

INFORMATION NOTE ON THE CONSTITUTIONAL COURT DECISION ON THE VIOLATION OF THE RIGHT TO REASONED DECISION

I. INTRODUCTION

The Constitutional Court's decision dated November 2, 2023, with the application number 2018/25691 concerning the violation of the right to reasoned decision within the scope of the right to fair trial guaranteed under Article 36 of the Constitution due to the failure to meet the claim affecting the outcome of the reinstatement lawsuit filed upon the termination of the employment contract on the grounds that the trust relationship with the employer was impaired (the "**Decision**") was published in the Official Gazette dated March 26, 2024, and numbered 32501.

II. SUMMARY OF THE CASE SUBJECT TO THE INDIVIDUAL APPLICATION

In the concrete case, the applicant was employed as a worker by a subcontractor company and his employment contract was terminated on the grounds of suspicion of having links with a terrorist organization. The applicant filed a lawsuit for the invalidity of the termination and reinstatement, stating that he had no connection with the Fetullah Terrorist Organization/Parallel State Structure ("FETÖ/PDY") and argued that the principle of individuality in punishment was violated by stating that his contract was terminated on the grounds that his relative was arrested. Salihli Labor Court (the "**Local Court**") stated that the termination of the contract was justified on the grounds that there was an investigation against the applicant for being a member of a terrorist organization and that his close relative had been arrested in connection with the crime of being a member of FETÖ/PDY. The applicant appealed against the Local Court's decision, stating that even if there was an investigation against the applicant, no action such as arrest, detention or interrogation had been taken.

The İzmir Regional Court of Appeals 3rd Civil Chamber stated that since the employer suspected the employee's connection with FETÖ/PDY and that this was most likely true, the necessary suitability for the continuation of the employee's employment relationship disappeared due to the destruction of or severe damage to the trust and the emerge of a suspicion that the employer cannot be expected to bear. Accordingly, it was concluded that the termination is based on a justified reason. The applicant appealed against the decision in due time, and the Court of Appeal 22nd Civil Chamber rejected the applicant's appeal request and upheld the decision of the Regional Court of Appeal.

III. CONSTITUTIONAL COURT DECISION

The applicant claimed that the presumption of innocence, the right to work and the principle of individuality in punishment were violated due to the unjust termination of his employment contract. As the Constitutional Court, on the other hand, is not bound by the legal characterization of the events made by the applicant and appreciates the legal characterization of the events and facts itself, the Constitutional Court considered that the applicant's complaints are generally directed towards the right to reasoned decision, which is one of the guarantees of the right to fair trial, and conducted its examination within this scope.

The Constitutional Court firstly indicated that the courts of instance must reasonably justify the proof of the facts and material events, the evaluation of the evidence, the interpretation and application of the rules of law, the conclusion reached in relation to the dispute, and the reasons for the discretionary power used in reaching the conclusion. Accordingly, the issues determined as a result of the investigations and examinations carried out by the courts of instance must be set forth in the reasoned decision, considering the characteristics of the concrete case, in a manner to ensure the principles of legal security and certainty and to prevent arbitrary practices. In this context, it is not sufficient to have a justification only in the formal context, but it is also required that the justification must be reasonable.

In this respect, the Constitutional Court held that, although it is not expected to prove the suspicion in the concrete case due to the nature of the termination of suspicion, the suspicion must be based on a reason arising from the employee's personality, and this reason must be supported by objective events and facts of a concrete, significant and substantial nature. In this context, the courts of instance should first determine the nature of the employer organization and the position of the employee whose contract has been terminated, the nature and importance of his/her job, and should set forth these issues in the reasoned decision.

Upon the examination conducted by the Constitutional Court in this respect, it was observed that the reasoning of the courts of instance failed to include the reasons why and how the information obtained about the applicant justified the termination of his employment contract. The Constitutional Court has stated that the courts of instance should reveal the legal effect of the pending investigation against the applicant on the termination of the employment contract and its own assessment of the merits of the matter. In other words, the applicant's allegations that his employment contract was unfairly terminated despite the fact that he had no connection with a terrorist organization were not clarified. Therefore, when the judgement process is evaluated as a whole, it is concluded that the applicant's right to reasoned decision has been violated.

IV. CONCLUSION

The Constitutional Court ruled that the applicant's claim that his right to reasoned decision within the scope of the right to fair trial was violated, was admissible, that his right to a reasoned decision was violated, that a copy of the Constitutional Court's decision shall be sent to the Local Court for retrial in order to eliminate the consequences of the violation.

In this respect, it should be noted that the issues determined as a result of the investigations and examinations to be carried out by the courts of instance according to the requirements of the respective case should be set forth in each reasoned decision in line with the principles of legal security and certainty, considering the characteristics of the concrete case. Reasoned judgements shall demonstrate how the court has characterized the events and facts subject to the case, the reasons and legal regulations on which the judgement is based, and the connection between the events and facts and the judgement. In this context, in order for the courts to understand and evaluate the reason why the parties are considered justified or unjustified by the legal order in terms of that case, it is essential to provide a duly established justification that is clear enough to leave no room for doubt, showing the reason why the judgement is given in that content and scope. Indeed, reasoned judgements will enable the parties to ensure that they can rely on the courts and the judiciary in general by learning the basis of the court's decision, as well as enabling the parties to make an effective application to the legal remedy and protecting the right to fair trial.

Full decision of the Constitutional Court: <https://www.resmigazete.gov.tr/eskiler/2024/03/20240326-7.pdf>

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