

Turkish Constitutional Court: Right to Fair Trial Violated by Failure to Consider Request to Use Oath Evidence

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Turkey's Constitutional Court recently considered whether a first instance court had breached the principle of equality of arms by failing to consider a party's request to use an oath as evidence. The court held the party's right to a fair trial had been violated, sending the matter back to the lower court for a re-trial.

During the first instance court's trial (about unjust enrichment), the applicant sought to use oath evidence to refute a legislative presumption which weighed against her (as the defendant). However, the court decided the case without considering her right to use the oath as evidence.

At the Constitutional Court, the applicant claimed her right to a fair trial had been violated, seeking a re-trial and compensation. She argued that the first instance court had misjudged the evidence by failing to recognize her jurisdiction plea and consider her right to use an oath as evidence. As a result, she argued the lower court's decision had been contrary to law.

The Constitutional Court considered the matter on the basis that the principle of equality of arms is a sub-element to the right to fairness.

The Constitutional Court ruled that by preferring the evidence of one party, the applicant was put in an unequal position, impacting the whole trial's fairness.

It held that the lower court has a duty to assess whether an oath would be beneficial to settling the dispute and whether the oath would affect the outcome. Therefore, it held the lower court's decision was contrary to the principle of equality.

Please see this [link](#) for full text of the Constitutional Court's decision, made on 1 February 2017, with application number 2014/12324 (only available in Turkish).