of whom is directly affected by the act, transaction or the negligence that is claimed to have led to the violation, but however in the first sentence of paragraph (2) of the same article it has been indicated that public entities cannot make individual applications.

26. Along with central administrative units, local administrations are also included in the concept of "*public legal entity,*" which has been indicated in the said paragraph. From this perspective, whether or not the custodial supervision over local administrations is a lax or a strict one or the quality of the legal relation that the administration concerned is in has no importance.

27. In compliance with paragraphs one and five of article 127 of the Constitution, the "*village*" is a local administration unit, which has been formed so as to meet the common

requirements of the people of the village, the principles of establishment of which are regulated by code, which is under the administrative custodial supervision of the central administration and which is a public legal entity. In Code No. 442 it has been regulated that the decision making organs of the village that have been equipped with public power privileges and authorities such as raising tax and giving sentences shall accede by election.

28. Since the individual application is a remedy that is provided against violations of rights arising from the exercise of the public power, entitlement of the right to individual application for public legal entities is not in congruity with the legal characteristic of this constitutional institution.

29. For the village, which is a local administrative unit that has a public legal entity and the administrators of which take office directly upon being elected as per paragraph one of article 127 of the Constitution, the right to make individual applications has not been entitled in compliance with paragraph (2) of article 46 of the Code No. 6216.

30. Due to the explained reasons, as it is understood that the applicant who is a public legal entity has no capacity to make individual applications, it has to be decided that the application is inadmissible because of "*lack of venue in terms of person*" without examination thereof regarding other admissibility criteria.

#### **V. JUDGMENT**

It is **UNANIMOUSLY** decided on the date of 25/12/2012 that the application is **INADMISSIBLE** because of "lack of venue in terms of person" and that the trial fees be charged on the applicant.

President  
Alparslan ALTAN

Member  
Osman Alifeyyaz PAKSÜT

Member  
Recep KÖMÜRCÜ

Member  
Engin YILDIRIM

Member  
Celal Mümtaz AKINCI