



REPUBLIC OF TURKEY
CONSTITUTIONAL COURT

FIRST SECTION

DECISION

TUNCAY ALEMDAROĞLU APPLICATION

(Application Number: 2012/827)

Date of Decision: 15/10/2014

Off. Gaz. Date-Issue: 17/12/2014-29208

FIRST SECTION

DECISION

President	: Serruh KALELİ
Members	: Burhan ÜSTÜN Nuri NECİPOĞLU Hicabi DURSUN Hasan Tahsin GÖKCAN
Rapporteur	: Özcan ÖZBEY
Applicant	: Tuncay ALEMDAROĞLU
Counsel	: Att. Mustafa HALICI

I. SUBJECT OF APPLICATION

1. The applicant asserted that a permanent limitation of movement occurred in his right foot and knee as a result of the armed assault he suffered by a third person, that the judicial process that was conducted with regard to the incident that took place on 7/7/2004 was not concluded within a reasonable period and that the case became subject to the statute of limitations, that the individual who carried out the assault was left unpunished due to the failure to conduct an effective trial, that therefore articles 17, 36 and 141 of the Constitution were violated in connection with the right to life and the right to a fair trial.

II. APPLICATION PROCESS

2. The application was directly lodged with the Constitutional Court on 29/11/2012. As a result of the preliminary examination of the petition and annexes thereof as conducted in terms of administrative aspects, it was found that there was no deficiency that would prevent the referral thereof to the Commission.

3. It was decided by the Second Commission of the First Section on 18/3/2013 that the examination of admissibility be carried out by the Section and the file be sent to the Section.

4. It was decided by the Section during the meeting held on 26/6/2013 that the examinations for admissibility and merits of the application be carried out together and a copy be sent to the Ministry of Justice for its opinion.

5. The facts and cases, which are the subject matter of the application, were notified to the Ministry of Justice on 27/6/2013. The Ministry of Justice presented its opinion to the Constitutional Court on 29/7/2013.

6. The opinion of the Ministry of Justice was notified to the applicant on 1/8/2013, and the applicant submitted his counter opinion on 5/8/2013.

III. FACTS AND CASES

A. Facts

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

8. The applicant served as the Mayor in Yenimahalle District of Ankara province from 1999 to 2004. During this duty of his, the car market that belonged to the individual named Ö.F.Ç. was permanently shut down via a decision of the Municipal Council with legal justifications such as it lacking a permit and being situated on public land.

9. The applicant suffered an armed assault by Ö.F.Ç. on 7/7/2004 after his duty as the Mayor had ended. According to the report of the Directorate of Forensic Medicine of Ankara dated 20/8/2004, the applicant was injured in a way that would not cause life-threatening danger but prevent his usual activities for 15 days. And in the report of the Forensic Medicine Institute dated 23/6/2006, it was established that the functional restriction that occurred in the applicant's right foot and knee amounted to permanent limb infirmity.

10. As a result of the investigation that was conducted by the Office of the Chief Public Prosecutor of Ankara based on the preliminary file numbered 2004/66774 due to this incident, a public action was filed with the indictment dated 20/8/2004 and numbered 2004/17459 at the 3rd Criminal Court of First Instance of Ankara with the request that the mentioned individual be punished for the crimes of "*carrying a firearm without permit*" and "*willful injury*".

11. With the decision dated 24/1/2006 and numbered M.2004/895, D.2006/10, a decision of lack of jurisdiction was delivered by the mentioned Court by taking into account the legal nature of the crime and the file was sent to the Assize Court of Ankara.

12. With the decision of the 4th Assize Court of Ankara dated 6/10/2006 and numbered M.2006/29, D.2006/349, the crimes attributed to Ö.F.Ç. were considered to be proven and it was decided that "*he be sentenced to 10 months in prison and TRY 440 administrative fine for the crime of carrying a firearm without permit as per article 13/1 of the Code numbered 6136; and to 4 years and 2 months in prison for the crime of willful injury as per article 86/1 of the Turkish Criminal Code numbered 5237*".

13. Upon the appeal of the decision in question by the parties, it was decided to reverse the judgment with the justifications contained within the writ of the 3rd Criminal Chamber of the Supreme Court of Appeals dated 10/11/2010 and numbered M.2008/16798, D.2010/17182 to the effect that "*there had been a failure to observe the requirement of article 9/3 of the Code numbered 5252 to the effect that the judgment which is in favor needs to be determined by means of applying all of the provisions of both the preceding and the succeeding codes to the incident and comparing the results that would be obtained in this fashion and that the judgment needed to be established with the decision clearly demonstrating the practice pertaining to both codes in a detailed manner that would allow for audit, the necessity of assessing whether or not the pronouncement of the judgment*

could be postponed with regard to decisions delivered for the crime of violating the Code numbered 6136 regarding the accused, the failure to observe the requirement to indicate the period of right deprivations in the decision section stipulated in article 53 of the TCC, the failure to indicate in the judgment section the reasons for determining the base punishment based on the minimum level given that the action of injury attributed to the accused had been committed due to the public service of the victim and with a firearm".

14. With the decision of the 4th Assize Court of Ankara, dated 11/3/2011 and numbered M.2011/21, D.2011/158 which complied with the decision of reversal, it was decided that Ö.F.Ç. *"be sentenced to 10 months in prison and TRY 366 administrative fine for the crime of carrying a firearm without permit and to 5 years in prison for the crime of willful injury"*.

15. Upon the appeal of this decision by Ö.F.Ç., it was decided by the decision of the 3rd Criminal Chamber of the Supreme Court of Appeals dated 19/10/2011 and numbered M.2011/8185, D.2011/14511 that the judgment that had been established for the crime of carrying a firearm without permit be approved and that the judgment pertaining to the crime of willful injury be reversed with the justification that *"while as a result of the crime attributed to the accused, all of the relevant provisions of the Turkish Criminal Code numbered 765 that was in force at the time of the crime and the Turkish Criminal Code that came into effect on 1/6/2005 after the date of the crime needed to be applied to the incident as per article 9/3 of the Code numbered 5252 in an appropriate fashion in the justification section of the decision and the results thus obtained needed to be compared with each other in order to determine the code that is in favor, the judgment was established in written fashion with a reference that the TCC numbered 5237 was in favor in such a manner that would not allow for audit"*.

16. As a result of the trial that was pursued by complying with the decision of reversal, at the hearing of the mentioned Court dated 24/1/2012, it was decided that the public action be discontinued on grounds of statute of limitations.

17. The appeal application filed by the applicant with his petition dated 27/1/2012 was dismissed with the decision of the 3rd Criminal Chamber of the Supreme Court of Appeals dated 8/10/2012 and numbered M.2012/27297, D.2012/33268, the decision of the local Court was approved and the decision, which became final on the same date, was notified to the applicant on 26/11/2012.

18. The applicant lodged an individual application within its due period with his petition dated 29/11/2012.

B. Relevant Law

19. Paragraph (1) and subparagraph (e) of paragraph (3) of article 86 of the Turkish Criminal Code dated 26/9/2004 and numbered 5237 with the side heading of *"Willful injury"* are as follows:

"(1) A person who wilfully causes pain to another's body or causes the deterioration of their health or perception capacity shall be sentenced to a prison sentence of one to three years.

...

(3) In the event that the act of willful injury is committed;

...

e) By use of a firearm,

The penalty to be imposed shall be increased, without seeking plaint, by half."

20. Subparagraph (a) of paragraph (1) of article 87 of the Code numbered 5237 with the side heading of "Aggravated injury due to its consequences" is as follows:

"(1) If the act of willful injury has caused;

a) Permanent weakening of the function of one of the victim's senses or organs,

...

The penalty determined as per the above article shall be increased by one fold. However, the penalty to be imposed in circumstances falling under clause one cannot be less than three years, and in circumstances falling under clause three, it cannot be less than five years."

21. Paragraph (1) of article 13 of the Code on Firearms and Knives and Other Tools dated 15/7/1953 and numbered 6136 is as follows:

"Regarding those who purchase or carry or possess firearms and rounds belonging to these in defiance of the provisions of this Code, a prison sentence of 1 to 3 years and an administrative fine of thirty to one hundred days shall be adjudged."

22. Subparagraph (4) of paragraph one of article 102 of the abolished Turkish Criminal Code dated 1/3/1926 and numbered 765 is as follows:

"Public action for circumstances other than those prescribed separately in the Code:

....

(4) In crimes punishable by heavy imprisonment, imprisonment or temporary banishment not exceeding five years or by temporary deprivation from public rights,

...

shall be removed when five years elapse."

IV. EXAMINATION AND JUSTIFICATION

23. The individual application of the applicant dated 29/11/2012 and numbered 2012/827 was examined during the session held by the court on 15/10/2014 and the following were ordered and adjudged:

A. Claims of the applicant

24. The applicant claimed that a permanent limitation of movement occurred in his right foot and knee as a result of the armed assault he suffered by a third person, that since the judicial process that was conducted starting from 7/7/2004, which was the date of the incident, was not concluded within a reasonable period, the case became subject to the statue

of limitations, that the individual who carried out the assault was thus left unpunished, that therefore articles 17, 36 and 141 of the Constitution were violated in connection with the right to life and the right to a fair trial and requested TRY 50,000 in moral compensation.

B. Evaluation

1. In Terms of Admissibility

a. The Claim That the Right to a Fair Trial Was Violated

25. The applicant alleged that his right to a fair trial was violated by indicating that the criminal trial that had been conducted with regard to the individual who has injured him was not concluded within a reasonable period of time.

26. In the opinion of the Ministry, as the complaint to the effect that the right to a fair trial was violated was being examined, the principles adopted by the European Court of Human Rights (ECtHR) in this matter were mentioned, and it was indicated that the ECtHR examined complaints to the effect that article 6/1 of the Convention was violated within the scope of article 3 with a reference to the length of the investigations conducted against those responsible as a procedural requirement of article 3 of the Convention and that it did not separately handle complaints based on article 6/1.

27. The applicant did not agree with the opinion of the Ministry by indicating that considering the right to a fair trial as a right belonging solely to the accused in criminal cases and withholding this right from the victims would not be in harmony with the principle of justice.

28. Even though the applicant alleged by relying on the right to a fair trial that the case that was conducted to the detriment of the third person exceeded the reasonable period, no separate assessment was conducted regarding the mentioned complaint with a view to the right to fair trial since an effective investigation also fulfills the criterion of being conducted with reasonable speed and this criterion also needs to be taken into account in the event of the disruption of one's physical integrity within the scope of the state's responsibility of conducting an effective investigation.

b. The Claim That the Right to Life Was Violated

29. As a result of the examination of the application, it must be decided that this part of the application is admissible since it has been understood that the allegations with regard to the violation of physical integrity are not clearly devoid of justification and no other reason is deemed to exist to require a decision on their inadmissibility.

2. In Terms of Merits

30. The applicant alleged that the case he had filed due to having been injured as a result of the armed assault by a third person that he had suffered was not concluded within a reasonable period of time, that the case became subject to the statute of limitations and that therefore his right to life was violated.

31. In the opinion of the Ministry, it was indicated that given the fact that the applicant survived the armed assault he suffered and was not injured in such a way that did not cause a life-threatening danger in the incident on hand that is the subject of the

application, the complaint to the effect that the right to life was violated needed to be evaluated within the scope of article 17 of the Constitution and article 3 of the European Convention on Human Rights (ECHR/the Convention), that the applicant had not faced any threat of assault previously and that he suffered the assault on the day of the incident in an unexpected fashion, that according to the European Court of Human Rights (ECtHR) it is very important that investigations pertaining to allegations of torture and ill-treatment do not become subject to the statute of limitations within the framework of the objectives of the right to an effective remedy, that it was within the discretion of the Constitutional Court to evaluate the complaint to the effect that the right to individual inviolability was also violated with a view to the procedural liability.

32. The applicant indicated that he did not agree with the opinion of the Ministry that was to the effect that the allegations needed to be examined within the framework of article 3 of the ECHR, that he also did not have a request as such, that the examination needed to be conducted within the framework of the right to a fair trial.

33. The applicant was injured as a result of the armed assault by a third person that occurred suddenly on the day of the incident. Given the fact that no loss of life occurred as a result of the armed assault that the applicant suffered or that he did not suffer a life-threatening injury, the complaint to the effect that the right to life was violated needs to be evaluated within the scope of paragraph three of article 17 of the Constitution and article 3 of the ECHR. Moreover, since there is no complaint with regard to a violation of the state's material liability in the incident on hand and that no such situation has been determined, the examination needs to be conducted with a view to procedural liability in connection with the state's positive responsibility.

a. General Principles

34. Paragraph three of article 17 of the Constitution is as follows:

"No one can be subjected to torture or torment; no one can be subjected to a penalty or treatment which is incompatible with human dignity."

35. Article 3 of Convention is as follows:

"No one shall be subjected to torture or to inhuman or degrading treatment or punishment."

36. Within the scope of the right regulated under article 17 of the Constitution, the state has the positive liability to protect the material and spiritual existence of all individuals within its jurisdiction against risks that can stem from the actions of public instances, other individuals and the individual himself/herself. The state is liable to protect the material and spiritual existence of the individual from all sorts of hazards, threats and violence (App. No: 2013/293, 17/7/2014, § 105; App. No: 2012/752, 17/9/2013, § 51).

37. The ECtHR has indicated that the positive liabilities of states also cover the actions of private individuals. The state has the liability to provide the sufficient protection and legal framework in the face of ill-treatments that can be committed by public officials as well as private individuals (see *Denis Vasilyev v. Russia*, App. No: 32704/04, 17/12/2009, § 98; *97 Members of the Gldani Jehovah's Witnesses Community and 4 other individuals v. Georgia*, App. No: 71156/01, 3/5/2007, § 96; *Costello-Roberts v. United Kingdom*, App. No:

13134/87, 25/3/1993, § 26-28; *A v. United Kingdom*, App. No: 100/1997/884/1096, 23/9/1998, § 22-24; *X and Y v. the Netherlands*, App. No: 8978/80, 26/3/1985, § 27).

38. There is also a procedural dimension to this positive liability that the State has within the scope of the right of the individual to protect his/her material and spiritual existence. Within the framework of this procedural liability, the state is obliged to carry out an effective official investigation which can ensure that those who are responsible for all sorts of incidents of physical and spiritual assault that are not natural are determined and, if necessary, punished. The main aim of this type of an investigation is to guarantee the effective implementation of the law that prevents the assaults in question and, in incidents in which public officials or institutions are involved, to ensure that they are accountable for the incidents that occur under their responsibility (App. No: 2013/293, 17/7/2014, § 106; also, for decisions of the ECtHR in the same vein see *Anguelova v. Bulgaria*, App. No: 38361/97, 13/6/2002, § 137; *Jasinskis v. Latvia*, App. No: 45744/08, 21/12/2010, § 72).

39. Accordingly, in the event that an individual has a justifiable claim that s/he has been subjected to an unlawful treatment by a state official or a third person in such a manner to violate article 17 of the Constitution, article 17 of the Constitution requires the conduct of an effective official investigation when it is interpreted together with the general liability under article 5 with the side heading "*Fundamental aims and duties of the State*". This investigation needs to be suitable for the determination and punishment of those responsible (App. No: 2012/1017, 18/9/2013, § 30). If that is not possible, this article will become ineffective in practice despite the importance it has and it will become possible in certain circumstances for state officials to take advantage of their de facto immunity and abuse the rights of individuals that are under their control (App. No: 2012/969, 18/9/2013, § 25; also for a decision of the ECtHR in the same vein see *Corsacov v. Moldova*, App. No: 18944/02, 4/4/2006, § 68).

40. It is necessary to determine the type of investigation required by procedural liability in an incident depending on whether the liabilities as regards the essence of the right of the individual to protect his/her material and spiritual existence require a criminal sanction or not. In cases pertaining to incidents of death and injury occurring intentionally or as a result of assault or ill-treatment, the state has the liability to conduct criminal investigations of a nature that allows for the determination and punishment of those responsible in case of lethal or injurious assault as per article 17 of the Constitution. In these kinds of incidents, the mere payment of compensation as a result of the administrative and civil investigations and cases that are conducted is not sufficient to eliminate the violation of this right and to remove the title of victim (App. No: 2012/752, 17/9/2013, § 55).

41. The aim of criminal investigations conducted is to ensure that the provisions of the legislation that protect the material and spiritual existence of the individual are implemented in an effective way and that those who are responsible are accounted for with regard to the incident of death or injury. This is not a result liability, but a liability to use the appropriate means. On the other hand, the assessments included herein do not mean in any way that article 17 of the Constitution grants applicants the right to get third parties tried or punished due to a judicial crime (for a decision of the ECtHR in the same vein, see *Perez v. France*, 47287/99, 22/7/2008, § 70), or imposes a duty of concluding all trials with a

conviction or a certain criminal sentence (see above mentioned *Tanlı v. Turkey*, § 111) (App. No: 2012/752, 17/9/2013, § 56).

42. The criminal investigations to be conducted should be effective and sufficient so as to allow for those who are responsible to be determined and punished. In order to be able to say that an investigation is effective and sufficient, investigation authorities need to act *ex officio* and collect all evidence that can enlighten the incident and are useful for the determination of those who are responsible. Therefore, an investigation required by allegations of ill-treatment needs to be conducted independently, swiftly and extensively. . In other words, officials need to try to learn about facts and incidents in earnest and not rely on hasty ungrounded outcomes for the sake of concluding the investigation or justifying their decisions (see *Assenov and others v. Bulgaria*, App. No: 24760/94, 28/10/1998, § 103; *Batu and others v. Turkey*, App. No: 33097/96 - 57834/00, 3/6/2004, § 136). Within this framework, officials need to take all reasonable measures that can be taken in order to collect the evidence pertaining to the incident in question including the statements of witnesses and investigations of criminalistic experts as well as other evidence (see *Tanrikulu v. Turkey* [BD], App. No: 23763/94, 8/7/1999, § 104; *Gül v. Turkey*, App. No: 22676/93, 14/12/2000, § 89).

43. Within the scope of the positive liability of the State, the mere fact that no investigation has been conducted or that an insufficient investigation has been conducted can sometimes constitute ill-treatment. As a result, regardless of the circumstances, officials need to take action as soon as an official complaint is filed. Even when no complaint has been filed, the initiation of an investigation needs to be ensured in the event that definitive indications demonstrating the existence of ill-treatment are present. Within this context, the investigation needs to be launched immediately, and be open to public scrutiny, conducted independently, carefully and swiftly and be effective as a whole (App. No: 2012/969, 18/9/2013, § 25; also for a decision of the ECtHR in the same vein see above mentioned *Batu and others v. Turkey*, §§ 133, 134).

44. The mere legal existence of a remedy that would enable the investigation is not sufficient, this remedy also needs to be effective in practice and the instance that is applied to needs to have the authority to handle the essence of the violation claim. It is possible to refer to the effectiveness of the application remedy only if it is capable of preventing the violation of a right, terminating it if it is ongoing or concluding a right violation that has already ended and offers a suitable compensation for it. When an allegation of a right violation that has already occurred is in question, sufficient procedural guarantees also need to be provided in terms of determining those responsible in addition to the payment of a compensation (App. No: 2012/969, 18/9/2013, § 26; for decisions of the ECtHR in the same vein see above mentioned *Aksoy v. Turkey*, § 95; *Ramirez Sanchez v. France*, App. No: 59450/2000, 4/7/2006, §§ 157-160).

45. When an investigation that has been conducted with a view to complaints regarding ill-treatment is in question, it is important that the officials act swiftly. Nevertheless, it is also necessary to acknowledge that in certain circumstances there may be reasons or difficulties that prevent an investigation from progressing. However, in investigations regarding ill-treatment, the investigation needs to be conducted by the officials with utmost speed and care and especially crimes that create life-threatening situations should not be left without punishment so as to ensure adherence to the rule of

law, prevent creating the image that unlawful actions are tolerated and encouraged, prohibit all deceptions and unlawful actions and sustain the confidence of the public opinion. (For decisions of the ECtHR in the same vein see *Maorano and others v. Italy*, App. No: 28634/06, 15/12/2009, § 124; *McKerr v. United Kingdom*, App. No: 28883/95, 4/5/2001, §§111, 114; *Opuz v. Turkey*, App. No: 33401/02, 9/6/2009, § 150; *Öneryıldız v. Turkey*, [BD], App. No: 48939/99, 31/11/2004, § 96).

46. Courts need to deploy all of their efforts and resort to all instruments in order to make sure that especially an incident that amounts to torture and ill-treatment does not become subject to the statute of limitations. When there is a criminal case pertaining to allegations of ill-treatment, a swift response to be given by the officials can be regarded as a fundamental element with regard to the protection of the public's trust within the framework of the principle of equality and serves to refrain from all sorts of tolerance to be offered to those who have been involved in unlawful actions (App. No: 2013/293, 17/7/2014, § 116; also for decisions of the ECtHR in the same vein see *Hüseyin Esen v. Turkey*, App. No: 49048/99, 8/8/2006; *Özgür Kılıç v. Turkey*, App. No: 42591/98, 24/9/2002).

47. The ECtHR has pointed out that in circumstances which result in torture or ill-treatment, it is of utmost importance that criminal proceedings and the process of delivering the judgment do not become subject to the statute of limitations and that an amnesty or general amnesty is not rendered possible within the framework of the objectives of "an effective remedy". Moreover, the ECtHR has also drawn attention to the importance of suspending an official whose investigation or case is ongoing and, if convicted, barring him/her from the profession (see *Abdülsamet Yaman v. Turkey*, App. No: 32446/96, 2/11/2004, § 55; *Eski v. Turkey*, App. No: 8354/04, 5/6/2012, § 34; also see Final Decisions and Recommendations of the United Nations Committee Against Torture: Turkey, 27/5/2003, CAT/C/CR/30/5).

b. Application of General Principles to the Incident

48. The applicant indicated that the investigation was not effective since the case that had been filed for the crime of injury as a result of the physical assault he had suffered was discontinued due to the statute of limitations.

49. The applicant suffered an armed assault on 7/7/2004. An investigation was launched on the same day by the Office of the Prosecutor and a public action was filed with regard to the accused on 20/8/2004. The first conviction judgment was delivered by the Court on 6/10/2006, the second conviction judgment was delivered on 11/3/2011, as a result of the decisions of reversal of the Supreme Court of Appeals dated 10/11/2010 and 19/10/2011, it was decided with the decision of the Court dated 24/1/2012 that the case in question be discontinued due to the statute of limitations. This decision was approved by the Supreme Court of Appeals and finalized on 8/10/2012.

50. According to this, the procedure in the two-stage trial was terminated on 8/10/2012, which is 8 years 3 months 1 day after the date on which the complaint was filed. Whereas within the framework of the principles mentioned above (§ 45, 46, 47) courts need to swiftly conclude trials pertaining to individuals who are accused of assaults against physical integrity and therefore prevent the case from becoming subject to the statute of

limitations, it is observed that the case became subject to the statute of limitations in the present incident. Therefore, it is observed that the case pertaining to the accused who was sentenced by the Court of first instance by acknowledging that material evidence to his detriment was present ended up becoming subject to the statute of limitations. As a result, it has been determined that there was a considerable delay in the process before the Court of instance, that this delay did not rest on a reasonable cause, that action was not taken swiftly enough to prevent the accused from going unpunished and that this caused the criminal application to become ineffective.

51. Due to the reasons that are explained, it needs to be decided that the procedural liability of the State to conduct an effective investigation stipulated by paragraph three of article 17 of the Constitution was violated.

V. IMPLEMENTATION OF ARTICLE 50 OF THE CODE NUMBERED 6216

52. The applicant requested that the fundamental right violation that he brought forward in his application be determined and that TRY 50,000 in moral compensation be ruled upon.

53. Paragraph (2) of Article 50 of the Code numbered 6216 with the side heading "*Decisions*" is as follows:

"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."

54. In the application, it has been concluded that paragraph three of article 17 of the Constitution was violated in terms of its procedural dimension. The applicant requested that the moral damage he suffered be compensated.

55. As a result of the lack of the conduct of an effective and dissuasive criminal investigation and prosecution with a view to the incident regarding the protection of the applicant's material and spiritual existence, it has been concluded that a net amount of TRY 21,000 needs to be paid by discretion to the applicant in exchange for his moral damage, which cannot be compensated by the mere determination of the violation, by taking into account the characteristics of the present incident.

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

VI. JUDGMENT

In the light of the reasons explained, it is **UNANIMOUSLY** held on 15/10/2014;

A. That the complaint brought forward by the applicant pertaining to the violation of paragraph three of article 17 of the Constitution is **ADMISSIBLE**,

B. That paragraph one of article 17 of the Constitution was VIOLATED from a procedural point of view,

C. That a separate examination of the complaint pertaining to the violation of article 36 of the Constitution was not necessary,

D. That a net amount of TRY 21,000 be paid to the applicant in exchange for the moral damage he suffered,

E. That the trial expenses of TRY 1,672.50 in total composed of the fee of TRY 172.50 and the counsel's fee of TRY 1,500.00, which were made by the applicant be paid to the applicant,

F. That the payments be made within four months as of the date of application by the applicant to the Ministry of Finance following the notification of the decision; that in the event that a delay occurs as regards the payment, the legal interest be charged for the period that elapses from the date, on which this period comes to an end, to the date of payment.

G. That a copy of the decision be sent to the relevant Court.

President
Serruh KALELİ

Member
Burhan ÜSTÜN

Member
Nuri NECİPOĞLU

Member
Hicabi DURSUN

Member
Hasan Tahsin GÖKCAN