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Does the appeal period for an application for legal remedy begin upon announcement of the constitution?

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Background

Under Turkish law, the time period for an application for legal remedies (appeal and cassation) against court decisions begins, in principle, once the parties have been notified of the decision. However, some laws stipulate that the time period begins from the announcement of the decision by the court to the parties present at the hearing.

The courts of first instance usually only announce a summary of the judgment at the decision hearing. The courts provide their reasoning to the parties later. Where the appeal period starts from the announcement of the judgment, to avoid any loss of rights, the parties inform the courts that they wish to appeal the decision through a petition known as "time holding" (which has no equivalent in procedural law). The parties then submit their detailed appeal petitions following the notification of the reasoned decision.

Where the court's reason is not disclosed with the judgment, the parties have no opportunity to explain their grounds for application to legal remedy. If a time holding petition is not submitted, the regional courts of appeal (which are responsible for appeal examinations) can reject applications on the grounds that the appeal request was not filed within the time limit. This causes serious losses of rights.

Facts

In a recent dispute, the appeal period started from the announcement of the decision and a time holding petition was not submitted. The dispute was subject to an individual application before the Constitutional Court. The applicants claimed that their right to access court had been violated.⁽¹⁾

Decision

In its examination, the Constitutional Court stated that the sensitive balance between legal security and stability, and the right of access to court, should be observed while interpreting the law regarding time periods. The Court held that the matter should be handled according to the principle of proportionality. The Court pointed out that a decision that doesn't have the elements specified under article 297 of the Code of Civil Procedure (on the scope of court decision) cannot be considered to have been validly announced. Therefore, the period in which a legal remedy may be filed cannot start until the service of the reasoned decision.

Thus the Court concluded that expecting applicants who do not know the reasoning of the decision to apply for appeal as of the announcement of the judgment would impose a heavy burden on them. The Court held that this situation was not proportionate and that it interfered with the right to apply to the court. On these grounds, the Court decided that the applicants' right to access to the court, within the scope of the right to a fair trial under article 36 of the Constitution, had been violated.

Comment

This decision shows that where the period in which a legal remedy application may be filed begins at the announcement of the judgment, but the reasoning is not announced together with the judgment, the appeal period should only start with the notification of the reasoned decision. There should be no requirement to submit a time holding petition. However, given that other authorities might interpret this differently to the Court in this case, the established practice of submitting petitions for time holding might not change.

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Endnotes

(1) The Constitutional Court's decision dated 14 September 2022, with the application No. 2019/12803 was published in the *Official Gazette* dated 25 October 2022.

