

Turkish Constitutional Court: Administrative Fine Imposed for Failing to Make Material Events Disclosure Does Not Violate Property Rights

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Turkey's Constitutional Court recently ruled that an excessive personal burden had not been placed on a property owner where the administrative fine imposed by the administration on account of applicant's personal fault of not making material events disclosure in compliance with capital market regulations. The court ruled that a fair balance must exist between protecting individual property rights and the public interest, and that the interference of the administration with imposing fines had been measured.

In summary, the applicant was engaged in a merger and acquisition transaction permitted by the Competition Board, which was disputed and granted a motion for stay of execution. The action was dismissed due to the waiver of the claimant. The Capital Market Board requested the applicant's plea of defense for not making material events disclosure in respect to the litigation proceedings initiated against the permit of the Competition Board and eventually imposed administrative fines. The applicant filed an application with the Constitutional Court, claiming the administrative fine constituted violation of its property rights.

The Constitutional Court noted:

- Property rights are not unlimited. Rather, these can be restricted by law for the purpose of public interest, taking into account the principle of measurement.
- The principle of measurement states that a reasonable degree of fairness must exist between the purpose of the intervention by the public authorities and the means used to achieve this objective, by considering:
 - Convenience.
 - Necessity.
 - Proportionality.
- The obligation to make disclosures about material events and the administrative fine imposed for failures to do so is regulated in an accessible, clear, foreseeable and explicit manner. In particular, the administration has discretion to regulate technical and administrative matters and this does not impair the lawfulness criteria.
- The administrative fine is intended to ensure public disclosures occur for capital markets transactions. Accordingly, the measure is appropriate to achieve the objective of public interest.
- The act of the applicant is not regulated as an offense requiring judicial sanction. Taking into account the wide discretion of the public authorities, the measure cannot be deemed unnecessary since the applicant's act is regulated as a misdemeanor and only administrative fines were imposed.
- From the standpoint of proportionality, the applicant received the opportunity to put forward their claims and defenses against the administrative fine. However, the applicant provided no information or document to enable a review of proportionality between the amount of the administrative fine and its effects on the applicant's economic conditions.

Accordingly, the Constitutional Court ruled that the balance between protecting individual property rights and the public interest had not been impaired and that the interference had been proportional.

Please see this [link](#) for the full text of the Constitutional Court's decision dated 10 October 2018 and numbered 2017/23849 which was published in the Official Gazette number 30625 on 14 December 2018 (only available in Turkish).

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