



REPUBLIC OF TURKEY
CONSTITUTIONAL COURT

SECOND SECTION

JUDGMENT

Application No: 2013/7970

Date of Judgment: 10/6/2015

SECOND SECTION

JUDGMENT

President : Alparslan ALTAN
Judges : Osman Alifeyyaz PAKSÜT
Celal Mümtaz AKINCI
Muammer TOPAL
M. Emin KUZ
Rapporteur : Murat AZAKLI
Applicant : Nurten ESEN
Counsel : Att. ORHAN TUNALI

I. SUBJECT OF APPLICATION

1. The applicant alleged that her right to social security and the principle of social justice were violated as she was put on invalidity pension approximately 20 months after her application to Social Security Institution (SGK) and the lawsuit for the payment of invalidity pension for this period of twenty months was dismissed by Istanbul 8th Labor Court.

II. APPLICATION PROCESS

2. The application was lodged through Istanbul 5th Labor Court on 24/10/2013. In the result of the preliminary examination, it was found that there was no deficiency that would prevent referral thereof to the Commission.

3. It was decided by the First Commission of the Second Section on 10/2/2014 that the examination of admissibility of the application be conducted by the Section and the file be sent to the Section.

4. It was decided by the Second Section during the meeting held on 25/2/2014 that the examinations for admissibility and merits of the application be conducted together

5. Incidents and facts which are the subject matter of the application and a copy of the application were sent to the Ministry of Justice for its opinion. The Ministry stated in its response dated 21/3/2014 that they would present no opinion on the application with reference to the previous judgments of the Constitutional Court and opinions expressed in that context

III. INCIDENTS AND FACTS

A. Incidents

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

7. The applicant was injured in her arm in the traffic accident on 16/6/2008.

8. The applicant's arm was amputated as evidenced by the report of Ondokuz Mayıs University Health Implementation and Research Center dated 24/6/2008.

9. The applicant applied to SGK Istanbul Provincial Directorate by mail on 8/7/2008 and requested for invalidity pension.

10. The applicant was referred to Ankara Numune Education and Research Hospital by SGK on 16/2/2010 and the Hospital stated in its report dated 5/3/2010 that the applicant suffered 57% loss of her bodily functions.

11. In consideration of the report by Ankara Numune Education and Research Hospital and in accordance with SGK Istanbul Provincial Directorate's report dated 29/3/2010, SGK decided that that the applicant lost at least 60% of her capacity to work.

12. In accordance with SGK Istanbul Provincial Directorate's report dated 29/3/2010, the applicant was put on pension as of April 2010 under Social Security Law (repealed) Nr. 506, dated 17/7/1964.

13. The applicant applied to SGK Istanbul Provincial Directorate on 18/5/2010 stating that she was put on pension in April 2010 although she had applied on 8/7/2008. She also requested that she be paid pension beginning from 8/7/2008.

14. SGK Istanbul Provincial Directorate notified the applicant through its letter dated 3/6/2010 that she was put on pension as of April 2010, the month following the report dated 5/3/2010.

15. The applicant filed an action against the SGK at Istanbul 8th Labor Court on 6/7/2010 stating, although she had applied to SGK for invalidity pension on 8/7/2008, she was put on invalidity pension beginning from 1/4/2010; that she was not paid pension for a period of 20 months and no response was given with regards to her initial application. The applicant claimed the amount equal to her pension of 20 months non-paid allegedly due to defendant authority's negligence and she requested for collection of 1.000,00 TL applying the legal interest rate beginning from 8/7/2008 without prejudice to her rights for surplus.

16. The applicant increased her demand with her amendment petition dated 28/2/2012 and requested for payment of 16.278,63 TL.

17. In its Judgment Nr. 2012/451 with Reg. Nr. 2010/787 dated 31/5/2012, the court of first instance stated that, in accordance with Article 56 of Law Nr. 506, the applicant was put on pension beginning from the first month following the date of report; that the defendant authority's action was consistent with the law; and that the applicant was put on invalidity pension beginning from the first day of the month following the report issued on 5/3/2010. The court dismissed the case. The justification of the judgment is as follows:

"The dispute between the parties focuses on "late assignment of the invalidity pension to the plaintiff" and "whether she must be put on pension in accordance with her initial request or not". According to the SGK registry file of the applicant, the documents contained in that file and the whole contents of the file; the applicant was insured on 4/3/1983, she applied to Istanbul Directorate of Old Age Pension for invalidity pension, the plaintiff was found to have

lost at least 2/3 of her capacity to work as per the report nr. 52/51 dated 5/3/2010, the plaintiff was put on invalidity pension beginning from 1/4/2010 which is the first day of the month following the date of said report, the plaintiff filed an action at our court alleging that she had to be put on pension in accordance with her request on 8/7/2008 since the relevant authority's action was incorrect and there was a negligence on the part of the authority and she requested for the payment of an amount equal to 20 months invalidity pension non-paid to her. However, it is understood that the relevant authority's action is proper as Article 56 of the Law Nr. 506 on the beginning of the invalidity pension payment, which was in effect on the date of application, states "The payment of an invalidity pension to an insured person who, having left his employment, submits a written claim for a pension to which he has become entitled, shall commence as of the beginning of the month following his claim. If, however, the report which certifies him as being disabled carries a date subsequent to the month following his written claim, payment shall be made as from the beginning of the month following the date of the said report." The case is dismissed as the plaintiff was put on invalidity pension beginning from the first day of the month following the report issued on 5/3/2010".

18. Upon the appeal of the judgment, the judgment was upheld with the writ of 10th Civil Chamber of the Court of Cassation nr. 2013/11201, Reg. Nr. 2012/20526, dated 23/5/2013. The justification for decision of approval is as follows:

"The case is about the allegations that the invalidity pension was assigned late and the request for the collection of pension payments including the legal interest for the time period between 8/7/2008-1/4/2010. As it is stated in its judgment, the court of first instance dismissed the case. In consideration of the documents of the file, the reasoning of the judgment that is adopted by our Chamber as well, the material evidences that constitute a basis for this judgment and the fact that there is no inaccuracy in the assessment of these evidences; the Court dismisses all applications for appeal and upholds the judgment which is consistent with the procedural and legal requirements."

19. The judgment was notified on 11/10/2013 and the applicant filed an individual application on 24/10/2013.

B. Relevant Law

20. Paragraph one of Article 1 of the Law on Labour Courts nr. 5521, dated 30/1/1950 is as follows:

"Labor Courts shall be established at places deemed necessary with a purpose to resolve the disputes arising from the claims for rights based on the Labour Law or the labor contracts between the individuals considered to be workers under Labor Law(excluding those working at workplaces exempted under paragraph Ç, D and E of Article 2 of the relevant law) and the employers or the unions of employers."

21. Article 56(repealed) of the Law nr. 506 titled "Beginning of the pension payment" is as follows:

"The payment of an invalidity pension to an insured person who, having left his employment, submits a written claim for a pension to which he has become entitled, shall commence as of the beginning of the month following his claim. If, however, the report which certifies him as

being disabled carries a date subsequent to the month following his written claim, payment shall be made as from the beginning of the month following the date of the said report.

If the insured person who has been certified as having lost at least two-thirds of his working capacity is receiving allowance against temporary incapacity for work at the date on which the payment of invalidity pension had to be commenced in accordance with the provisions of the preceding paragraph, his invalidity pension shall commence to be paid only as from the beginning of the month following the date on which the payment of the allowance against temporary incapacity for work terminates. If, however, the amount of the invalidity pension to be awarded is more than the amount of the allowance against temporary incapacity for work payable in a month, difference shall be paid as from the date to be determined according to the first paragraph. ”

22. Article 27(which entered into force at the beginning of October 2008) of the Law on Social Securities and National Health Insurance Nr. 5510, dated 31/5/2006 titled “*Calculation, start, termination and restart of invalidity pension*” is as follows:

“The invalidity pension, for the insurance holders with the number of premium days less than 9000 shall be calculated over 9000 days, and for the ones with the number of premium days equal to or more than 9000 days shall be calculated over the number of paid premium days, in accordance with the provisions of Article 29. If the insurance holder is in need of permanent care of another person, then the replacement rate shall be increased by 10 points. However, the 9000 premium days shall be applied as 7200 premium days for the insurance holders under item (a) of paragraph one of Article 4.

For the insurance holders under items (a) and (b) of paragraph one of Article 4 and the individuals, who, when insured under item (c), quitted their duties and did not work subject to another insurance status, the invalidity pension shall start at the beginning of the month following;

a) the date of written request, if the date of report used as basis for disability is before the date of written request,

b) the date of report, if the date of report used as basis for disability is after the date of written request,

c) the date of quitting duty due to disability, for individuals working under item (c) of paragraph one of Article 4.

... ”

23. Article 134(repealed) of the Law nr. 506 titled “*Settlement of disputes*” is as follows:

“Disputes arising from the application of this Law shall be adjudicated by the competent labor courts or by the courts authorized with the examination of such litigation.”

24. Article 101 of the Law nr. 5510 titled “*Settlement of disputes*” is as follows:

“Unless otherwise specified in the provisions of this Law, conflicts that may arise due to the execution of the provisions of this Law shall be resolved in labor courts.”

IV. EXAMINATION AND JUSTIFICATION

25. The individual application of the applicant dated 24/10/2013 and numbered 2013/7970 was examined during the session held by the Court on 10/6/2015 and the following were ordered and adjudged:

A. Allegations of the Applicant

26. The applicant stated that her arm was amputated after the traffic accident on 16/6/2008 and she applied to SGK on 8/7/2008 with a report from Ondokuz Mayıs University Health Implementation and Research Center and requested for invalidity pension. She also stated that, upon no response from the defendant authority, she inquired her petition at the institution and it was revealed that no action was taken with regards to her petition. Upon her inquiry, she was referred to the hospital to obtain a report and was put on invalidity pension on 1/4/2010 as per the report dated 5/3/2010. She stated that she was not paid invalidity pension for a 20 month period from the date of initial application until the assignment of the pension and that SGK took no action during this period of time. She also alleged that the case she filed against the SGK for the payment of her invalidity pension for 20 months period was dismissed by Istanbul 8th Labor Court as Article 56 of Law nr. 506 was interpreted in an unconstitutional way and, thereby, the SGK was discharged of its liability. The applicant alleged that her right to social security and the principle of social justice were violated and requested for a retrial or payment of just satisfaction for her pecuniary damages.

B. Evaluation

27. From the examination of the application petition and annexes thereof, it has been understood that the applicant stated the case she filed against the SGK for the payment of her invalidity pension for 20 months period was dismissed by Istanbul 8th Labor Court by interpreting Article 56 of Law nr. 506 in an unconstitutional way and, thereby, the SGK was discharged of its liability. The applicant alleged that her right to social security and the principle of social justice were violated. The Constitutional Court is not bound by the legal qualification of the fact raised by the applicant; the Court appraises the legal definition of the facts and cases itself. Accordingly, the applicant’s said allegations of violation have been considered to be pertinent to violation of right to a reasoned decision under the scope of right to a fair trial.

1. In Terms of Admissibility

28. The applicant stated that the case she filed against the SGK for the payment of her invalidity pension for 20 months period was dismissed by Istanbul 8th Labor Court by interpreting Article 56 of Law nr. 506 in an unconstitutional way and, thereby, the SGK was discharged of its liability. The applicant alleged that her right to a fair trial defined under Article 36 of the Constitution has been violated.

29. As the application with regards to the applicant’s allegations that her right to a reasoned decision under the scope of right to a fair trial has been violated is not manifestly ill-founded and there is no other reason to declare the application inadmissible, it should be decided that the application is admissible.

2. In Terms of Merits

30. The applicant stated that her arm was amputated after the traffic accident on 16/6/2008 and she applied to SGK on 8/7/2008 with a report from Ondokuz Mayıs University Health Implementation and Research Center and requested for invalidity pension. She also stated that, upon no response from the relevant authority, she inquired her petition at the institution and it was revealed that no action was taken with regards to her petition. Upon her inquiry, she was referred to the hospital to get a report and was put on invalidity pension on 1/4/2010 as per the report dated 5/3/2010. She stated that she was not paid invalidity pension for a 20 month period from the date application until the assignment of the pension and that SGK took no action during this period of time. She also alleged that the case she filed against the SGK for the payment of her invalidity pension for 20 months period was dismissed by Istanbul 8th Labor Court as Article 56 of Law nr. 506 was interpreted in an unconstitutional way and, thereby, the SGK was discharged of its liability. The applicant alleged that her right to a fair trial has been violated.

31. Paragraph one of Article 36 of the Constitution with the side heading of "*Freedom to claim rights*" is as follows:

"Everyone has the right of litigation either as plaintiff or defendant and the right to a fair trial before the courts through legitimate means and procedures."

32. Paragraph three of Article 141 of the Constitution with the side heading of "*Publicity of hearings and the necessity of justification for verdicts*" is as follows:

"The decisions of all courts shall be written with a justification."

33. The relevant part of Article 6 of the European Convention on Human Rights(Convention) with the side heading of "*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."

34. The first paragraph of Article 36 of the Constitution guarantees everyone's right of litigation either as plaintiff or defendant and, thereby, the right to action, defense and a fair trial. The freedom to claim rights, as protected under the relevant article, is not just a fundamental right *per se* but it is also one of the most effective guarantees that ensures the protection and duly exercise of other fundamental rights and freedoms. In this context, it is evident that Article 141 of the Constitution which stipulates that the decisions of all courts shall be written with a justification should also be taken into account in determining the scope of right to a fair trial (Vedat Benli, App. Nr. 2013/307, 16/5/2013, § 30).

35. The production and evaluation of evidence including the right to call witness during the trial that are accepted within the scope of the principle of the equality of arms considered as one of the elements of the right to a fair trial, and this right and the right to a reasoned decision are also concrete manifestations of the right to a fair trial just as the right to trial in a reasonable time. In many of its decisions under Article 36 of the Constitution, the Constitutional Court includes principles and rights such as the right to a reasoned decision and the principle of the equality of arms, which are both stipulated in the wording of the Convention and included within the scope of the right to a fair trial through the case law of the ECtHR, within the scope of article 36 of the Constitution by way of interpreting the

relevant provision in the context of Article 6 of the Convention and the case law of the ECtHR (*Güher Ergun and others*, App. Nr: 2012/13, 2/7/2013, § 38).

36. While the requirement that the decisions of the court are reasoned is one of the elements of the right to a fair trial, this right cannot be construed as to respond to all kinds of claims and defenses asserted in the trial in a detailed way. For this reason, the scope of the obligation of producing a justification can vary depending on the quality of a decision. Nevertheless, the fact that the claims of the applicant as regards procedure or merits which require a separate and clear response have been left unresponded will result in the violation of a right (*Muhittin Kaya and Muhittin Kaya İnşaat Taahhüt Madencilik Gıda Turizm Pazarlama Sanayi ve Ticaret Limited Şirketi*, App. No: 2013/1213, 4/12/2013, § 26). Although the details of the justification depend largely on the characteristics of the case, it is evident that at least a brief and short summary of a legal reason which serves as the basis of the verdict must be included in the court judgment (*Vesim Parlak*, App. Nr. 2012/1034, 20/3/2014, § 33).

37. While the requirement that decisions are justified ensures that the parties to a case are informed of the basis of the court decision and that they maintain confidence in the judiciary in general, it is also one of the most important factors that make it possible for the parties to resort to an effective remedy. While it will not be possible to effectively resort to a legal remedy against a decision whose justification is not known, it cannot be expected of an effective appellate review of such a decision either. (*Vesim Parlak*, App. Nr. 2012/1034, 20/3/2014, § 34).

38. The obligation that decisions of all courts shall be written with a justification is regulated explicitly under the Constitution and the right to a reasoned decision is one of the key conditions for a fair trial as well.

39. On the other hand, the courts of first instance do not have to respond all allegations submitted before them. However, if one of the allegations is deemed to effect the outcome of the case, then the court may be required to provide a certain and clear response on this issue (*Yasemin Ekşi*, App. Nr. 2013/5486, 4/12/2013, § 56).

40. The judicial authorities carrying out the trial must duly examine the allegations asserted and the evidences presented by the parties of the case. However, it is the court of first instance who is authorized to evaluate the evidences in a certain case and decide whether the presented evidence is relevant to the case or not (*Yüksel Hançer*, App. Nr. 2013/2116, 23/1/2014, § 19).

41. The courts are obliged to indicate the basis, on which they predicate their decisions, in a sufficiently clear manner. In addition to the point that this obligation is necessary for the parties to exercise their right of appeal, it is also necessary for the parties to know whether the claims they have asserted during the trial are duly examined. It depends on the characteristics and conditions of the case which elements need to be exactly included in a decision. Nevertheless, in the event that the claims and defenses, which are asserted in a clear and concrete way during the trial, are effective on the result of the case, in other words, they are found to have the quality of changing the result of the case, then it is necessary that these matters which are directly related to the case be responded to by the courts with a reasonable justification. However, the fact that the courts formally respond to the asserted claims and defenses is not sufficient, it is also necessary that the responses given to the claims and defenses are logical, consistent and not without a basis. In other words, the justifications

presented by the courts must be reasonable when the conditions of the case are considered (*Sencer Başat and others*, [Plenary] App. Nr. 2013/7800, 18/6/2014, § 34-36).

42. A reasonable justification must contain the court's definition of the incidents and facts of the case, on which grounds and legal regulations the verdict rests upon, and it must show the relation between the incidents and facts of the case and the judgment (*İbrahim Ataş*, App. Nr. 2013/1235, 13/6/2013, § 24). If the court does not provide relevant and sufficient response with regards to an issue that the court deems to be effecting the result of the trial or if the claims and defenses relating to the procedural and substantive issues which requires a response are left unanswered, then this may lead to violation of the right to a reasoned decision under the scope of right to fair trial.

43. The admissibility of evidence is governed primarily by the rules of domestic law, and that it is normally for the national courts to assess the evidence before them. The ECtHR's task under the Convention is to ascertain whether the proceedings, considered as a whole, including the way in which the evidence was submitted, were fair (see *Schuler-Zraggen/Switzerland*, App. Nr. 14518/89, 24/6/1993, § 66)

44. In the incident which is subject matter of the application, the applicant stated that she was injured in the traffic accident in Samsun on 16/6/2008 and that she was working at Yenimahalle Municipality of Ankara province at the time of the incident. The applicant's arm was amputated according to the report by Ondokuz Mayıs University Health Implementation and Research Center. Upon her return to Ankara, she applied to SGK Istanbul Provincial Directorate on 8/7/2008 with the report by Ondokuz Mayıs University. Although SGK received her letter of application, the institution did not provide a response for a very long period of time and she called SGK and inquired her application. She was referred to hospital 20 months later by SGK. Ankara Numune Education and Research Hospital issued a report on 5/3/2010 and she was put on invalidity pension on 1/4/2010 following this report. Although she applied on 8/7/2008, she was referred to the hospital for report and put on invalidity pension 20 months after her application allegedly due to the negligence of SGK. She stated that SGK took no action in this 20 month period and therefore she was not paid her pension. She expressed that the assignment of her pension was delayed because SGK remained passive. She requested for collection of 1.000,00 TL without prejudice to her rights for surplus.

45. The defendant SGK stated that the applicant applied for invalidity pension on 8/7/2008 and she was put on pension in April 2010 after the report by Ankara Numune Education and Research Hospital dated 5/3/2010; that the invalidity pension can be assigned beginning from the month following the date of report, not the date of application for pension and that the applicant's request was accepted after making the necessary inquiries and examinations. Accordingly, SGK requested for the dismissal of the case.

46. The court asked for an expert opinion and the expert report stated that the applicant applied to the institution on 8/7/2008; that the report by hospital was issued on 5/3/2010 and the invalidity pension was assigned beginning from 1/4/2010; that the action by the defendant authority was consistent with Article 56 of Law nr. 506. The expert opinion also stated that, if the court is of the opposing opinion, then the applicant must be put on invalidity pension beginning from the 1st day of the month following the date of 8/7/2008 and, in that case, the applicant is entitled to a sum of 16.278,63 TL.

47. Upon the announcement of the expert opinion, the applicant increased her request by filing a petition for amendment.

48. In its judgment dated 31/5/2012, the court of first instance stated that the applicant was insured on 4/3/1983; that she applied to Istanbul Directorate of Old Age Pension for invalidity pension on 4/7/2008 and was found to have lost at least 2/3 of her capacity to work as per the report dated 5/3/2010; that she was put on invalidity pension beginning from 1/4/2010 which was the first day of the month following the date of said report; although the applicant alleged that she had to be put on pension pursuant to her request on 8/7/2008, she was put on pension beginning from the first month following the date of report in accordance with Article 56 of Law Nr. 506(repealed) and that the defendant authority's action was consistent with law. The court dismissed the case as the applicant was put on invalidity pension beginning from the first day of the month following the report issued on 5/3/2010. The judgment was upheld by the 10th Civil Chamber of the Court of Cassation on 23/5/2013 (see § 17-18).

49. Article 134 of Law nr. 506(repealed) and Article 101 of Law nr. 5510 regulates that *"Unless otherwise specified in the provisions of this Law, conflicts that may arise due to the execution of the provisions of this Law shall be resolved in labor courts."* In the concrete incident, the applicant filed an action at the Labor Court alleging that her pension, that she is entitled under Law nr. 506(repealed), was not paid for a period of 20 months due to the negligence of SGK. The court tacitly accepted that the case was filed at the authorized court and carried out examination on the merits of the case and adjudged that the case be dismissed as the action of the defendant authority was consistent with Article 56 of Law nr. 506. The Constitutional Court rejected the request for annulment of the Article 101 of Law nr. 5510 with its Judgment Nr. 2011/169, Reg. Nr. 2010/65, dated 22/12/2011.

50. It is the duty of the parties to a case to present the material facts and the judge's duty is to carry out legal qualification of such facts. The material facts presented by the parties and used as basis for the claims must be fully identified by the court and the legal qualification of material facts and application of relevant law must be carried out by the court.

51. Article 56 of the Law nr. 506, which was in force at the time of applicant's request for invalidity pension, prescribes *"The payment of an invalidity pension to an insured person who, having left his employment, submits a written claim for a pension to which he has become entitled, shall commence as of the beginning of the month following his claim. If, however, the report which certifies him as being disabled carries a date subsequent to the month following his written claim, payment shall be made as from the beginning of the month following the date of the said report."*

52. In the concrete incident, the fact that the applicant's arm was amputated as evidenced by the report by Ondokuz Mayıs University Hospital and that the applicant applied to SGK Istanbul Provincial Directorate on 8/7/2008 to be put on invalidity pension are not issues of dispute among the parties. The expert opinion and the court's judgment reflect these facts explicitly as well. It is understood that, although the applicant applied to SGK on 8/7/2008, she was referred to Ankara Numune Education and Research Hospital on 16/2/2010 and a report was issued by the hospital on 5/3/2010. The applicant was found to have lost %60 of her capacity to work as per this report and she was put on invalidity pension beginning from 1/4/2010. It could not be determined whether SGK took any action during the time period from the applicant's application on 8/7/2008 until 16/2/2010 when she was referred to the Hospital by SGK.

53. Although the court dismissed the case on the basis of Article 56 of Law nr. 506, the court did not discuss whether the defendant took any action during the time period alleged by the applicant or whether there is any negligence attributable to the defendant during this

period. Although the applicant did not allege that the action by the defendant authority was contrary to Article 56 of Article 506 and that she did not complain that she was put on pension at a later date than the month following the date of report on 5/3/2010, the court dismissed the case on the basis of Article 56 of Law nr. 506 just by considering the issue date of the report and the date on which the applicant was put on pension. The court made no evaluation as to the receivable amount that the applicant claimed for the time period between application to SGK and the date of report and the court did not examine the applicant's allegation for this period of time.

54. The principles of legal security and legal certainty are the prerequisites of the rule of law. The principle of legal security, which aims to ensure the legal security of individuals, requires that the legal norms are foreseeable, that the individuals have trust in the State in all their acts and actions and that the state refrains from methods impairing such sense of trust while making the legal regulations. The principle of legal certainty means that all legal regulations are clear, precise, intelligible and applicable to all persons and the administration without leaving any room for hesitation and doubt. It also means that such regulations contain protective measures against the arbitrary practices of the public authorities. The types of decisions to be taken by the administrative authorities in execution of their duties assigned by law can not be predetermined through legal regulations by considering all kinds of incidents and facts in advance. Considering the variability of public service and social needs, such a method is not favorable method as well. Therefore, the administrative organs must be equipped with discretionary power so that they can create the most suitable solution when they face different situations. The purpose of the discretionary power is to provide the administrative organ with freedom to choose the suitable and expedient ones among different solutions. The discretionary power of the administration does not mean that administration can act "*arbitrarily*". It is among the general principles of law that the discretionary power of the administration must be used in accordance with the principle of equality and public interest and the requirements of the particular service (Constitutional Court. Reg. Nr. 2013/95, Dec. Nr. 2014/176, Date of Judgment 13/11/2014).

55. In the concrete incident, it is determined that the court did not ascertain whether any action was taken by the defendant authority SGK upon the application of the applicant for her invalidity pension, that it was not investigated why the applicant's application dated 8/7/2008 was processed too late and the applicant's allegations in her petition were not sufficiently responded. It is also determined that the time period between applicant's application on 8/7/2008 and her referral to hospital for report on 16/2/2010 was not discussed, and the case was dismissed by stating the applicant was put on pension beginning from 1/4/2010 in accordance with relevant Law.

56. The justification of a court judgment must set forth how the material facts of that case were qualified by the court and on which grounds and legal regulations the judgment was established, and it also shows the logical connection between material facts and the judgment. It is obligatory that there is a duly prepared part for justification in the court judgment which explicitly shows why the verdict was given under that scope and context. Thus, the parties may understand and evaluate on which grounds they were found right or wrong and they may review the judgment's compliance with the law and apply to relevant remedies.

57. In the incident subject to application, the court had to examine the applicant's petitions for lawsuit and amendment of her claim and the defense of the defendant, evaluate the actual request of the application, investigate whether the defendant SGK took any action between time period beginning the applicant's application on 8/7/2008 until her referral to the

hospital for report on 16/2/2010 and, if no action is taken, the reason for such delay. The court, after evaluating the claims and the defenses of the parties, had to determine whether there has been any loss of pension payment on applicant's party due to SGK's action and the court had to decide accordingly. However, the court dismissed the case just on the grounds that the action of the defendant party is in accordance with Article 56 of Law nr. 506 and this violates the right to a reasoned decision under the scope of right to a fair trial. Therefore, when the proceedings are considered as a whole, it has been concluded that the applicant's right to a reasoned decision is violated.

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

C. In Terms of Article 50 of the Code Numbered 6216

59. The applicant requested for a retrial or just satisfaction of her material losses which is 16.278,63 TL.

60. Article 50 of the Law on the Establishment and Rules of Procedure of the Constitutional Court Nr. 6216, dated 30/3/2011 with the side heading "*Decisions*" is as follows:

"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, expediency review cannot be carried out, no decision with the quality of an administrative act and action can be delivered.

If the found violation arises out of a court decision, the file shall be sent to the relevant court for holding a retrial in order for the violation and the consequences thereof to be removed. In cases where there is no legal interest in holding 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."

61. As the violation determined in the case which is the subject matter of the application arises out of the violation of the right to a reasoned decision, it is decided that a copy of the decision be sent to the relevant court in order to carry out a retrial for the removal of the violation and its consequences.

62. The applicant claimed just satisfaction of her pecuniary damages. As the violation of Article 36 of the Constitution was determined and it was decided to remove the violation with a retrial to be carried out by the court of instance which will assess the allegations of pecuniary losses as well, it is not necessary to make an assessment of the claims for pecuniary damages under this application.

63. It is decided that 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 and determined in accordance with the documents in the file be paid to the applicant.

V. JUDGMENT

In light of the reasons explained, it was decided **UNANIMOUSLY** on 10/6/2015 that;

A.

1. The applicant's claim as to the point that the right to a reasoned decision was violated is **ADMISSIBLE**,
2. The right to a reasoned decision guaranteed under Article 36 of the Constitution **WAS VIOLATED**,

B. The file be sent to Istanbul 8th Labor Court in order to carry out a retrial for the violation and the consequences thereof to be removed

C. The claims of the applicant for just satisfaction 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 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.