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EUROPEAN COURT OF HUMAN RIGHTS: REVIEW OF DECISIONS (HIRO BALANI / SPAIN)

Summary

The European Court of Human Rights acknowledges the violation of Article 6 in order to provide unfounded reasons for court decisions. Therefore, claims that may affect the outcome of the trial must be answered.

The topic is very relevant for research in modern times. Research and comparative methods were used in the study of the topic. The study focused on Turkish and English literature.

Key words: *Substantiation of Court Decisions, Right to Fair Trial, Right to Defense, European Court of Human Rights, Constitution*

Introduction

As per Article 141 of the Constitution, judicial decisions must be justified. The European Court of Human Rights (ECHR) also accepts that the judicial decisions are unjustified or the justification is insufficient, as a violation of the right to a fair trial.

The attitude of the local courts, the arguments and defenses of the parties, the defense of the Spanish Government against the application to the ECHR and the decision of the ECHR were emphasized. In the second part, the right to a reasoned decision is explained and the decision of the ECHR has been evaluated in this context.

Examination of the ECHR's "Hiro Balani v. Spain" Judgment

Within the scope of the 6th article titled "Fair Trial" of the European Convention on Human Rights (ECHR), there is also the "right to a reasoned decision". However, it is important to determine the scope of this right and to reveal under which conditions the violation of this right will occur in case of failure [Akinci, 2016: 22]. In the incident, a decision was taken on other grounds in favor of the claimant, without focusing on an allegation made by the court of first instance.

Upon the appeal of this decision, this time the judgment was made against the claimant without giving place to this claim, which was put forward before the court of first instance but not mentioned. In this case, the point to be focused on within the scope of the right to reasoned decision is whether the courts are obliged to answer all the claims of the parties and whether the appellate authority can be obliged to respond to the claims not made before it.

Spanish Domestic Law on the Subject

The registration of a trademark or name in Spain gives the owner the authority to file a civil or criminal case against the violators in case of violation of their rights arising from the Industrial Property Regulation (Akinci, 2016: 100). The priority of a trademark starts from the application made to the industrial property register for the registration of the trademark.

The Paris Convention on the Protection of Industrial Property dated 20.03.1883, ratified by Spain on 13.12.1971, applies to a trade name or trademark registered in any of the contracting states, without payment or registration in all countries that are parties to the contract. Provides.

Accordingly, the holder of a trademark or name within the scope of the Paris Convention may request the deregistration of any Spanish trademark registered after its trademark and incompatible with it (Akinci, 2016: 29).

According to Article 270 of the Industrial Property Regulation, the court of first instance should hold a hearing by taking the opinion of the Industrial Property Registry Legal Department on the subject in order to cancel a commercial name or trademark from the registry, and then send the prepared file to the Regional Court to decide on the issue.

The objections raised when filing an appeal against Regional Court decisions must comply with the limited number of annulment reasons specified in Article 1707 of the Spanish Civil Jurisdiction Code.

Except for the appeals that are subject to purely procedural problems in accordance with Article 1715 of the Spanish Civil Jurisdiction Code, the Supreme Court, whose appeal has been referred to it, will not only annul the judgment, but will also make a new decision on the merits of the matter, taking into account all the claims put forward by the parties during the trial process.

Defense of the Party Government

The Spanish Government, on the other hand, stated that the applicant's claim of priority was completely unrelated to the subject of the proceedings before the Supreme Court and that the trademark Creations Orient had already been protected from counterfeit articles due to registration (Ozdek, 2015: 45).

According to the Government, the case concerned the deregistration of a trademark on watches, and both the Industrial Property Register Legal Department and the Supreme Court took this view.

Secondly, the Government stated that in another case where the deregistration of a trademark previously filed by the same company and acquired for Orient watches was requested from the registry, the Supreme Court had briefly and clearly denied the claim regarding the priority of the Creations Orient brand in an appeal filed by the applicant.

Moreover, the Government stated that the Supreme Court in its decision based on the difference between the products manufactured for the applicant's brand and those sold under the Japanese company's trade name.

Evaluation of the ECHR

First of all, the Human Rights Commission examined the application in question and found it admissible. The Commission stated that the Spanish Supreme Court's silence on the priority of the applicant's trade name Creations Orient, in line with the applicant's allegations, raised doubts about the scope of the investigation (2, 68).

The ECHR stated that the courts should give the judgments of Article 6 of the ECHR with reasons, but that this does not mean giving a detailed answer to all kinds of allegations.

In addition, the court found that the scope of the obligation to give reasoned decisions may differ depending on the nature of the decision (4). Accordingly, whether a national court violates the obligation to make a reasoned decision can be determined in the light of case-specific circumstances such as legal conditions in the contracting states, traditional rules, legal perspective, differences in drafting and explanation of judgments.

In this case, Ms. Balani objected, among other things, to the case concerning the deletion of her trademark "based on the priority of another brand owned by her" (Ozdek, 2015: 51). This objection was made in writing before the first instance court and it was put forward sufficiently clearly and precisely.

In this case, the Supreme Court, which annuls the decision of the court of first instance and makes a new decision on the merits of the matter, has to examine all the issues put forward during the trial, even if they are not brought forward in the appeal, as long as they constitute the subject of the dispute (Ozdek, 2015: 48).

Evaluation of the ECHR Decision

The right to defense constitutes the source of the reasoned decision right. The right to defense starts when the individual is informed that the case has been filed and continues during the finalization of the verdict (Ozdek, 2015: 49).

The right to defense after the verdict includes the right to form the courts, to make the decision, to learn the content of the verdict and to make a reasoned decision (3).

At this point, the right to reasoned decision ensures that the reasons for the verdict are learned. In addition, the fact that the judicial decision is justified is also important in terms of resorting to legal remedies (Erdoghan, 2017: 40). First of all, the decision must be notified to the person concerned with justification and in accordance with the procedure.

However, in this case, it is possible for the person concerned to apply for an effective legal remedy. The fact that the judicial decision is unjustified means that the legal remedies that are part of the right to defense cannot be used effectively. The right to reasoned decision is one of the tools to build trust in the judiciary.

The person seeking rights before the court will only be able to understand why he did not get his right, and for what reason and evidence the judge made the decision only with the justification of the decision (Erdoghan, 2017: 48).

In fact, the justification is an indication and assurance that the jurisdiction does not give arbitrary verdicts. Therefore, the reasoning must satisfy the parties to the proceedings.

As a result, leaving an unanswered claim on the merits of the case overshadows the right to a fair trial. Despite the fact that the Court focused on the scope of the reason expected from the national courts while reaching the

violation decision and determined general principles, the argument that the international court was given a very large supervisory power on the grounds of separate voting remains unfounded.

In this case, the decision of violation of the “fair trial” in Article 6 of the Agreement is justified. In our country, article 141 of the Constitution states that “all kinds of decisions of all courts are written with justifications”.

Therefore, it is a constitutional obligation for the final decisions, interim decisions or temporary legal protection decisions of the courts to be justified. It was also regulated in procedural laws such as HMK, CMK and İYUK that justification should be included in judicial decisions.

According to the Council of State, “It is also clear that the justification of the decision will be related to the legal evaluation of the material event (Erdoghan, 2017: 46). The justification, which is one of the main elements of the court decisions together with the provision clause, can be defined as the justification of the judicial decisions of the judicial authorities in a correct, just, legal, reasonable and way that allows them to be audited (Erdoghan, 2017: 111).

In order to be able to mention that the judicial decisions are grounded in a way that allows them to be inspected, the allegations, events and facts that are effective on the outcome of the case must be clearly revealed, and must be sufficient and clear enough to allow the right to appeal to be used effectively.

In the decision of the Court examined by appeal, after the provisions of the relevant legislation were included, it was decided to dismiss the case on the grounds that there was no contradiction to the public interest and service requirements in the transaction established as a result of the examination of the information and documents in the file, but the legal basis of the conclusion reached by judicial review was not revealed, the decision should be audited in the above-mentioned sense and the exercise of the right of appeal is not clearly justified. “The Supreme Court likewise states that court decisions should be justified.

In addition, the individual application remedy is regulated in the Law No. 6216 on the Establishment of the Constitutional Court and Judicial Procedures. According to everyone, it enshrined in the Constitution, fundamental rights and freedoms, European Convention on Human Rights and additionally by Turkey is a party that any public power of the protocols can be applied to the Constitutional Court on the alleged violation.

In this case, since the right to a reasoned decision is one of the rights protected by the ECHR within the scope of the ECHR, it is also possible to make an individual application to the Constitutional Court with the claim that this right has been violated (Erdoghan, 2017: 123). This is expected to serve as an important oversight of the justification of judicial decisions.

Conclusion

The European Court of Human Rights emphasized the 6th article of the European Convention on Human Rights and stated that the courts should give their judgments with justifications, but that this does not mean giving detailed answers to all kinds of claims.

Furthermore, the court also ruled that the scope of the obligation to make a reasoned decision may differ according to the nature of the decision. Accordingly, whether a national court violates the obligation to make a reasoned decision can be determined in the light of case-specific circumstances such as legal conditions in the contracting states, traditional rules, legal perspective, differences in drafting and explanation of judgments.

The basis of the right to reasoned decision is the right to defend. As a matter of fact, resorting to legal remedies becomes meaningful only if the decision is justified. Again, the reasoned decision increases the confidence in the judiciary by ensuring the impartiality of the judge.

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