

## Turkish Constitutional Court: Bank Holding the Pledge until the Repayment of Other Debts, Despite the Full Repayment of the Debt on Mortgage, Violates the Property Right

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The Constitutional Court ruled that the applicant's property right was violated due to the fact that the mortgage placed on the applicant's ("**Applicant**") immovable in order to secure the loan of the debtor was not cancelled on the grounds that the debtor owed the bank in other ways, even though the debtor had fully repaid the loan debt subject to the mortgage.

In the present case,

- The Applicant has established a mortgage on its property in favor of the bank in order to guarantee the housing loan of his son-in-law, E.K. The first page of the mortgage deed states that "*a mortgage was established with an upper limit of YTL 120,000 to constitute the guarantee of all debts arising from all the loans that E.K. has obtained or will obtain from the bank*". However, the second page of the same mortgage deed reads as "*the real estate is given as a guarantee for all kinds of debts arising from loans, other banking transactions and any other reasons to the bank that have arisen or will arise*".
- After repayment of the said housing loan by E.K., the Applicant applied to the bank for the removal of the mortgage on his property. However, the bank refused to cancel the mortgage based on the latter statement in the mortgage deed on the grounds that E.K.'s enforcement proceedings regarding two cheques to a third party are still ongoing even if the loan debt is repaid in full.
- The Applicant filed a lawsuit at the Çan Civil Court of First Instance for the removal of the mortgage. In the expert report requested by the relevant court, it was determined that the mortgage constituted a guarantee only within the scope of the debts related to the loans obtained from the bank. Consequently, the court concluded that the debts arising from cheques had no connection with the loan agreement and therefore with the mortgage in this context, and decided to remove the mortgage.
- The bank, by appealing against this decision, stated that according to the mortgage deed the mortgage was established to cover all debts arising from it, and therefore the mortgage should not be removed.
- The 14th Civil Chamber of İzmir Regional Court of Justice annulled the decision of the first instance court and dismissed the case, on the grounds that all receivables of the bank need to be repaid in order for the upper limit mortgage to be removed, considering that the mortgage covers all the receivables that will arise against the bank by E.K.
- The applicant filed an appeal against this decision and stated that only E.K.'s debts to the bank were included in the scope of the mortgage according to the first page of the mortgage deed, and even the broader provision on the second page covers E.K.'s debts only to the bank, not to third parties.
- The 19th Civil Chamber of the Supreme Court rejected the appeal and upheld the decision of the Regional Court of Justice.
- The final decision was served upon the Applicant on 10 July 2018, and the Applicant made an individual application to the Constitutional Court on 9 August 2018.
- As a result of the evaluations made, the Constitutional Court found that the Regional Court of Justice's interpretation in favor of the bank in the lawsuit filed by the Applicant regarding the annulment of the mortgage caused a serious uncertainty for the Applicant, and that it had provided a commercial advantage in favor of the bank in acquisition of E.K.'s debts to the third parties and thus, it upsets the legal balance to the detriment of the Applicant which had to be established between the interest of the bank, as the mortgage creditor and the Applicant's benefit.

In conclusion, the Constitutional Court decided to clarify whether there is harmony between the will of the parties regarding the scope of the mortgage and ruled that the property right of the applicant was violated on the grounds that the debt covered by the mortgage was extended to a degree that cannot be reasonably foreseen by the Applicant, and thus the applicant is exposed to a disproportionate burden, leading to a serious imbalance between the interests of the mortgage creditor and the mortgage debtor.

Please see this [link](#) for the full text of Turkish Constitutional Court's decision dated 14 September 2021 and numbered 2018/25663, published in Official Gazette dated 20 December 2021 and numbered 31695 (Only available in Turkish).

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