



REPUBLIC OF TURKEY
CONSTITUTIONAL COURT

FIRST SECTION

DECISION

Application No: 2012/855

Date of Decision: 26/6/2014

FIRST SECTION

DECISION

President	: Serruh KALELİ
Members	: Zehra Ayla PERKTAŞ Burhan ÜSTÜN Erdal TERCAN Zühtü ARSLAN
Rapporteur	: Selami ER
Applicant	: Aktif Elektrik Müh. İnş. San. ve Tic. Ltd. Şti.
Counsel	: Att. Mehmet Ali GÖLCÜKLÜ

I. SUBJECT OF APPLICATON

1. The applicant has claimed that his right to a fair trial and article 40 of the Constitution have been violated when the appeal application he has made with the reasons that the court that has been hearing the compensation case that was lodged about him has not specified in the minutes that the case was heard with the title of a labour court; that in the brief decision that was pronounced the name of the court was mentioned as the '*Acipayam Civil Court of First Instance*' and only the expression '*in a way that legal remedy is available*' was dismissed by the Supreme Court of Appeals as it was made after the appeal period which is 8 days; and furthermore has requested that a cautionary judgment be made concerning the preservation of the compensation amount that he had deposited to the execution file as it is, that a retrial be made or a material compensation of 85.000 TRY be ruled so as to remedy the violation.

II. APPLICATION PROCESS

2. The application was lodged on 26/11/2012 via the 3rd Civil Court of First Instance of Denizli. 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. In accordance with the interlocutory decision of the First Section dated 6/2/2014, it was decided that the examination of admissibility and merits of the application be carried out together and a sample thereof be sent to the Ministry of Justice for its opinion.

5. The letter of opinion dated 4/4/2014 of the Ministry of Justice was notified to the counsel of the applicant on the date of 15/4/2014. The counsel of the applicant did not submit his statements against the response of the Ministry of Justice within its legal period.

III. FACTS AND CASES

A. Facts

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

7. The applicant signed a contract with the Aysüt Süt Ürünleri Ltd. Şti., a producer of dairy products, in the Acipayam District of Denizli Province, and undertaken the electromechanical door work which the factory needed.

8. As a result of the collapsing scaffold during the installation of the door, the worker Ali ÇATAL, who had a work contract with the applicant, was wounded in the work accident that took place on the date of 06/02/2006 and was hospitalized. With the impact of the accident Ali ÇATAL's spine was broken and he was paralyzed. He was being treated in the physical therapy department when he choked on the crumbs of bread that his wife was helping him to eat and he was infected as a result of the pieces of bread that got into his lungs and he was referred to the intensive care unit. Ali ÇATAL lost his life on the date of 10/4/2006.

9. Upon the death of Ali ÇATAL, a public case was lodged with the Merits file 2006/295 at the Acipayam Civil Court of First Instance regarding the crime of giving rise to involuntary manslaughter.

10. While the case was ongoing, Perihan ÇATAL, the wife of the deceased Ali ÇATAL, upon such fact, filed a case for compensation against the applicant company and the Aysüt Süt Ürünleri Ltd. Şti on the date of 1/5/2007 at the Acipayam Civil Court of First Instance (the Court), by proxy of his son Ömer MERT on her own behalf, requesting a total compensation amount of TRY 130.000.

11. The mother and the father of the deceased, and two nurses who worked at the hospital where he underwent surgery, who were heard as witnesses have declared that the deceased had surgery following the accident and that his situation was getting better and that his wife Perihan ÇATAL, involuntarily led to the infection in his lungs when she was having him eat his bread.

12. The court has ordered an expert examination so as to determine the degree of negligence, on the date of 4/12/2009 the expert with the expert report has separately established the degree of negligence as 40% for Aysüt Süt Ürünleri Ltd. Şti and 20% for Perihan ÇATAL, the wife of the deceased.

13. The court has requested an expert report also for the compensation for the loss of support and it was established with the expert report dated 25/6/2010 that Perihan ÇATAL had the right to request a compensation of TRY 41.717,85 and her son, TRY 9.166,51.

14. The court in the 11th and final hearing dated 06/07/2010 has decided with partial acceptance of the case, without specifying that it tried the case with the title of a labour court, that the wife and son of the deceased Ali ÇATAL receive from Aysüt Süt Ürünleri Ltd. Şti a compensation whereby '*the legal remedy be available*' and this was read out in the faces of the counsels of the claimant and the defendant.

15. In its justified decision No. M.2007/280 D.2010/281 dated 06/07/2010, the court has written down the same consequence with the expression '*whereby the legal remedy to the*

Civil Chamber of the Supreme Court of Appeals within 8 days be available' and the justified decision was notified to the applicant on the date of 22/07/2010.

16. The decision of the court has been appealed by all the defendants and by the claimant. The counsel of the applicant has made the appeal application on the date of 23/07/2010 and the counsel of the claimant on the date of 26/07/2010.

17. The 21st Civil Chamber of the Supreme Court of Appeals that has carried out the appeal examination, with its decision No. M.2012/15465, D.2012/15530 dated 25/9/2012 has decided that the petition of appeal of the applicant and the claimant be dismissed regarding their requests for appeal on grounds of statute of limitations and, regarding the request for appeal of Aysüt Süt Ürünleri Ltd. Şti, reversed the decision of the court with the justification that if as a result of the preliminary investigation performed to ascertain whether this accident was a working accident it was found out that the accident is indeed a work accident, the compensation that was received from the Social Security Institution (SSI) had to be set off.

18. The decision that was finalized regarding the applicant was notified to the applicant on the date 7/11/2012. The applicant has paid the compensation that was ruled by the court on the date of 9/11/2012 to the register of the office of execution.

B. Relevant Law

19. Former article 8 of the Code of Labour Courts dated 30/1/1950 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 notification.

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."

21. Related parts of paragraph (1) of article 297 of the Code of Civil Procedure No. 6100 and dated 12/1/2011 with the side heading of *"Scope of judgment"* are as follows:

"The judgment is delivered "On Behalf of the Turkish Nation" and contains the following matters after this expression:

a) The name of the court which has delivered the judgment and the names and surnames of the judge or judges and the clerk and their registration numbers, the title of the court under which the judgment has been delivered if the court functions under various titles.

...

ç) *The outcome of the judgment, the return of the unspent part of the trial expenses and the advance payments previously received from the parties, legal remedies and their time periods if applicable.*

...”

22. 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."

23. Paragraph 1 of article 432 of the Code of Civil Procedure No.1086 is as follows:

"The period for appeal is fifteen days. The periods of appeal commence upon the notification of the writ to each of the parties procedurally."

IV. EXAMINATION AND JUSTIFICATION

24. The individual application of the applicant dated 26/11/2012 and numbered 2012/855 was examined during the session held by the court on 26/6/2014 and the following were ordered and adjudged:

A. Claims of the applicant

25. The applicant, by indicating that it was not indicated in the minutes that the court which has tried the case for pecuniary and non-pecuniary damages that was lodged against him had tried the case under the title of a labour court, that in the brief decision that was taken in the last hearing of the case, the name of the court has appeared as the '*Acipayam Civil Court of First Instance,*' and only the expression '*whereby legal remedy be available*' was used and that he later understood in the justified decision that was notified on the date of 22/07/2010 that the court had made the decision under the title of a labour court and that even though he had appealed the case on the date of 23/7/2010 his petition for appeal was rejected by the Supreme Court of Appeals with the indication that the period for the appeal as it appears in the Code of Labour Courts is 8 days; purported that as a result his right to a fair trial and article 40 of the Constitution have been violated and requested that a cautionary judgment be made regarding the preservation in the file, as it is, of the compensation money that was deposited in the execution file by him, that a retrial be made so as to remedy such violation and in the event of reaching the conclusion that there is no legal benefit in the retrial, that the material compensation of 85.000 TRY incurred as a result of such violation be paid to himself together with the court expenses.

B. Evaluation

26. The claim of the applicant that his right to a fair trial and article 40 of the Constitution have been violated as a result of the facts that it was not indicated in the minutes that the court had tried the case under the title of a labour court; that in the brief decision that was taken in the last hearing of the case the name of the court has appeared as the '*Acipayam Civil Court of First Instance*,' and only the expression '*whereby legal remedy be available*' was used, which made him miss the appeal period shall be evaluated within the scope of the right to access to court.

1. In Terms of Admissibility

27. The complaint of the applicant regarding the violation of his right to access to court is neither clearly devoid of grounds, nor is there any other reason of inadmissibility for this complaint. For this reason, it is necessary to deliver a decision of admissibility as regards this part of the application.

2. In Terms of Merits

28. The applicant claims that as it was not indicated that the court had tried the case under the title of a commercial court and that in the brief decision that was taken in the last hearing of the case the name of the court has appeared as the '*Acipayam Civil Court of First Instance*,' and only the expression '*whereby legal remedy be available*' was used, he has missed the period of appeal, hence his right to access to court has been violated.

29. The Ministry of Justice in its letter of opinion has declared that the right to court action which is an aspect of the right to access to court is not an absolute right, that it can be the subject of some limitations concerning especially the litigability of a case and as per its quality, of some regulatory transactions regarding such matter and nevertheless such limitations must not attain a level which damages the gist of the right to access to court of a person who wishes to litigate, that the court, if it performs its duties with a variety of titles, has to indicate in the decision with which of such titles it has made the decision, that in the case which is the subject of the material application the Court has tried the case during the trial as the civil court of first instance, yet it was understood in the justified decision it was specified that it has done so with the title of a labour court, thus during the examination of the claims of the applicant these issues have to be taken into consideration.

30. 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."

31. Paragraph four of article 40 of the Constitution with the side heading of "*Protection of fundamental rights and freedoms*" is as follows:

"Anyone whose rights and freedoms vested by the Constitution are violated has the right to ask for being granted the opportunity to apply to an authorized body without any delay."

The State is obliged to indicate in its proceedings the legal remedies and authorities the relevant individuals should apply and the timeframes for these.

Damages incurred by any individual through unfair treatment by public officials are compensated for by the State as per the law. The State reserves the right of recourse to the relevant official having responsibility."

32. The relevant part of article 6 of the Convention with the side heading "*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."

33. Under paragraph one of article 36 of the Constitution, the right of everyone to be able to apply to judicial bodies as plaintiffs and defendants and, as a natural consequence of this, their rights 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, as per article 40 of the Constitution, one of the most effective guarantees which enables the due enjoyment of other fundamental rights and freedoms and their safeguarding (M.2013/64, D.2013/142, D.D. 28/11/2013). Within this scope, it is clear that article 40, that expresses that the Constitution has to indicate which legal remedies and offices persons concerned have to address in the transactions of the state, has to be observed in the determination of the scope of the right to a fair trial. Since the scope of the right to a fair trial is not regulated within the Constitution, the scope and content of this right needs to be determined within the framework of article 6 of the Convention with the side heading "*Right to a fair trial*" (App. 2012/1049, 26/3/2013, § 22).

34. The right to access to court, which is one of the most fundamental elements of the right to a fair trial, means the ability to take a dispute before a court and to request the conclusion of the dispute in an effective manner. (App. No: 2012/791, 7/11/2013, § 52). European Court of Human Rights (ECtHR) accepts the right to effective access to court as one of the basic aspects of the principle of '*rule of law*' and expresses that the right to effective access to court requires the existence of a consistent system concerning applications to the court and that persons wishing to litigate have to have clear, practical and effective opportunities in access to court. For this reason, in cases where legal obscurities or obscurities in practice damage access to court, it is decided that such right has been violated (*Geffre v. France*, App. No: 51307/99, 23/1/2003, § 34).

35. 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, to their including protective guarantees against arbitrary treatments of public authorities (M.2013/64, D.2013/142, D.D. 28/11/2013).

36. As a rule, the right to access to court is not an absolute right and a right which can be restricted. Nevertheless, it is necessary that the restrictions to be imposed do not restrict the essence of a right in a way detrimental thereto, pursue a legitimate aim, are clear and proportionate and do not constitute a severe burden on the applicant (App. No: 2013/1613, 2/10/2013, § 38). States can impose some restrictions regarding the litigability of a case, as a requirement of their right of discretion and such cases, as required by the quality thereof, can be the subject of regulatory transactions. Nevertheless, these restrictions must not attain a level which will damage the essence of the right to access to court of someone who wishes to litigate (For similar decisions of the ECtHR see: *Edificaciones March Gallego S.A. v. Spain*,

App. No: 28028/95, 19/2/1998, § 34 and *Rodríguez Valín v. Spain*, App. No: 47792/99, 11/10/2001, § 22).

37. Practices that render it extremely difficult or impossible to access the court can violate the right to access to court. That being said, the fact that certain periods are envisaged for filing a case or resorting to legal remedies are a requirement of the principle of legal certainty and do not constitute a violation of the right to access to court unless they are so short as to render it impossible to file a case. Nevertheless, it must be accepted that the right to access to court has been violated if individuals were not able to exercise their rights to file a case or to resort to legal remedies as a result of the envisaged period conditions having been clearly mistakenly implemented or miscalculated in violation of the law (For a decision of the ECtHR in the same vein, see: *Osu v. Italy*, App. No: 36534/97, 11/7/2002, §§ 36-40).

38. Durations that will be envisaged so as to be able to claim a certain right at the court or to lodge a case within the scope of the freedom to claim right are a requirement of the principle of security of law and cannot be considered as the violation of the right to a fair trial. The said durations serve at once important and legitimate purposes such as to prevent injustices that might arise when courts are asked to make decisions concerning facts that have taken place in the extended past by relying upon evidence that is no longer reliable for the time has passed, lacking or hard to access, and to ensure the security of law. Such interventions, which introduce limitations on durations, are under the discretionary authority of the state and they shall not be considered to have prevented the right to claim rights which is found in the Constitution as long as they are proportionate to the legitimate aim and do not damage the essence of the right. (For a similar decision of the ECtHR see. *Stubbings and Others v. United Kingdom*, App. No: 22083/93, 22095/93; 22/10/1996, § 51).

39. Besides, although it is acceptable when the right to apply to a court is subjected to certain conditions, the courts in implementing procedural rules shall refrain from excessive formalism that can violate, on the one hand, the right to a fair trial and on the other, give rise to the outcome of the abolishment of the procedural rules that are regulated by law (*Walchli v. France*, App. No: 35787/03, 26/7/2007, § 29).

40. With the amendment that was accepted on the date of 3/10/2001, the provision "*The state, in its transactions, must determine which legal remedies and offices the persons concerned shall address and the durations thereof.*" has been added to article 40 of the Constitution. Then, in the justification of this amendment it is stated that the aim is to facilitate and make individuals' claim of their rights before the judiciary or administrative offices possible, and that the indication of the legal remedy, offices and the durations on the face of the legislation which is excessively disorderly, has become an obligation regarding the protection of rights and freedoms.

41. Also, in sub-paragraph (ç) of paragraph no. (1) of article 297 of the Code No. 6100 it is ruled that the legal remedy and the duration have to be found in the judgment part of the rulings of the court. Such requirement is of further importance, especially, regarding the civil courts of first instance that serve under various titles in places where a separate specialized court is not found. Then, explanation of the court title under which the civil courts of first instance have made their decision ensures that parties have correct information regarding the trial procedure that has been applied in the case and the legal remedies against the decision made, hence serves to enable the parties to exercise their right of appealing such decisions in a timely fashion and in compliance with the procedure thereof.

42. In the concrete fact which is the subject of the application, a case for material and spiritual damages has been lodged at the Acipayam Civil Court of First Instance against the applicant and the other defendant by the relatives of the worker who has lost his life at a later stage as a result of the work accident that took place during the installation of the electromechanical door, which was undertaken by the applicant. The claimants, in their petition for the case, have grounded their claims on unjust act and mentioned that the accident was a work accident. The court, in the course of the trial, has used the title of civil court of first instance in the minutes and in its correspondence, not indicated that it tried the case with the title of labour court and notified the decision to the claimant and the defendants with the expression "*whereby legal remedy be available*" on the date of 6/4/2010, under the title of civil court of first instance. Then, in its justified decision, which was notified to the applicant on the date of 22/5/2010, the Court has established judgment by indicating that it tried the case with the title of labour court and that the duration for appeal is 8 days starting from the pronouncement. The application for appeal that the applicant has made on the date of 23/5/2010 has been dismissed by the Supreme Court of Appeals with the justification that the requests of appeal have not been made in due time regarding the applicant and one of the defendants. The Supreme Court of Appeals, regarding the other defendant, has reversed the decision of the court of first instance with the justification that the fact that is alleged to be a work accident has not been notified to the SSI and that for this reason the determination of whether or not the case has the quality of a work accident is a pre-condition and that in the event of acceptance of the fact as a work accident the compensation to be received from the SSI has to be set off from the compensation which is the subject of the judgment.

43. Considering that a new circumstance has arose when the Supreme Court of Appeals has reversed the decision regarding the other defendant and made a ruling whereby the compensation shall be reduced in favor of the defendants when it decided that in the event of acceptance of the fact as a work accident the compensation that is received from the the Social Security Institute has to be set off from the compensation concerned; it is understood that the applicant's request concerning the review of appeal objections in terms of their merits and the interest that he wishes to obtain as a result thereof has material grounds and is not an abstract claim. Moreover, when the justification that, in the decision of reversal of the Supreme Court of Appeals, it was not determined whether or not the fact is a work accident and in relation thereto, whether or not the case is a compensation case arising from a work accident, it is seen that the quality of the case is also unclear in a way that the applicant cannot foresee.

44. As per article 8 of the Code No. 5521, in labour cases the appeal duration of 8 days commences with the pronouncement; while according to article 432 of Code 1086, in civil cases the duration of appeal of 15 days commences with the notification of the judgment. In places where there are no separate special courts, civil courts of first instance also perform the duties of special courts. In places where separate commercial courts are not found, civil courts of first instance try cases arising from disputes which fall within the scope of the labor code under the title of labour court.

45. Indeed, the General Assembly of Civil Chambers of the Supreme Court of Appeals with its justification "*As a rule, in cases where a case is lodged to be tried under the title of another court, the Civil Court of First Instance has to make a decision as to under which title it shall hear the case starting from the scheduling order and continue with the trial accordingly and, finally, show this in its final verdict. This issue is of great importance regarding the methodology of trial that will be applied, the duration of appeal and the application of other procedural rules. For example, in a litigation lodged at the Civil Court*

of First Instance under the title of labour court the procedure of serial trial shall be implemented and likewise, since the duration of appeal will commence with the pronouncement, the court shall decide that it will be trying the case under such title and demonstrate this in its final verdict. Considering the basic differences regarding the Civil Courts of First Instance and Labour Courts, that such a determination has not been made would be contrary to the procedure." has reversed the decision of insistence of the local court by overcoming the preliminary question and reaching the gist of the action (General Assembly of Civil Chambers of the Supreme Court of Appeals, M.2011/19-446, D.2011/569, 28/9/2011).

46. In parallel to the decision of the General Assembly of Civil Chambers of the Supreme Court of Appeals the 9th Civil Chamber has reversed the decision of the court of first instance with a decision with the justification that *"In line with article 8 of the Code of Labour Courts No. 5521, the duration of appeal against decisions taken at labour courts is eight days starting from the date of pronouncement or of notification. If the decision has been pronounced vis-a-vis by the court, the brief decision that has been pronounced has to bear the conditions that have been specified in article 297 of the Code of Civil Procedure No. 6100 (in article 383 and the subsequent articles of the Code of Civil Procedure No. 1086). Otherwise, a pronouncement that is compliant with the procedure thereof cannot be mentioned. In this case, the duration of appeal shall commence starting from the notification of the reasoned decision."* (9th Civil Chamber of the Supreme Court of Appeals, M. 2009/40934, D. 2012/846, 18/01/2012)

47. In the case which is the subject of the concrete application, when the civil court of first instance has not indicated neither in the minutes of the hearing nor in its correspondences that it tried the case under the title of a labour court and the presence of conflict between the brief decision which was pronounced and the reasoned decision concerning the explanations pertaining to the title of the court and the legal remedy, the legal obscurity arising therefrom has led to the applicant not being able to make his application for appeal on time. Upon the decision of the 21st Civil Chamber of the Supreme Court of Appeals that has examined the application for the appeal to dismiss the requests for appeal regarding time, there was no possibility that the requests for appeal of the applicant be discussed in terms of merits.

48. The ECtHR has stated that, if conditions of procedure relating to the lodging of a case such as the condition of duration are of the quality that might lead to more than one interpretation, one of those interpretations shall neither be used in a way so strictly as to prevent the persons who wish to litigate nor the conditions concerned be subject to a strict application (See: *Beles v. Czech Republic*, App. No: 47273/99, 12/11/2002, § 51; *Tricard v. France*, App. No: 40472/98, 10/7/2001, § 33).

49. As a result, in the concrete case which is the subject of the application, it was decided that the right to access to court of the applicant has been violated, for such reasons when the civil court of first instance that has tried the case under the title of labour court has not used such title of a labour court during the course of the trial, pronouncing yet, the verdict without specifying the legal remedy and the duration as prescribed in article 40 of the Constitution and in the Code No. 6100 and the Supreme Court of Appeals has rejected the request of the applicant in terms of duration, without taking the legal obscurity that had formed into consideration.

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

C. Regarding Article 50 of the Code No: 6216

51. The applicant, claiming that his right to access to court of the applicant has been violated, when the civil court of first instance that has tried the case under the title of labour court has not used such title of a labour court during the course of the trial, pronouncing yet, the verdict without specifying the legal remedy and the duration, and the Supreme Court of Appeals has dismissed the request for appeal in terms of duration, has requested that a retrial be made so as to lift the outcomes of such violation or that a compensation be ruled for the compensation of the damage that he has incurred.

52. In its opinion, the Ministry of Justice has declared that the payment of a compensation which is in compliance with equity would be appropriate in the event of identification of a violation and if the pursuance of another method for the lifting of the outcomes of the violation is not envisaged.

53. 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 can 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."

54. It has to be decided that the file be sent to the respective court so that the applicant is given the opportunity to avail himself of remedy of making an application for appeal in order for the violation and consequences thereof be removed as per paragraphs (1) and (2) of the Code No. 6216 whereby his case would be examined in terms of the merits, wherein there is legal interest, for in the concrete fact which is the subject of the application the first violation arose from the non-indication of the civil court of first instance that it had tried the case under the title of labour court during the entire course of the case and when in the verdict that was pronounced the legal remedy and the duration thereof have not been specified as a result of which the Supreme Court of Appeals, without taking into consideration the legal obscurity that has thus formed, has decided that the request for appeal of the applicant be dismissed in terms of duration.

55. It should be decided that the trial expenses of TRY 1,672.50 in total composed of the fee of 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.

V. JUDGMENT

In the light of the reasons explained, it is decided UNANIMOUSLY that;

A. The claim of the applicant as to the fact that his right to access to court was violated is **ADMISSIBLE**,

B. The right to a fair trial guaranteed 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. That the payments be made within four months as of the date of application by the applicants 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,

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

On the date of 26/6/2014.

President
Serruh KALELİ

Member
Zehra Ayla PERKTAŞ

Member
Burhan ÜSTÜN

Member
Erdal TERCAN

Member
Zühtü ARSLAN