



REPUBLIC OF TURKEY
CONSTITUTIONAL COURT

SECOND SECTION

DECISION

Application No: 2013/3063

Date of Decision: 26/6/2014

SECOND SECTION

DECISION

President : Alparslan ALTAN
Members : Serdar ÖZGÜLDÜR
Osman Alifeyyaz PAKSÜT
Recep KÖMÜRCÜ
M. Emin KUZ
Rapporteur : Bahadır YALÇINÖZ
Applicant : Murat DAŞ
Counsel : Att. Cavit ÇALIŞ

I. SUBJECT OF APPLICATON

1. The applicant, indicating that in the case that he has lodged with the request that the transaction in relation to the non-reimbursement of the difference of pecuniary compensation be annulled, has stated that he had to pay the judicial charges, that the counsel's fee that was ruled against him was not proportionate, that his freedom to claim rights was restrained, claims that his rights that have been defined in articles 2 and 36 of the Constitution have been violated, hence requests that his material and spiritual damages be remedied.

II. APPLICATION PROCESS

2. The application was directly lodged to the Constitutional Court on 10/5/2013. In the preliminary examination that was carried out in administrative terms, it has been determined that there is no circumstance to prevent the submission of the application to the Commission.

3. It was decided by the First Commission of the Second Section on 21/11/2013 that the examination of admissibility be conducted by the Section and the file be sent to the Section.

4. In the session held by the Section on 20/1/2014, it was decided that the examination of admissibility and merits be carried out together.

5. The facts and cases which are the subject matter of the application and a copy of the application were sent to the Ministry of Justice for the opinion thereof, the Ministry of Justice submitted its written opinion to the Constitutional Court on 17/2/2014.

6. The opinion letter of the Ministry was notified to the applicant on 24/2/2014. The applicant submitted his petition including his answers to the opinion of the Ministry on 27/2/2014.

III. FACTS AND CASES

A. Facts

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

8. The applicant, while he served as a specialist sergeant at the Special Operations Battalion Command of the Gendarmerie in Hakkari, was wounded during the terrorist attack that took place on the date of 12/9/2010 in a way that he was incapacitated to work and from power for 158 days.

9. A cash compensation of 11.771,20 in compliance with the provisions of the Code Regarding Pecuniary Compensation and Allocation of Salary dated 3/11/1980 and numbered 2330 has been paid to the applicant.

10. With the report dated 21/11/2011 that was drawn up following the examination of the applicant at the Gülhane Military Medical Academy it was decided that he could not serve at the Turkish Armed Forces, and he was superannuated as service-disabled.

11. The applicant, on the date of 20/4/2012, requested additional compensation from the Ministry of Interior, his request was not responded to in 60 days in anyway and no additional payment was made during this time.

12. A case was lodged by the applicant at the Third Chamber of the High Military Administrative Court (HMAC) on the date of 22/6/2012 with the request that the transaction of implied dismissal regarding the non-reimbursement of the difference of pecuniary compensation be annulled.

13. On the other hand, the Pecuniary Compensation Commission of the Gendarmerie General Command, with its decision dated 4/6/2012, has ruled that the applicant be paid additional pecuniary compensation, it has not notified the applicant of such decision, on the date of 29/6/2012 the payment order document was drawn up and the payment of the compensation has been made following the date of lodging of the case.

14. The Third Chamber of the HMAC has dismissed the case with its decision dated 22/11/2012 and No. M.2012/1764, D.2012/2295, placing the mail cost and the judicial charges worth of 53,55 TRY upon the applicant and ruled that the counsel's fee of 1.200 TRY be taken from the applicant and given to the defendant administration. The relevant parts of the decision are as follows:

“... ”

In the dispute which is the subject of the case, administrative action has been established upon the request of the counsel of the plaintiff regarding the payment of an additional pecuniary compensation, in line with the request within the duration of implied dismissal and upon the decision dated 04.06.2012 of the Pecuniary Compensation Commission. As of the date of lodging of the case the defendant administration has no explicit or implied action of dismissal. The transaction of payment that has been made upon the decision of the Pecuniary Compensation Commission is a transaction concerning the ex officio performance, transfer to the material world of the administrative transaction that the Pecuniary Compensation Commission has established in line with the request of the plaintiff. In the assessment that is made regarding the existence of the dispute which is the subject matter of the case, the date on which the administrative transaction has emerged in the legal world shall be taken into consideration by administrative justice jurisdictions that carry out review of legality. It was ruled out that the case be dismissed since it was bereft, as of the date of lodging of the case, of

a subject matter for lack of an administrative transaction that can establish the subject of a dispute.

...

The counsel's fee was left upon the plaintiff as a result of lack of involvement of the defendant administration in the lodging of the case.

...

In the light of the reasons explained above,

1. That the CASE which is left with no subject matter be DISMISSED,

..."

15. The request filed against this decision for the revision of decision was also dismissed with the decision of the same Chamber dated 4/4/2013 and numbered M.2103/439, D.2013/474.

16. The decision was notified to the applicant on the date of 15/4/2013.

B. Relevant Law

17. Article 10 of the Code Numbered 2330 is as follows:

"The form of payment of pecuniary compensations that will be ruled as per this Code and the amount of compensations that will be paid in compliance with paragraph (b) of article 3 and other issues in relation to this code shall be arranged with a regulation that shall be prepared by the Council of Ministers within the three months following the entry into force of the code. (Additional phrase: 28/2/1995 - 4082/2 art.) Following the approval by the respective Minister or by other persons who have been authorized of transactions concerning the payment of pecuniary compensation, the transaction of payment cannot be delayed by offices of accounting with the justification that the incident is not included within the scope of this Code.

However, in this regulation; the disability compensation is arranged using the six degrees that have been specified in the "Regulation No. 1053 dated 13/7/1953 on the Types and Degrees of Disabilities of Service" which is considered as principal regarding those who have become service-disabled as per the code no. 5434, and depending on the degrees of disability whereby a discount of 10% is made for each degree."

18. Articles 13 and 14 of the Regulation on Pecuniary Compensation and Allocation of Salary are as follows:

"The issue whether or not the compensations specified in this Regulation are paid shall be examined by a commission composed of chiefs of units that are tasked with staff, finance, law and health and other authorities that are related to the matter, which shall be determined by the respective ministry or the institution.

The decisions of the commission shall be approved by the highest chief of the respective ministry or the institution or by the authority that shall be authorized by them.

(Additional: 9/1/1996 - 96/7821 D.) Following the approval by the respective Minister or by other persons who have been authorized of transactions concerning the payment of pecuniary compensation, the transaction of payment cannot be delayed by offices of

accounting with the justification that the incident is not included within the scope of the Code no. 2330 and of this Regulation."

...

"Following the forwarding by the respective ministry or institution of the decision and other documents that have been approved within the framework of article 13 to the institutions and organizations with which the personal rights of the person are affiliated that are found in the place where the person wishes to receive his/her compensation in the event that such action is deemed appropriate by the administration, pecuniary compensation shall be paid by the offices of accounting of such institutions and organizations to the holders of the right. "

19. Article 35 of the Code of High Military Administrative Court 1602 and dated 4/7/1972 is as follows:

“ a) Optional application:

The revocation, abolishment, amendment of administrative transactions that have been established by offices that are authorized to carry out final transactions, or performance of a new transaction can be requested from the higher office; if this not applicable, then, from the office that has carried out the transaction within the duration specified for lodging a case. This application shall stop the period of filing an administrative case that has commenced.

In the event that no response is provided within sixty days, the request shall be considered as dismissed.

In the event that the request is dismissed the period of filing a case shall start and the period, which has elapsed until the date of the application, shall also be taken into account.

b) Foreclosure of administrative authorities:

Those concerned can apply to administrative authorities so that an action or transaction that may be the subject of an administrative case about them be carried out. In this case, authorized offices shall respond in sixty days at most.

In the event that no response is provided within sixty days, the request shall be considered as dismissed. Those concerned may file a case before the High Military Administrative Court within the period of filing a case following the expiry of the sixty-day period. In the event of cases whereby a case is not lodged and of the dismissal of the petition for having been lodged after the expiry of the sixty-day period, if a response is provided following the expiry of the sixty-day period, the period of filing a case shall recommence following the notification of this issue.

A signed and sealed document of receipt without stamp, which shows the date and number of the registration, shall be given to the applicant."

20. Article 71 of the same Code is as follows:

"Charges and mail fees that have been paid as a result of the case which has been lodged at the High Military Administrative Court and costs that have been incurred in relation to expert examinations, establishment of evidences and viewings and the counsel's fee in cases that are litigated via the counsel, depending on the tariff thereof, shall be charged on the party that is proven to be wrong and in the event of partial dismissal or partial acceptance of the case, such costs shall be charged, proportionately, on the parties. The party that waives or accepts the case shall be considered as proven wrong regarding the trial expenses and the counsel fee.

IV. EXAMINATION AND JUSTIFICATION

21. The individual application of the applicant dated 10/5/2013 and numbered 2013/3063 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

22. The applicant, indicating that he has waited for 60 days following his request for additional pecuniary compensation, a decision regarding the dismissal or the acceptance of his request has not been sent to him, that he has lodged the case after the expiry of the sixty-day period, that he is not responsible that the decision of the Commission is not sent to him in 60 days and the payment of the compensation is not made within the same period, and that it was also not possible for him to be knowledgeable of this circumstance, that he has lodged his case in compliance with the legislation, that the counsel's fee that was ruled against him as a result of the dismissal of the case was not proportionate, his right to claim rights was prevented and that he had to pay the judicial fees, propounded that his constitutional rights have been violated and requested a material compensation of 2.868,00 TRY and a moral compensation of 2.000,00.

B. Evaluation

23. The applicant complains that he was forced to pay the counsel's fee and the judicial charges for the case that he had lodged as he was not informed despite his application to the administration within the legal duration that his request was being processed, was dismissed. Such claim of the applicant will be examined within the scope of right to a fair trial.

1. In Terms of Admissibility

24. In its opinion letter, the Ministry did not make any assessment as to the admissibility of the application.

25. According to the provisions of paragraph three of article 148 of the Constitution and paragraph (1) of article 45 of the Code numbered 6216, in order for the merits of an individual application made to the Constitutional Court to be examined, the right, which is claimed to have been intervened in by public power, must fall within the scope of the Convention and the additional protocols to which Turkey is a party, in addition to it being guaranteed in the Constitution. In other words, it is not possible to examine the merits of an application, which contains a claim of violation of a right outside the common field of protection of the Constitution and the Convention (App. No. 2012/1049, 26/3/2013, § 18).

26. In paragraph one of article 36 of the Constitution, it is stated that 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. 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. No. 2012/1049, 26/3/2013, § 22).

27. Paragraph one of Article 36 of the Constitution with the side heading of "*Freedom to claim rights*" 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."

28. Paragraph (1) of article 6 with the side heading of *"Right to a fair trial"* of the Convention is as follows:

"1. 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. ..."

29. The compensation for personal damages of military individuals arising from the acts and actions of the military administration falls within the scope of the concept of *"civil rights and obligations"* stipulated under article 6 of the Convention, there is no doubt regarding the fact that these kinds of disputes fall within the field of protection of the right to a fair trial regulated in the Constitution and the Convention.

30. It should be decided that this part of the application, which is not openly devoid of grounds and where no other reason that will require making a decision of inadmissibility is found, is admissible.

2. In Terms of Merits

31. The applicant complains that he was forced to pay the counsel's fee and the judicial charges for the case that he had lodged as he was not informed despite his application to the administration within the legal duration that his request was being processed, was dismissed.

32. In the opinion letter of the Ministry, it was indicated that the applicant who was not informed about the decision of the Commission has lodged a case for the revocation of the implied dismissal transaction as his request was not responded to in 60 days, that a payment was made to him within the scope of his request after the case was lodged, and that the case hence was left without a subject, and that it is ensured in paragraph 1 of article 331 of the Code No. 6100 that the judge shall appraise and rule the costs of litigation depending on the rightfulness of the parties on the date of lodging of the case in cases where making of a decision regarding the merits of the case is not needed for the case is bereft of a subject matter, that the HMAC has ruled that the counsel's fee be charged on the applicant with the justification that the defendant administration had no involvement whatsoever in the lodging of the case and in this regard such circumstance be considered during the assessment whether or not the HMAC has interpreted this provision in a way that is other than usual.

33. The applicant in his counter statement has indicated that he himself enjoined the issues that have been specified in the opinion letter of the Ministry and that his request for compensation has to be admitted.

34. Paragraph four of article 148 of the Constitution is as follows:

"In individual application, examination cannot be done on matters that need to be taken into account in the legal remedy"

35. Paragraph (6) of Article 49 of the Code numbered 6216 with the side heading of *"Examination as regards the merits"* is as follows:

"Examination of the sections of individual applications regarding a court decision shall be limited to whether or not a basic right has been violated and the determination of how such violation can be remedied. Examination on issues that have to be observed in legal remedies shall not be performed.

36. Paragraph (2) of article 48 of the Code numbered 6216 with the side heading "*The conditions and evaluation of admissibility of individual applications*" is as follows:

"The Court, can rule on the inadmissibility of applications, which are clearly devoid of grounds."

37. It has been ensured that the said provisions of the Constitution and of the Code, and the matters that need to be taken into account in the legal remedy cannot be examined in individual applications and that within this framework, the inadmissibility of applications which are clearly devoid of grounds can be ruled. 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 courts of instance be reexamined, are clearly devoid of grounds and that they relate to matters, which are left outside the venue of the Court by the Constitution and the Code. (App. No:2012/1056, 16/4/2013, § 34).

38. Proving the incidents that are contained within the case that is the subject of the individual application, interpretation and application of the rules of law, the admissibility and evaluation of evidence during the trial and whether or not a solution brought by courts of instance to a personal dispute is fair in terms of merits shall not be subjected to an assessment during the individual application examination. As long as the rights and freedoms stipulated in the Constitution are not violated and unless they contain any obvious arbitrariness, material and legal mistakes in decisions of courts of instance cannot be handled in the examination of an individual application either. In this framework, unless an evident discretionary mistake or an obvious arbitrariness is present in the evaluation of the evidence of the courts of instance, the Constitutional Court shall not intervene in this discretion (App. No: 2012/1027, 12/2/2013, § 26).

39. The claims of the applicant that the interpretation and application of the rules of law during the trial by the HMAC were erroneous must be assessed from the point of view of article 6 of the ECHR and article 36 of the Constitution.

40. In paragraph one of article 36 of the Constitution, it is stated that 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. Since the scope of the right to a fair trial is not regulated in 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. No: 2012/13, 2/7/2013, § 38).

41. The principle of legal security is a principle that is present tacitly within the right to a fair trial which is included in article 36 of the Constitution. A legal regulation needs to contain enough certainty so that individuals can organize their behavior accordingly and the individual needs to be able to foresee, if necessary by means of seeking legal assistance, to a reasonable degree the results that would occur in the field regulated by this code as a result of a certain action. The predictability does not have to be at an absolute scale. Even though the clarity of the code is a desirable situation, it can sometimes result in excessive rigidity as well. However, the law needs to be adaptable to changes that appear. Many codes are, quite naturally, formulas that are open to interpretation, the interpretation and implementation of

which depend on the practical reality (For decisions of the ECtHR in the same vein see *Kayasu v Turkey*, App. No: 64119/00 and 76292/01, § 83).

42. One of the fundamental principles of a state of law stipulated in article 2 of the Constitution is "*certainty*". According to this principle, it is necessary that legal regulations be clear, net, understandable and implementable in a way that will not give rise to any interruption and doubt in terms of both individuals and the administration, that moreover they include some protective guarantees against the arbitrary practices of public authorities. The principle of certainty is associated with legal security and an individual should have the opportunity of learning from the law with some certain accuracy, which legal sanction or consequence is attributed to which concrete action and case, which authority of intervention they grant to the administration. Only in this case can an individual foresee the liabilities which are incumbent upon him/her and regulate his/her behaviors accordingly. Legal security necessitates that the rules are predictable, that individuals are able to have confidence in the state in all of their acts and actions, and that the state avoids methods that would tarnish this feeling of confidence in its legal regulations. (App. No: 2013/849, 15/4/2013, § 34).

43. The right to access to court means the ability to take a dispute before a court and to request the conclusion of the dispute in an effective manner. Restrictions which prevent a person from applying to a court or render a court decision meaningless or in other words, make the court decision considerably ineffective can violate the right to access to court (App. No: 2012/791, 7/11/2013, § 52).

44. In the present case, the applicant who worked under the command of the Special Operations Battalion Command of the Gendarmerie as a specialist sergeant was wounded in the terrorist attack that took place on the date of 12/09/2010 in a way that he was incapacitated to work for 158 days and a pecuniary compensation of 11.771,20 TRY as per the Code No. 2330 has been paid to him, then later the applicant requested from the Ministry of Interior, an additional pecuniary compensation on the date of 20/4/2012 and lodged a case at the Third Chamber of the HMAC on the date of 22/6/2012 requesting that the transaction of implied dismissal concerning the non-payment of the pecuniary compensation be revoked when his request was not responded to in 60 days in anyway, whereby, during this time, no additional compensation payment was made. On the other hand, the Pecuniary Compensation Commission of the Gendarmerie General Command, with its decision dated 4/6/2012, has ruled that the applicant be paid additional pecuniary compensation, it has not notified the applicant of such decision, on the date of 29/6/2012 the payment order document was drawn up and the payment of the compensation has been made following the date of lodging of the case.

45. The Third Chamber of the HMAC has dismissed the case with its decision dated 22/11/2012, placing the mail cost and the judicial charges worth of 53,55 TRY upon the applicant and ruled that the counsel's fee of 1.200 TRY be taken from the applicant and given to the defendant administration. In the decision of the court it was indicated that transaction has been established for the payment of the compensation within the duration of the implied dismissal upon the request of payment of additional compensation, that the administration has no explicit or implied transaction of dismissal as of the date of lodging of the case, that the transaction of payment is a transaction concerning the execution of the transaction of the compensation commission, that the date when the administrative transaction has emerged in the legal world should be taken into consideration by jurisdictions of administrative law that carry out assessment of legality and that the case was bereft of a subject matter as there were

no transactions present regarding the administrative case as of the date on which the case was lodged and shall be dismissed.

46. The main issue that has to be assessed in the application that has been made before the Constitutional Court following the said court decision is whether or not the trial expenses and the counsel's fee that have been ruled against the applicant as a result of dismissal of the case because of the latter not being informed about the transaction that was established by the administration before the lodging of the case at the HMAC leads to a violation of constitutional rights. Then, neither the applicant has placed a complaint regarding the non-payment of the compensation and the decision of the court, nor the compensation which is the subject of the case was paid to the applicant following the lodging of the case and this circumstance was taken into account by the court.

47. In article 35 of the Code No. 1602 it is provided that those concerned can apply to administrative offices so that an action or a transaction that can be the subject matter of an administrative case be performed, that the authorized offices in this case would have a period of at most sixty days to respond and that in the event of not responding within such duration the request would be considered as dismissed and that those concerned can lodge a case at the HMAC within the duration for lodging an administrative case, starting from the end of the sixty-day period.

48. In addition thereto, in article 71 of the Code it was also included within the rule that the charges and mail fees that have been paid and costs that have been incurred in relation to expert examinations, establishment of evidences and viewings and the counsel fee in cases that are litigated via counsel, depending on the tariff thereof, shall be charged on the party that is proven to be wrong and in the event of partial dismissal or partial acceptance of the case, such costs shall be charged, proportionately, on the parties.

49. In the incident which is the subject of the application it is seen that, regarding the request dated 22/4/2012 concerning the payment of the compensation difference, a decision by the Pecuniary Compensation Commission that the difference be paid within the duration of implied dismissal was made on the date of 4/6/2012, yet this decision was not notified to the applicant. And, it is understood that the applicant who was not notified of the decision of the commission has lodged a case on the date of 22/6/2012 for the revocation of the implied dismissal since his request was not responded to within 60 days, and he was paid on the date of 29/6/2012 within the scope of his request, the case is hence bereft of a subject matter.

50. Following the application that he has made in compliance with article 35 of the Code No. 1602, the applicant waited for the 60 day period as prescribed in the legislation and as he was not notified as to whether or not his request was accepted or rejected, he lodged a case at the HMAC within due duration to do so. As it is seen, the applicant has abode by the administrative application and litigation procedure as prescribed for him in the legislation and lodged the case in due time. On the other hand, as per the Code No. 1602, it is also under obligation that a case be filed in such time by the applicant. For such a transaction of implied dismissal that emanates as a result of the failure of the administration to establish a transaction in 60 days following the application that has been made to the administration for the establishment of an administrative action must be litigated within the duration of lodging a case, and it is obvious that the case that is lodged after such time is due would be dismissed on grounds of statute of limitations.

51. In the present case, the applicant has made his application in line with the regulation prescribed in Code No. 1602 and lodged his case for he was not notified in any

which way at the end of the waiting period of 60 days. Although the Pecuniary Compensation Commission has made a decision that an additional compensation be paid to the applicant in 60 days starting from the application that it has been submitted, it has neither notified the applicant of such decision nor paid him, in such time, the compensation that the applicant had to be paid. In this case, what needs to be done by the applicant is to lodge a case so that his request for compensation is satisfied. It is clearly seen in such incident that it is not the applicant that has caused such litigation but the failure of the Pecuniary Compensation Commission in the performance of the dispositions it had to perform in due time thereof.

52. In the part of the decision of the HMAC that concerns the charging of trial expenses against the applicant and the payment of the counsel's fee, it is seen that the procedure in article 35 of the Code No. 1602 was not taken into consideration, that the administration has clearly led to the lodging of the case and that, while on the one hand the justification that no transactions to constitute the subject matter of the case were present as of the date of lodging of the case was indicated, still, the case was dismissed and the applicant was charged with the entirety of the trial expenses and the counsel's fee were charged

53. In this case, the '*predictable*' issue in the case that the applicant has lodged so as to comply with the procedure that has been prescribed in article 35 of the Code No. 1602 is that the request of the applicant was dismissed by implication and that the decision shall be made regarding the merits of the case that has been lodged as a result of such transaction of dismissal. That the applicant was charged with trial expenses and counsel's fee because a case had to be lodged as a result of failure of the administration to notify the applicant in due legal time of the decision regarding the acceptance of the request of the applicant is of '*unpredictable*' quality and this has hampered the applicant's right to have access to court as a result of the outcome of the decision of the HMAC.

54. Also, there is no circumstance that would require the applicant to expect that he would be treated differently than the clear legal provision when filing the case (even though he benefits from legal assistance).

55. For reasons explained, it has to be decided that article 36 of the Constitution has been violated since the interpretation and application of the rules of law during the trial of the applicant were of '*unpredictable*' quality.

3. In Terms of Article 50 of the Code No. 6216

56. As it was ruled against him that he shall pay the trial expenses and the counsel's fee, the applicant has requested that in return for the material damages he has incurred 2.868,00 TRY of material and 2.000,00 TRY of moral compensation in return for the spiritual damages that he has incurred be ruled.

57. 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."

58. In the incident that is the subject of the application, since there is no legal benefit in resorting to a retrial with a view to removing the consequences of the determined violation, it should be decided that 2.000,00 TL in moral compensation be paid by discretion to the applicant in exchange for his moral damages, which cannot be compensated with the mere determination of the violation.

59. It should be decided that the total trial expense incurred by the applicant of 1.698,35 TL, consisting of 198,35 TL for fees and 1.500,00 TL for counsel's fee, as determined as per the documents in the file should be paid to the applicant.

V. JUDGMENT

In the light of the reasons explained, it is decided UNANIMOUSLY on the date of 26/6/2014;

A. That the complaint of the applicant pertaining to the right to a fair trial was ADMISSIBLE,

B. That article 36 of the Constitution has been VIOLATED since the interpretation and application of the rules of law during the trial of the applicant were of '*unpredictable*' quality,

C. That the applicant be paid a compensation of 2.000,00 for MORAL DAMAGES and that other requests of the applicant regarding compensation be DISMISSED,

D. The trial expenses of 1,698.35 TL in total composed of the fee of 198.35 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 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.

President
Alparslan ALTAN

Member
Serdar ÖZGÜLDÜR

Member
Osman Alifeyyaz PAKSÜT

Member
Recep KÖMÜRCÜ

Member
M. Emin KUZ