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Constitutional court declares provisions of law on civil procedure unconstitutional

Requirement that a party be represented by qualified attorney

The disputed provision of the Law on Civil Procedure required that a party be represented in civil litigation by a qualified attorney, unless it opts for self-representation. Legal entities could have also been represented by an in-house lawyer employed with the entity, provided the in-house counsel had passed bar exam. The Constitutional Court found that these provisions unduly restrict the right to access to court and the right to fair trial and declared them unconstitutional.

The Court observed that the right to access to court is not an absolute right and that it can be restricted, however only in pursuance of legitimate interests and provided the restriction is indispensable and proportionate to the attainment of those legitimate interests. The requirement that a party be represented by a qualified attorney can be, as a matter of principle, in the function of legitimate interest of protecting judiciary from being overburden and shielding parties from unqualified legal services. However, the Court observed that such requirement is not indispensable for the goal sought to be achieved and that it imposes a significant financial burden on the party to the proceedings, which also makes it disproportionate to that goal. This conclusion of the court was particularly motivated by its opinion that that the provisions of the Law on Civil Procedure on the right to be exempted from payment of costs of proceedings and the right to receive free legal representation are not sufficient to offset potentials of the challenged provision for raising barriers to access to court.

Procedure for protection of collective rights and interests of citizens

The Constitutional Court also declared unconstitutional special provisions of the Law on Civil Procedure pertaining to collective lawsuits.

Those provisions sought to enable associations whose registered activity and business object is protection of collective rights and interests of a large number of citizens to initiate proceedings against persons who are infringing upon those collective rights.

The Constitutional Court found that the Law of Civil Procedure failed to define the notion of "collective rights and interests" that this special procedural mechanism was aimed at protecting.

Furthermore, according to the Constitutional Court, it was unclear which organizations have standing to sue. In order for a general act to be considered law, its norms must be sufficiently clear, precise and predictable so as to enable the subjects concerned to adjust their behavior accordingly. In the Court's option, the provisions of the Law on Civil Procedure on collective lawsuits did not pass this test.

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