

## INFORMATION NOTE ON THE INDIVIDUAL APPLICATION DECISION OF THE CONSTITUTIONAL COURT WITH APPLICATION NUMBER 2019/22055

### I. INTRODUCTION

The Constitutional Court's decision dated November 15, 2023, with the application number 2019/22055 concerning the violation of the right to fair trial due to the rejection of the claim for non-pecuniary damages brought for the compensation of moral damage suffered as a result of the delivery of furniture ordered for the residence after the specified date despite the commitment to deliver before the wedding (the "Decision") was published in the Official Gazette dated February 28, 2024, and numbered 32474.

### II. SUMMARY OF THE CASE SUBJECT TO THE INDIVIDUAL APPLICATION

The applicant stated that despite the commitment to deliver the purchased furniture before the wedding, they had to spend the first twenty (20) days of their marriage without furniture due to the fact that the delivery was made twenty-six (26) days after the promised contracted date, and for these reasons, he and his wife had experienced uneasiness, consequently, the applicant filed a non-pecuniary damages lawsuit for the compensation of moral damages before Istanbul 1<sup>st</sup> Consumer Court (the "Local Court"), and the Local Court decided to accept the case by taking into account the difficulties experienced by the applicant due to the non-delivery of the furniture on the date specified in the contract, the unrest in the family, the sadness experienced, and the social and economic status of the parties. Upon the defendant's appeal request, the decision of the Local Court was reversed by the decision of the Court of Appeal 13<sup>th</sup> Civil Chamber (the "Chamber") dated May 13, 2018. In the reasoning of the decision, it was stated that in order to award non-pecuniary damages, the right to personality must be unlawfully damaged, and in cases where personality rights are not damaged, it is not possible to award non-pecuniary damages even if the action is unlawful. The Local Court dismissed the case by complying with the Chamber's reversal decision, and the decision subject to the applicant's individual application was approved on April 29, 2019.

### III. CONSTITUTIONAL COURT DECISION

The applicant claimed with his individual application that their rights to fair trial and the principle of equality were violated due to the dismissal of the lawsuit filed for the compensation of moral damages incurred as a result of the non-delivery of the goods under the contract on the promised date, which was contrary to the precedents.

Since the essence of the applicant's complaint was related to the dismissal of the lawsuit filed for the compensation of moral damages in a manner contrary to the precedent decisions, the application was examined by the Constitutional Court within the scope of the right to fair trial, which is among the guarantees of the right to fair trial. During the examination conducted by the Constitutional Court, it was stated that the allegation that the right to fair trial in accordance with equality was violated by the dismissal of the lawsuit filed for the compensation of moral damages was admissible.

The Constitutional Court examined the precedent decisions of the General Assembly of Civil Chambers of the Court of Appeals and the Court of Appeals 13<sup>th</sup> Civil Chamber submitted by the applicant, and it was determined that in the decisions, if the plaintiffs suffer from a violation of their personality rights, or in other words, if they are wrongfully caused emotional distress due to the breach of contract, then non-pecuniary damages shall be compensated. However, it was noted that in the present case subject to the individual application, a different conclusion was reached compared to the precedent decisions presented in the Decision. It was highlighted that the Court of Appeals did not provide any explanation or reason for departing from its previous jurisprudence, nor did it give any justification for this deviation.

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It has been concluded by the Decision that the failure to ensure a consistent and uniform application would contradict the principles of legal certainty and predictability, as well as undermine the trust of individuals in the judicial system and court decisions, and in this respect, the fairness of the proceedings has been damaged due to the unpredictable application for the applicant.

## IV. CONCLUSION

The Constitutional Court ruled that the applicant's claim that his right to fair trial was violated was admissible, that his right to fair trial was violated, that a copy of the Constitutional Court's decision shall be sent to the Local Court for retrial, and that the applicant's claim for compensation is rejected.

Full decision of the Constitutional Court: <https://www.resmigazete.gov.tr/eskiler/2024/02/20240228-5.pdf>

*Should you have any queries on the above, please contact us.*

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