

The Constitutional Court Rules the High Court of Appeals' Divergence from Similar Case Law as A Breach of The Right to a Fair Trial

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1. Introduction

The case subject to this study is as follows: Ziya Metehan Arısoy (“**Applicant**”), a newlywed, purchased furniture for his and his wife’s new apartment, where they planned to reside after their wedding. The seller had committed to delivering the furniture prior to the wedding. However, the furniture was delivered 26 days after the wedding. Consequently, the Applicant filed a claim for non-pecuniary damages in the consumer court, citing the seller's failure to fulfill its contractual obligations. In the lawsuit, the Applicant asserts that the delay in the furniture delivery caused distress during the early days of his marriage.

The consumer court, adhering to the precedents of the High Court of Appeals in similar cases, ruled in favor of the Applicant and accepted the lawsuit. The defendant, thereafter, appealed the decision. Upon appellate review, the High Court of Appeals reversed the consumer court's ruling with the reasoning that the delay in the furniture delivery could not be deemed an infringement of personal rights.

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On November 15, 2003, upon an individual application of the Applicant, the Constitutional Court decided through its decision numbered 2019/22055 (“**Decision**”) that the High Court of Appeals’ divergence from similar case law constitutes a breach of the right to a fair trial.

2. Common Practice and Previous Case Law

2.1. Non-Pecuniary Damages on Contractual Breach

Failure in performance and/or incomplete or late performance of a contract by either party constitutes a “contractual breach” under the provisions of the Turkish Code of Obligations numbered 6098 (“**TCO**”). Although the provisions of TCO do not explicitly state that non-pecuniary damages should be compensated in case of a contractual breach, it is accepted that these breaches may cause personal rights to be damaged too.

Indeed, it has been established in the precedents of the High Court of Appeals¹ that if there is a contractual breach, then the non-pecuniary damage caused by this contractual breach should be compensated. However, but in the contested decision, contrary to the previous case law, the Applicant was not granted with non-pecuniary compensation by the High Court of Appeals.

2.2. Right To a Fair Trial

The “right to a fair trial” regulated in the European Convention on Human Rights (“**ECHR**”) is guaranteed in Article 36 of the Constitution, which states that “*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.*”

The right to a fair trial determines the procedural principles regarding the trial, guarantees to reach a fair decision as a result of an objective trial, and thus constitutes the fundamental element of the rule of law².

¹ 13th Civil Chamber of the High Court of Appeals, decision dated 02.10.2018 and numbered 2016/18595 E., 2018/8877 K.; 13th Civil Chamber of the High Court of Appeals, decision dated 20.10.2014 and numbered 2014/15331 E., 2014/32162 K.

² Prof. Dr. Sibel İnceoğlu, Individual Application to the Constitutional Court Handbook Series-4, p.1

The principle of legal security is also a component of the right to a fair trial³ which is under constitutional security as explained above. Accordingly, the Constitutional Court has stated in different decisions⁴ that differences in case law regarding the same incident without proper reasoning will lead to legal uncertainty.

3. Analysis of the Constitutional Court's Decision

In the Decision, the Constitutional Court explains that the principles of legal security and legal clarity are prerequisites of a rule of law. It has been further clarified that although it is first instance courts that will interpret legal provisions or select the correct interpretation for the current case if there are multiple interpretations of a relevant legal provision; it is the duty of the Constitutional Court to determine whether such different interpretations cause a breach of legal security or legal clarity.

It has been stated by the Constitutional Court in the Decision that different decisions in similar cases are in contradiction with the legal security and legal clarity and that judicial bodies are expected to provide a certain level of consistency in terms of implementation of legal provisions in order to maintain the public trust to judicial system.

After establishing the legal background and relevant principles applicable for this individual application, the Constitutional Court took into account the previous decisions of the High Court of Appeals and determined that the High Court of Appeals has been ruling for non-pecuniary damages if the personal rights of the relevant parties were damaged due to the breach of contract. However, in the contested case, the High Court of Appeals did not provide any explanation and/or justification as to why it diverged from the previous case law.

Based on the foregoing, the High Court of Appeals concluded that the difference in case law stemmed from the decisions of the High Court of Appeals, and that failure to ensure a consistent

³ Dr. Abdullah Çelik, “ Adil Yargılanma Hakkı Rehberi, p. 140

⁴ Türkan Bal Application, App. No: 2013/6932, 6/1/2015, §§ 57, 63

and uniform implementation in the case law would not only be contrary to the principles of legal security and legal clarity but could also damage individuals' trust in the judicial system and court decisions. Therefore, in this respect, the applicant's right to a fair trial was found to be violated due to the unpredictable nature of the current practice.

4. Conclusion

According to the Constitutional Court, the provisions of the law can be interpreted differently by different judicial bodies with varying areas of jurisdiction or competence, and it is inevitable that provisions that bear a certain degree of abstract elements will be applied differently to varying material facts. This is often the source of discrepancies in case law that arise from court decisions. However, multiple implementations may undermine the principles of legal security and legal clarity, erode public trust in the judicial system and its rulings, and ultimately disrupt public order.

Given the legal framework discussed above, the Constitutional Court's approach to varying applications of the law in similar cases is crucial for ensuring and maintaining legal certainty and clarity—both of which are essential for fostering public trust in the judicial system and upholding public order.

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