

## The Constitutional Court Decided to Annulation of the Provision Regulating the Public Receivables to be Collected with 10% Increase from the Debtor who has Unjustly Objected against the Payment Order

30 Sep 2022

The objection subject to the Constitutional Court's ("**Constitutional Court**") decision published in Official Gazette numbered 31911 on 2 August 2022 is related to the request for annulment of article 58 paragraph 5 of the Law on Collection of Public Receivables numbered 6183, which reads as "*The amount of public receivables, against which the objection is rejected, is collected with 10% increase from the debtor who is completely or partially unjustified in his/her objection.*". The decision is based on the grounds that the relevant paragraph is in violation of the Constitution's article 2 titled "Qualifications of the Republic", article 13 titled "Limitation of Fundamental Rights and Freedoms", article 36 titled "Right to Legal Remedies" and article 125 titled "Judicial Remedy".

While examining the request, the Constitutional Court took into account the sub-principles suitability, necessity and proportionality, which constitute the principle of proportionality regulated under article 13 of the Constitution regarding the limitation of fundamental rights and freedoms, considering that the provision in question constitutes an interference with the right to property.

In this respect, the Constitutional Court has ruled that:

- The respective provision is not suitable since filing a lawsuit against a payment order does not, in principle, suspend collection process, and even in case of a stay of execution, a default interest still applies,
- The respective provision does not meet the criteria of necessity since the attempt to prevent a lawsuit against the payment order by collecting the public receivable with 10% increase is not the least intervention to the right and the last resort while the judicial process regarding the assessment process on the basis of the public receivable is ongoing,
- The respective provision is not proportionate since no upper limit is stipulated in terms of the amount or in proportion to the original debt regarding calculating the increase in unjust objection, the courts' inability to evaluate the specifics of the concrete situation, and the lack of discretionary power to the judge, and
- The respective provision restricts the right to legal remedies as it makes difficult and deterrent to resort to the judiciary.

Therefore, the court decided to annul the relevant provision, as it violates article 13 titled limitation of fundamental rights and freedoms, the right to property protected by article 35 and right to legal remedies protected by article 36 of the Constitution.

You can access the full text of the Constitutional Court's decision numbered 2021/119 M. and 2022/48 D. published in Official Gazette dated 2 August 2022 and numbered 31911, via [this link](#). (Only available in Turkish)

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