

Turkish Constitutional Court's Review of the Decree number 670 in the Light of Right to Access to Court

11 Dec 2020

Kayhan Erciye? ("**Applicant**") filed a lawsuit against the Social Security Institution ("**SSI**") for the cancellation of the payment order of execution proceedings initiated in accordance with the provisions of the Law on the Procedure for Collection of Public Claims for the purpose of collecting the debts of social security premium debts. In the lawsuit filed before the Employment Court, it was decided to dismiss the case on the grounds that there was no application for administrative remedies within the scope of Decree number 670 on Measures to be taken under the State of Emergency ("**Decree number 670**"). The Applicant filed an appeal against this decision. İzmir Regional Court of Justice rejected the petition of appeal, stating that the amount, subject to the dismissal of the case, did not exceed the monetary limit required for the appeal examination. After that, the applicant applied to the Constitutional Court. The Constitutional Court has decided that the Applicant's right of access to the court has been violated, that an examination should be made by the court of the first instance on the merits and therefore the trial should be renewed.

In this case,

The applicant served as the rector of İzmir University, which was closed by a decree since it is related to the Fetullah Terrorist Organization / Parallel State Structure.

İzmir University was closed due to the Decree-Law on Measures Taken Under the State of Emergency and all its bank accounts were blocked. Due to the blocking, social security premium debts could not be collected from İzmir University and accordingly, enforcement proceedings were initiated against the Applicant in accordance with the provisions of the Law on Collection Procedure of Public Claims numbered 6183.

- Payment orders were served to the Applicant by hand. Within the scope of execution, annotation of lien was imposed on the Applicant's all movable and immovable property. The Applicant has filed a lawsuit against the SSI at the İzmir 12th Employment Court, requesting the cancellation of the payment orders in his petition dated 23 September 2016.

The Constitutional Court referred to article 16 of the Decree on Taking Certain Measures under the State of Emergency number 675 and stated that "*the lawsuit and the prosecution shall be dismissed as there is no legal action or follow-up requirement in accordance with article 5 of the Decree-Law number 670 for the lawsuits and enforcement and bankruptcy proceedings filed against the institution, organization and the real or legal persons owning them or the Ministry of Finance and the General Directorate of Foundations upon closure or ex officio abandonment since 17 August 2016.*"

The first instance court stated that the Applicant can apply to the relevant administrative authority within 30 days from the date of notification in accordance with the procedure specified in Decree number 670 and a lawsuit can be filed against the decision of the administrative authority. Furthermore, it was pointed out that the decision given by the administrative judiciary is final and cannot be the subject of any other lawsuit. The lawsuit that was filed by the Applicant is heard before the judicial jurisdiction without making an administrative application against this decision. As a result, the lawsuit filed by the Applicant against the SSI is rejected due to a lack of legal requirements set in the legislation. The Applicant has applied for an appeal against the decision of the first instance court, stating that the decision was against the procedure and the law. However, İzmir Regional Court of Justice ruled on the rejection of the Applicant's appeal petition because the monetary dispute in the appealed decision did not exceed the monetary

threshold set in the procedural law.

Thereupon, the Applicant made an individual application to the Constitutional Court with the allegation that the denial of the lawsuit filed with the request for the cancellation of the payment orders issued due to the social security premium debt violated his rights; i.e. the equality before the law, right of property and right to legal remedies.

The Ministry of Justice alleged that the application is inadmissible since the Applicant made an individual application without exhausting the administrative and judicial remedies that is available in the legal system. The Applicant alleged that he had exhausted the necessary legal remedies for the cancellation of payment orders issued by the SSI in accordance with current legal regulations.

The Constitutional Court decided that the application should be examined within the scope of the right of access to the court, since the Applicant had a complaint about the failure to reach a conclusion on the merits of the case within the framework of the evidence, although he claimed that the principle of equality and the right to property was also violated.

In the lawsuit filed by the Applicant with the request of the cancellation of the payment order, the first instance court considered that it was a lawsuit filed against the institutions closed according to the 5th article of the Decree number 670 and rejected the case due to lack of legal requirements set in the legislation. However, since the case was filed against the SSI, the Constitutional Court stated that it is no longer possible to evaluate the case before the first instance court within the scope of the Decree number 670. For this reason, it has been concluded by the Constitutional Court that the refusal of the case based on the Decree number 670 without examining the merits of a case violates the Applicant's right to access to the court.

Consequently, the Constitutional Court ruled for a retrial and elimination of the consequences of the decision given by the court of first instance. The Constitutional Court found that a retrial would be enough to eliminate the consequences of the violation and that the Applicant's claim for compensation had to be rejected.

You may access the full text of the Constitutional Court's decision dated 3 November 2020 and numbered 31293 at this [link](#). (Only available in Turkish)

Related Attorneys

- [BURAK BAYDAR](#)