

## Turkish Constitutional Court Accepted the Applicant's Reversal Request to Administration's Rejection to his Request to be Appointed as the Managerial Staff, pursuant to the Right to Respect for Private Life

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The Constitutional Court with its recent decision with the application number 2018/11772 and dated 20 October 2021, decided that the assignment process has concrete effects and reflections on the social and professional reputation of the applicant ("**Applicant**"); and therefore, the application can be examined within the scope of the right to respect for private life within the framework of the result-based applicability approach.

In the case at hand:

- After the Applicant was successful in the promotion exam, he requested to be appointed to the managerial staff, and this request was rejected by the administration. Due to the rejection of this request, the Applicant applied to the judiciary and the court has found the claims to be justified.
- After the court decision, the administration appointed the Applicant as the chief advisor to the head of the bureau temporarily, with an exceptional assignment.
- The Applicant filed a lawsuit for the annulment of the temporary assignment process. The Court has stated that the procedure should be annulled because it was not revealed with concrete information and documents how and for how long the Applicant would do the job subject to his assignment in the related case.
- The Administration appealed against the local court's decision. The Court of Appeal decided to annul the local court's decision, stating that the discretion granted to the mayors regarding the appointment of the personnel in managerial positions in municipalities is wider than that of other personnel.
- The Applicant made an individual application to the Constitutional Court on 4 May 2018.
- The Constitutional Court has stated that the professional life of individuals has a close connection with their private life, and it is undeniable that the right to respect for private life comes to the fore in cases where measures or interferences with their professional lives are in question.
- While the applicant was serving as the director of science affairs, he was appointed as the advisor to the head of the bureau through the procedure established by the mayor. The Constitutional Court has considered that the public authority has interfered with the Applicant's right to respect for private life by establishing the assignment process.
- In its decision, the Court of Appeal accepted that the occupational measures that interfere with the right to respect for private life, as a reason for limitation arising from the nature of the right, which is made for the purpose of protecting public order and ensuring the sustainability of the public service. In the application at hand, it has been evaluated that the administration using public power has the aim of ensuring the sustainability of the public service, and thus it has been concluded that there is a legitimate aim element. However, in the decision of the Constitutional Court, it was stated that the proceedings established without any requirements leading to arbitrariness can be considered as a heavy interference with the fundamental rights of the related persons.

For the reasons explained, the Constitutional Court has concluded that the right to respect for private life, which is guaranteed under article 20 of the Constitution, has been violated by the administrative authority, and that the Court of Appeal's decision, which was made without providing sufficient reasons, shall also be deemed as the violation of the right to respect for private life.

The Constitutional Court has decided that a retrial should be held in order to eliminate the violation and its consequences, and that rejected the claims for compensation as it was understood that the retrial would provide sufficient redress.

The full text of the Constitutional Court's decision dated 20 October 2021, numbered 2018/11772, published in Official Gazette dated 17 November 2021 and numbered 31662 is available at [this link](#). (Only available in Turkish)

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