



Türkçe (<https://kararlarbilgibankasi.anayasa.gov.tr/BB/2017/31619?Dil=tr>)



PRESS RELEASE

24/9/2020

Press Release No: Individual Application 57/20

Press Release concerning the Judgment Finding a Violation of the Right to Protect the Corporeal and Spiritual Existence due to the Procrastination of the Victim's Request for Termination of Her Pregnancy resulting from a Criminal Act

On 23 July 2020, the Plenary of the Constitutional Court found a violation of the right to protect and improve the corporeal and spiritual existence safeguarded by Article 17 of the Constitution in the individual application lodged by *R.G.* (no. 2017/31619).

The Facts

The applicant, who was under 18 at the time of the impugned events, became pregnant as a result of the sexual intercourses she had had by force and threat. The incumbent chief public prosecutor's office ("the prosecutor's office") initiated an investigation against the individuals who had been reported to have forced sexual intercourses with the applicant.

The applicant's family filed a request with the magistrate judge dealing with civil matters ("the magistrate judge") for the termination of the pregnancy. Indicating that this request should have been filed by the prosecutor's office conducting the investigation, the magistrate judge dismissed the request on procedural grounds. Thereafter, upon the family's request, the prosecutor's office referred the investigation file to the magistrate judge which, however, dismissed the request filed by the prosecutor's office.

In her petition addressed to the prosecutor's office, the applicant stated that she did not want to give birth to this baby due to her age and psychological condition and requested to obtain a report to ascertain whether termination of her pregnancy would pose a threat to her life. Accordingly, a report was obtained from the Forensic Medicine Institute. In this report, it is indicated that the mother may experience complications of normal pregnancy which may endanger her life; and that there would be medical interest, for both the mother and the foetus, in the termination of the pregnancy.

The prosecutor's office sent anew the investigation file with updated results to the magistrate judge for deciding on the applicant's request regarding the termination of her pregnancy. However, the magistrate judge dismissed this request once again, indicating that the report issued by the Forensic Medicine Institute did not contain sufficient details. The applicant's appeal against the magistrate judge's decision was dismissed.

The prosecutor's office then sent the investigation file to the incumbent civil court, in line with the appellate court's decision, to decide on the applicant's request for termination of her pregnancy. However, the civil court

issued a decision of non-jurisdiction, stating that the file should have been referred to the magistrate judge. The prosecutor's office accordingly sent the investigation file to the magistrate judge once again. However, the magistrate judge stated that there was no ground to decide on the request submitted by the prosecutor's office as its previous decision had been finalised.

The Applicant's Allegations

The applicant maintained that her right to protect and improve her corporeal and spiritual existence had been violated as her applications with the relevant courts for termination of her unwanted pregnancy had been rejected, and she had been therefore made to bear the burden of pregnancy.

The Court's Assessment

The request by a woman for termination of her unwanted pregnancy is directly related to her personal autonomy as well as to her mental or physical integrity. The notion of personal autonomy and the interferences with the individual's physical integrity fall –from the aspect of private life- within the sphere of the right to protect and improve the corporeal and spiritual existence enshrined in Article 17 of the Constitution.

The legislator allows for the termination of a pregnancy resulting from a criminal act, which is under 20 weeks, but makes it subject to authorisation. The reason for seeking an authorisation for ending pregnancy is to inspect whether the pregnancy has resulted from a criminal act.

It has been observed that in the present case, the applicant was not permitted to end her pregnancy merely on the ground that *“termination of pregnancy would amount to a breach of the right to life unless there are a threat to the mother's health or any exigent circumstances”*, without any discussion by the magistrate judge as to the statutory arrangement intended for striking a balance between the woman's right to protect her personal autonomy as well as physical integrity and the interests of the foetus and thus as to the relevant conditions set out in Code no. 5237. It has been further observed that the appellate authority also failed to take into consideration the applicant's challenges and procrastinated in the conclusion of the applicant's request for termination of her pregnancy.

Regard being had to the particular circumstances of the present case as a whole, the decision which should have been issued within the shortest time possible was not rendered within nearly 2 months during which time factor was of critical importance. This approach adopted by the judicial authorities deprived the applicant of the opportunity to end her pregnancy and thereby placed an excessive burden on her, which upset the required fair balance to the detriment of the applicant and also rendered disproportionate the impugned interference with the applicant's right to protect and improve her corporeal and spiritual existence.

Consequently, the Court has found a violation of the right to protect and improve the corporeal and spiritual existence safeguarded by Article 17 of the Constitution.

On the other hand, in cases where there is a violation of any fundamental right, the violation in question and its consequences could be, in principle, redressed by way of ensuring return to the former state, that is to say the state prior to the impugned violation, as much as possible.

In the present case, the damage suffered by the applicant cannot be compensated for by the finding of a violation alone. Therefore, within the framework of the principle of restitution, the Court has awarded a net amount of 100,000 Turkish liras to the applicant for the non-pecuniary damage which cannot be compensated for by the finding of a violation alone, with a view to redressing fully the consequences of the violation of the applicant's right to protect her corporeal and spiritual existence.

This press release prepared by the General Secretariat intends to inform the public and has no binding effect.