

REPUBLIC OF TURKEY
CONSTITUTIONAL COURT

FIRST SECTION

JUDGMENT

AHMET SAYGILI AND ŐEFİKA SAYGILI APPLICATION

(Application Number: 2013/135)

Date of Judgment: 21/1/2015

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FIRST SECTION

JUDGMENT

President	: Serruh KALELİ
Judges	: Burhan ÜSTÜN Hicabi DURSUN Erdal TERCAN Zühtü ARSLAN
Rapporteur	: Özcan ÖZBEY
Applicants	: Ahmet SAYGILI Şefika SAYGILI
Counsels	: Att. Halil ÖZTÜRK

I. SUBJECT OF APPLICATION

1. The applicants initiated compensation proceedings and requested the revocation of the action alleging that the case which they filed upon the non-acceptance of their application by the administration which they requested for monetary damages due to the fact that their son lost his life in a traffic accident which took place while he was fulfilling his military service was dismissed by the Supreme Military Administrative Court ("the Military Administrative Court"). The applicants also alleged that a case which the relatives of another soldier who lost his life during the same accident in question was admitted by the 8th Administrative Court of Ankara, that the fact that different decisions were issued in the cases which were filed in relation to the same incident with the same request tarnished the confidence placed in the system, that this situation violated the principle of "*equality before law*" defined in Article 10 of the Constitution.

II. APPLICATION PROCESS

2. The application was directly lodged with the Constitutional Court on 7/1/2013. 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 referral thereof to the Commission.

3. It was decided by the Second Commission of the First Section on 21/4/2013 that the examination of admissibility be conducted by the Section and the file be sent to the Section.

4. It was decided by the Section on 10/10/2013 that the examinations pertaining to the admissibility and merits of the application be conducted jointly and that a copy be sent to the Ministry of Justice for its opinion.

5. The facts, which are the subject matter of the application, were notified to the Ministry of Justice on 11/10/2013. The Ministry of Justice submitted its opinion to the Constitutional Court at the end of the additional period that was granted on 11/12/2013.

6. The opinion of the Ministry of Justice was notified to the applicants on 25/12/2013, the applicants submitted their counter-opinions on 3/1/2014.

III. THE FACTS

A. The Circumstances of the Case

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

8. İsmail Saygılı who was the son of the applicants lost his life, when the vehicle in which he was in rolled over on the way to the artillery range during the movement of the vehicles as a convoy. The applicants' son lost his life while he was fulfilling his military service under the command of the District Gendermarie Command of Gölbaşı in order to participate in the firing practice to be performed in Adıyaman on 19/1/2011.

9. The application which the applicants lodged before the Ministry of Interior for monetary damages stating that their son who was assigned to participate in the firing practice, which was a part of ensuring domestic security and public order, was rejected by the decision of the aforementioned Ministry (File No: 2011/135 of 5/6/2011) on the ground that the incident of death did not fall within the scope of the Law on Monetary Damages and Allocation of Salary no. 2330 of 3/11/1980.

10. The case which the applicants filed before the 4th Administrative Court of Ankara requesting revocation of the action in question was dismissed through the Court decision (File No: E.2011/1654, K.2011/2038 of 29/12/2011) on the ground that the Military Administrative Court had jurisdiction.

11. The case which the applicants filed before the 3rd Chamber of the Military Administrative Court thereupon was dismissed by the decision of the mentioned Court (File No: E.2012/1691, K.2012/2261 of 8/11/2012) and this decision was notified to the applicants on 7/12/2012. The reasoning of the court is as follows:

“It is clearly understood from the text of the Law no. 2330 that the purpose of the Law is to protect the personnel who are assigned to protect trust and public order in peace, to ban, track and investigate smuggling, and their relatives, due to the risk and danger that the personnel who is assigned with this work would face as a result of the conditions of this duty.

There is no doubt that each soldier and, within this scope, the plaintiffs' son needs to be trained in order to be able to perform all duties including ensuring domestic security and public order which can be entrusted to him in the best way without deficiency. However, the Law no. 2330 does not list all of the duties and activities performed during military service within the scope of the Law in order for monetary damages to be paid, but actually seeks primarily the assignment of the duties stipulated in Article 1 of the Law. If otherwise is accepted, it is clear that there is no need to specify for which duties monetary damages can be paid, by listing them separately in the Law.

The fact that a decision was issued by the 8th Administrative Court of Ankara on the payment of monetary damages for another soldier who passed away in the same accident with the plaintiffs' son is not binding for our Court.

When all these explanations are taken into consideration, it is deduced and concluded that any duty within the scope of ensuring security and public order listed in Article 1 of the Law no. 2330 did not cause nor had any effect on the occurrence of the traffic accident which resulted in the death of the plaintiffs' son, that the broadening of the implementation by considering the ordinary activities of military service as within the scope of the Law no. 2330 did not accord with the purpose of the law, that not paying monetary damages was not contrary to law within the scope of the Law no.2330 ... Due to the reasons explained, ... on the dismissal of the case which is of no legal basis ..."

12. On the other hand, the case filed by the relatives of gendermarie private Ö. G., who had lost his life in the same traffic accident, against the action of dismissal of the administration with a similar request was accepted by the decision of the 8th Administrative Court of Ankara (File No: E.2011/1744, K.2012/78 of 26/1/2012) and it was decided that the action be revoked and this decision was upheld with the decision of the 10th Chamber of the Council of State (E.2012/3319, K.2012/4158 of 27/9/2012) and became final.

13. The applicants lodged an individual application in its due time with their petition of 7/1/2013.

B. Relevant Law

14. Article 1 of the Law no. 2330 with the side heading "*Purpose*" is as follows:

"The purpose of this law is to regulate the principles and methods of monetary damages to be paid and the salary to be allocated and in the event that those who are assigned to protect trust and public order in peace, to ban, track and investigate smuggling, to ensure traffic and road safety or the referral and transfer of detainees and convicts, die or become disabled immediately or as a result of an injury or disease to which they incur due to their duties or, even if their duties come to an end, due to the service that they perform."

15. Article 3(1)(a) of the Law no.2330 with the side heading "*Monetary damages*" is as follows:

"a) (Amended: 1/4/1998 - 4356/1 art.) Monetary damages equivalent to 100 folds of the gross salary (including additional indicator) of the most senior Public Servant shall be paid to the heirs of the deceased"

IV. ASSESSMENT AND GROUNDS

16. The individual application of the applicants (App. No: 2013/135 of 7/1/2013) was examined during the session held by the Court on 21/1/2015 and the following were ordered and adjudged:

A. Applicants' Allegations

17. The applicants filed a request for the revocation of the action which is the subject matter of the case and for a compensation by alleging that the application which they lodged for monetary damages to be paid to them due to the fact that their son lost his life in a traffic accident which took place while he was fulfilling his military service was rejected by the administration and the Military Administrative Court, that however, the incident of death took place during an assignment which was given for the purpose of ensuring public order and domestic security, that moreover, a case which the relatives of another soldier who lost his

life during the accident in question lodged was admitted by the 8th Administrative Court of Ankara, that the fact that different decisions were issued in the cases which were filed in relation to the same incident with the same request tarnished the confidence placed in the system, that this situation violated the principle of "*Equality before law*" defined in Article 10 of the Constitution.

B. Assessment

18. The Constitutional Court is not bound by the legal qualification of the facts made by the applicant, it appraises the legal definition of the facts and cases itself. It is not possible to evaluate in an abstract manner the claims of the applicants as to effect that the principle of equality enshrined in Article 10 of the Constitution has been violated and it is absolutely necessary to handle them in connection with other fundamental rights and freedoms stipulated within the scope of the Constitution and the European Convention on Human Rights (ECHR).

19. The applicants stated that the principle of equality was violated as different decisions were issued by courts belonging to two different branches of judiciary in the cases which were filed in relation to the same incident with the same request. In order for this claim to be taken seriously, it is necessary for the applicants to put forth with reasonable evidence that they are treated differently from other persons who are in the same situation and that this difference is solely based on a discriminatory reason without any legitimate basis such as race, colour, gender, religion, language, sexual orientation etc. In the present case, it was seen that the applicants could not put forth any substantial evidence nor finding which would form a basis for their claims in this direction, and that their claims were essentially related to the right to a fair trial. For this reason, the complaints of the applicants were considered to be related to Article 36 of the Constitution, since the result of the trial was unfair as different decisions were issued on the same subject between different branches of judiciary, due to this fact the complaints were examined under the heading of the impairment of the principle of legal certainty..

1. Admissibility

a. Allegation that the Trial was not Fair in terms of its Outcome

20. The applicants alleged that the dismissal by the Military Administrative Court of the request for monetary damages which they filed due to the fact that their son lost his life as a result of a traffic accident that took place while he was fulfilling his military service was contrary to the ECHR and the Constitution.

21. In the opinion letter of the Ministry, it was stated that the complaint in question needed to be evaluated within the framework of Article 6 of the ECHR and the case-law of the European Court of Human Rights (ECtHR) and within the scope of Article 36 of the Constitution, that the admissibility or evaluation of the evidence was primarily a concern for local courts, that the ECtHR stated that it did not have any jurisdiction on the evaluation of the elements which resulted in a local court's ruling in this or that way, that as a matter of fact, it decided that it would mean that it considered itself a judicial body of third or fourth instance and that the duty of interpreting national legislation belonged to domestic authorities in the first place.

22. The applicants repeated their complaints in the application petition, disagreeing with the opinion of the Ministry.

23. Article 148(4) of the Constitution is as follows:

"In the individual application, judicial review shall not be made on matters required to be taken into account during the process of legal remedies. . ."

24. Article 48(2) of the Law on the Establishment and Rules of Procedures of the Constitutional Court no. 6216 of 30/3/2011 is as follows:

"The Court, (...) can rule on the inadmissibility of applications which are manifestly ill-founded."

25. Paragraph (6) of Article 49(6) of the Law No. 6216 with the side heading of *"Examination as regards the merits"* is as follows:

"Examination of the Sections of individual applications regarding a court ruling shall be limited to whether a fundamental right has been violated and the determination of how such violation can be remedied. Judicial review shall not be made by the Sections on matters required to be taken into account during the process of legal remedies."

26. In Article 148(4) of the Constitution and Article 49(6) of the Law no. 6216, it is stated that the matters that must be taken into account in the legal remedy in examinations as regards individual applications cannot be subjected to an examination; in Article 48(2) of the Law no.6216 it is stated that a decision can be issued on the inadmissibility of the applications which are manifestly ill-founded by the Court.

27. It is clear that applications, which do not contain a claim of violation of a constitutional right, where it is simply requested that the decisions of the courts of instance be re-examined, are manifestly ill-founded and that they relate to matters, which are left outside the jurisdiction of the Court by the Constitution and the Law. In this scope, proving the incidents within the case that is the subject of the individual application, interpretation and application of the law rules, the admissibility and evaluation of evidence during the trial and whether a solution brought by courts of instance to a personal dispute is fair in terms of its merits is not subjected to an examination during the individual application assessment. As long as the rights and freedoms stipulated in the Constitution are not violated and unless the decision of the courts of instance do not contain any evident discretionary error or explicit arbitrariness, material and legal errors in them cannot be scrutinized during the assessment of an individual application either. In this framework, unless an evident discretionary error or an explicit arbitrariness is present in the evaluation of the evidence of the courts of instance, the Constitutional Court cannot intervene in this discretion (B. No: 2012/1027, 12/2/2013, §§ 25-26).

28. In the present case, it is seen that the applicants' son lost his life when the vehicle in which he was in rolled over on the way to the firing range during the movement of the vehicles as a convoy in order to participate in the firing practice. The request for monetary damages which the applicants filed within the scope of the Law no. 2330 was dismissed by the Court on the ground that the incident did not fall within the scope of the mentioned Law, similarly, it was stated in the reasoning the fact that the Administrative Court ruled that monetary damages be paid for another soldier who passed away in the same accident as the applicants' son was not binding on the Court. Therefore, it is understood that the dispute is related to whether the applicants' son death would be evaluated within the scope of the Law

no. 2330 and as a result of the trial conducted, the Court decided to dismiss the case by also taking into account the special circumstances of the case after it evaluated the applicability of the Law no. 2330 within the scope of the evidence submitted. (§ 11).

29. The right to a fair trial provides individuals with the opportunity to have whether the trial process and procedure examined, in order to determine whether it was fair, rather than providing the opportunity of having the fairness of a judgment delivered at the end of a case examined. For this reason, in order for the complaints as regards fair trial to be assessed in an individual application, it is necessary for the applicant to submit information or documents with regard to a deficiency which has not been taken into consideration, negligence or explicit arbitrariness, as for the elements that result in the creation of the court decision such as the fact that the rights of the applicant are not respected in the trial process, that s/he is not informed about the evidence and opinions that the opposing party submits in this process or could not find the opportunity to object against them in an effective manner, that s/he could not submit his/her own evidence and claims or his/her claims as regards the settlement of the dispute were not heard by the court of instance or the decision is null and void (B. No: 2013/2767, 2/10/2013, § 22).

30. In the incident which is the subject matter of the application, it is understood that the applicants did not submit any information nor document as to the effect that the trial process was unfair, they did make a complaint that the evaluation of the legislation and the evidence by the Court and the content of the decision issued were unjust. According to this, it is seen that the applicants' allegations were essentially related to the fact that the decision issued by the Court of Instance was wrong, that the evaluation of the evidence and the interpretation and implementation of the law rules were not correct and therefore, the allegations were related to the result of the decision. In the examination conducted, no finding was established as to the fact that the applicants faced any problems with regard to being informed about the evidence and opinions which the opposing party submitted nor objected against them in an effective manner and submitting their own evidence and claims during the trial conducted by the Military Administrative Court, no evident discretionary error or explicit arbitrariness could be determined with regard to the trial conducted and the judgment established by taking into consideration the information and documents in the file in the present case, either.

31. Due to the reasons explained, as it is understood that the allegations of the applicants qualify as a legal remedy complaint, and that the decision of the Court of Instance did not include any evident discretionary error or explicit arbitrariness, it must be decided that the application is inadmissible as it is "*manifestly ill-founded*".

b. The Allegation That the Principle of Legal Certainty was Violated

32. In the examination conducted, since it is understood that the specified complaint of the applicant is not manifestly ill-founded and there is no other reason which would require a decision of inadmissibility, it must be decided that this part of the application is admissible.

2. Merits

33. The applicants stated that a case which the relatives of another soldier who lost his life in the same accident lodged was admitted by the 8th Administrative Court of Ankara, .The applicants also stated that different decisions were delivered by the courts belonging to

different branches of judiciary in the cases filed in relation to the same incident with the same request, which tarnished the trust placed in the system.

34. In the opinion letter of the Ministry, it was stated that the ECtHR accepted that each branch of judiciary which was composed of courts with different jurisdictions and competences could naturally have differences in case-law, that these sorts of differences could even be seen within the same jurisdiction and that it could not be said that this was contrary to the ECHR in itself. The Ministry also stated that the Military Administrative Court was an independent and impartial court, that it issued a decision after fairly evaluating the special circumstances of the case, the evidence submitted to it, and the applicability of the Law no. 2330. .

35. The applicants disagreeing with the opinion of the Ministry reiterated their complaints in their application petition.

36. In the present case, there is no difference arising from the case-law of the courts which are subject to the same branch of judiciary and there is an incompatibility of the case-law of two separate and independent courts which do not have any hierarchy therebetween and each of which has a unique supreme court. It is understood that the applicants complained about the differences arising in the administrative judiciary and military administrative judiciary evaluations when evaluating the circumstances of the traffic accident within the scope of the same legislation.

37. In principle, while the differences of interpretation and case-law with regard to the same legal text among independent judicial authorities of the same instance cannot be *per se* considered as violating the right to a fair trial, the differences of interpretation of appeal authorities among the requests and evidence of the parties with regard to disputes cannot be *per se* considered as violating the right to a fair trial, either (B. No: 2013/3351, 18/9/2013, § 45). It must be accepted that this situation is also the case for different branches of judiciary.

38. Within this scope, the fact that different decisions are issued by the same court will not *per se* mean the violation of the right to a fair trial (For the decisions of the ECtHR in the same vein, see *Pinto v. Portugal*, App. No: 39005/04, 20/5/2008, § 41; *Tudor Tudor v. Romania*, App. No: 21911/03, 24/3/2009, § 29 and *Remuszko v. Poland*, App. No: 1562/10, 16/7/2013, § 92). The possibility of decisions being delivered in different directions should be accepted as an inevitable feature of our judicial system which is composed of various supreme courts such as the Court of Cassation, the Council of State, and the Supreme Military Administrative Court.

39. Therefore, the protection of the legitimate confidence of individuals and the principle of legal certainty does not confer any right to consistency of the case-law (For the decisions of the ECtHR in the same vein, see. *Unédic v. France*, App. No: 20153/04, 18/12/2008, § 74 and *Nejdet Şahin and Perihan Şahin v. Turkey* [BD], aforementioned, § 58). Case-law development is not, in itself, contrary to the proper administration of justice since a failure to maintain a dynamic and evaluative approach would risk hindering reform or improvement (For a decision of the ECtHR in the same vein, see. *Atanasovski v. The Former Yugoslav Republic of Macedonia*, App. No: 36815/03, 14/1/2010, § 38).

40. Change in the case-law of courts is within the scope of discretion of judicial bodies and such a change means that the previous solution is not found to be satisfactory (For a decision of the ECtHR in the same vein, see. *S.S. Balıklıçeşme Beldesi Tarım Kalkınma*

Kooperatifi ve Diğ erleri/Türkiye, B. No: 3573/05 ... 17293/05, 30/11/2010, § 28). However, in the event that a judgment which is different from previously issued ones on the same matter is established, it is necessary that a reasonable explanation be made by courts with regard to this differentiation (For a decision of the ECtHR in the same vein, see. *Stoilkovskav.The Former Yugoslav Republic of Macedonia*, App. No: 29784/07, 18/7/2013, § 49).

41. The role that supreme courts need to play is to resolve the contradictions arising in case-law due to judicial decisions. However, in some cases such as in the interpretation of a newly-enacted law, it is obvious that a certain period of time is needed until the case-law becomes established (For the decisions of the ECtHR in the same vein, see *Zielinski and Pradal and Gonzalez and Others v. France* [BD], App. No: 24846/94 ... 34173/96, 28/10/1999, § 59 and *Schwarzkopf and Taussik v. The Czech Republic* (s.d.), App. No: 42162/02, 2/12/2008).

42. The fact that disputes or incidents in cases which are the subject matter of dispute are different from each other justify the evaluations which differentiate in two decisions therefore the conflicting judgments which are issued on the same subject cannot be in question (For a decision of the ECtHR in the same vein, see *Erol Uçar v. Turkey* (s.d.), App. No: 12960/05, 29/9/2009).

43. In the event that supreme courts or the courts which settle a dispute as the final authority have different acceptations, which does not arise from the content of the cases, in their decisions with regard to the same subject, the starting point will not be the determination of which one of the evaluations or interpretations of the courts of instance is correct and should be preferred (For a decision of the ECtHR in the same vein, see. *Stefanica and Others v. Romania*, App. No: 38155/02, 2/11/2010, § 34). However, the Constitutional Court will conduct an examination as to whether a change in decisions results in legal uncertainty and whether this is foreseeable by the applicant.

44. There is no doubt that the principle of legal certainty forms one of the requirements of the rule of law (see AYM, E.2008/50, K.2010/84, K.T. 24/6/2010; and E.2012/50, K.2012/128, K.T. 20/9/2012). Similarly, the ECtHR states that the right to a fair trial needs to be interpreted together with the preamble of the Convention which states the rule of law as a common heritage of the Contracting States. The principle of legal certainty or security which is among the main elements of the rule of law ensures a certain constancy in legal cases and contributes to the public confidence in courts. Court decisions which are inconsistent can lead to a judicial uncertainty by lessening the confidence in the judicial system (see *Nejdet Şahin and Perihan Şahin v. Turkey* [BD], App. No: 13279/05, 20/10/2011, § 57).

45. Changes in judicial decisions are positive in the way that they reflect their capacity to adapt the dynamism of law and the approaches of courts to the developments experienced. However, it is clear that, as a result of the fact that the chambers included within supreme courts or courts belonging to different branches of judiciary which are expected to ensure unity in practice reach to different conclusions in similar cases without showing any satisfactory reasoning, the expectation of the occurrence of the results which are opposite to each other such as the fact that a decision will be approved or positively finalized in the event that it is referred to a certain chamber or a different branch of judiciary, that it will be reversed or negatively finalized in the event that it is handled by another chamber is contrary to the principles of legal certainty and foreseeability. Moreover, in the event that such a perception

is established in the society, the confidence which individuals are expected to feel towards the judicial system and court decisions can be tarnished.

46. On the other hand, it is also important that the existence of a structural mechanism which can present solutions in the event that different decisions are issued in the same or different branches of judiciary.

47. In its judgment through which it examined an application which was similar to the present case, the ECtHR stated, in summary, that each judicial system which was composed of courts with the differences of jurisdiction and competence could naturally have the differences of case-law and that these sorts of differences could even be seen within the same jurisdiction. It also stated that it could not be said that this was contrary to the ECHR in itself and that the autonomy of judges to issue decisions could bear the result of the same text being differently interpreted in various instances of jurisdiction. However, it also indicated that it was important to activate mechanisms aimed at ensuring coherence and the unity of case-law among the practices of courts and that the difference of case-law which took place in the current case arose from the structure of the administrative judicial system and the fact that it consisted of two different types of courts with the same venue. Moreover, it asserted that these courts which parallelly engaged in activities within the same jurisdiction did not abide by their own jurisdiction with which they needed to comply as a principle in line with domestic law and that as the failure of courts to abide by their own jurisdiction lied in the center of the differences of legal interpretation about which the applicants complained, the Court of Jurisdictional Disputes clearly established that the High Military Administrative Court had jurisdiction (the judgment of the Court of Jurisdictional Disputes No. E.2006/246, K.2006/236 of 11/12/2006). It also stated that the source of the differences of legal interpretation on this subject was removed and that the trial by civilian administrative courts of the cases which were within the jurisdiction of military administrative courts was terminated in principle. In this respect, the fact that two separate and autonomous courts made two interpretations which were different from each other on the same legal text on the date on which the applicants applied to national courts did not *per se* constitute contrariety to the principle of legal security. Although the source of this incompliance in domestic law could be eliminated, the failure to do that was regrettable. However, even if different judgments in domestic law seem to be related to similar disputes at first glance, they could not be compared as they were issued by independent courts. Given the approach of the Court of Jurisdictional Disputes which strengthened the jurisdiction of military administrative courts, in the present case, the applicants could not claim that the competent court abstained from trying the case and thus, they suffered an injustice. The ECtHR, as a result of the evaluation which it conducted, emphasized on the importance of the mechanisms which were established for the solution of these sorts of problems (see *Nejdet and Perihan Şahin v. Turkey*, App. No: 13279/05, 27/5/2010).

48. Accordingly,, in the present case, it is clear that different legal conclusions were reached in cases filed before courts affiliated to different branches of judiciary which were regarding the same incident. It is seen that there are mechanisms which will eliminate these sorts of violations in practice, however they prove to be insufficient and fail to provide an effective solution. For instance, it is understood that there are solutions such as the method of "*the unification of conflicting decisions*" which will resolve the contradictions in case-law that are present among courts from the same branch of judiciary. Another solution is applying to "*the Court of Jurisdictional Disputes*" which will resolve the inconsistencies of competence

and of judgments among different branches of judiciary, that however, these mechanisms could not be used in the present case in practice and due to reasons arising from legislation.

49. Due to the reasons explained, it should be decided that the right to a fair trial of the applicants which is guaranteed under Article 36 of the Constitution was violated as it is concluded that when it is considered together with the deficiency in the use of the current structural mechanism, the fact that different decisions were delivered in the case filed with the courts which belonged to different branches of jurisdiction regarding the same incident resulted in legal uncertainty and insecurity, and was found to be unforeseeable in terms of the applicants.

3. Article 50 of the Law No. 6216

50. The applicants filed a request for the revocation of the action which was the subject matter of the application and for damages due to their right to a fair trial being violated.

51. Article 50(2) of the Law No.6216 with the side heading "*Decisions*" is as follows:

"If the determined violation arises out of a court judgment, 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 benefit in holding the retrial, a 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 judgment 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 judgment of violation."

52. As there is no legal benefit in the holding of a retrial within the scope of the violation which has been determined, it should be decided that the applicant's request for the holding of a retrial be dismissed.

53. Due to the legal uncertainty and insecurity which occurred in terms of the applicants, in return for their non-pecuniary damages which cannot be redressed only with the mere determination of violation, it must be decided that non-pecuniary damages of net TRY 10.000,00 be jointly paid to the applicants.

54. It must be decided that the trial expenses of TRY 1.698,35 in total composed of the fee of TRY 198,35 and the counsel's fee of TRY 1.500,00 which were incurred by the applicants and determined in accordance with the documents in the file be jointly paid to the applicants.

V. JUDGMENT

In the light of the reasons explained, it was **UNANIMOUSLY** held on 21/1/2015;

A. That the applicants'

1. Claim as to the fact that the trial was not fair is **INADMISSIBLE** as it is "*manifestly ill-founded*"

2. Claim as to the fact that the principle of legal certainty was violated is **ADMISSIBLE**,

3. That the right to a fair trial guaranteed under Article 36 of the Constitution WAS VIOLATED,

B. That the applicants be JOINTLY PAID non-pecuniary DAMAGES of net TRY 10.000,00, that other requests of the applicants regarding damages be REJECTED,

C. That the request for holding of a retrial be rejected,

D. That the trial expense of TRY 1.698,35 in total composed of the fee of TRY 198,35 and the counsel's fee of TRY 1.500,00 which was incurred by the applicants and determined in accordance with the documents in the file be jointly paid to the applicants,

E. 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 statutory interest be charged for the period that elapses from the date, on which this duration ends, to the date of payment.