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Headnotes:

Any criminal charge against individuals requires that a hearing be held and that the accused be present at that hearing. These are the natural consequences of the right to a fair trial and the right to defence. Even if a criminal order requires punishment other than imprisonment such as fines, suspension of a profession or trade, it is the requirement of the Constitution that a public hearing be held.

Summary:

Menemen Criminal Court of First Instance brought an action in the Constitutional Court alleging that provisions of Articles 302, 386 and Article 390.3 of Criminal Procedures Law no. 1412 were contrary to the Constitution.

The Constitutional Court reviewed only Article 390.3 among the alleged provisions since Articles 302 and 386 were not applicable to the case before the trial court.

Article 390.3 of Law no. 1412 stipulates that if the accused is sentenced to a fine or a heavy fine or suspension of a profession or trade or some or all of those sanctions are applied, the judge of the Criminal First Instance shall examine the case upon objection made by the accused according to Articles 301, 302 and 303 of Law no. 1412. In this situation, when the objection petition is given, the execution of the criminal order is stopped.

Article 390 of Law no. 1412 refers to Articles 301, 302 and 303. Under those articles, if the court is to decide on a sentence other than short imprisonment, it may issue a criminal order without holding a hearing. The trial court alleged that it is contrary to Article 36 of the Constitution (freedom to claim rights) to examine the case without holding a hearing. Thus, the right to be informed about the accusation, the right to have the decision after a public hearing and the right to defence are not guaranteed.

Under Article 390 of Law no. 1412 (entitled as "objection to the criminal order"), if an objection is raised against a criminal order which entails short imprisonment, then the hearing is held according to the general rules. However, if the criminal order entails a light or heavy fine or suspension of a profession or trade, then the

case file is sent to the Criminal Court of First Instance and the judge at that court shall examine the case without holding a hearing according to Articles 301, 302 and 303 of Law no. 1412. If the objection is acceptable, the criminal order shall be removed. Otherwise, the objection shall be rejected. The decision is final in both situations.

Article 36 of the Constitution stipulates that everyone has the right of access to a court either as a plaintiff or defendant and the right to a fair trial before the courts through lawful means and procedures.

On the other hand, in Article 6.1 ECHR, it is indicated that everyone is entitled to a fair and public hearing and the minimum rights to be ensured for the accused during the criminal procedures are counted in Article 6.3 ECHR.

Because of the changing social conditions in contemporary states, criminal instruments such as criminal order or even sanctions applied by the administration are widely used as a crime and punishment policy. In the case of objection to the criminal order, holding a hearing and being present at that hearing are the natural results of the right to a fair trial and the right to defence.

It is understood that the legislature did not regard the sanctions and the punishments other than imprisonment as heavy as punishments requiring deprivation of liberty. If the fines are not paid, they will be transformed into imprisonment. Therefore, the accused must be ensured an open hearing and his or her defence must be taken, if he or she objects to the criminal order.

For those reasons, the objected provision was annulled unanimously.