

## Turkish Constitutional Court: Dismissal of an Objection for being Time-Barred without Considering the Notification's Receipt Date Violates the Right of Access to the Court

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Turkish Constitutional Court decided that dismissal of an applicant's objection to the consumer arbitration committee's decision as being time-barred, without considering the receipt date of the notice, violates the right of access to a court within the scope of the right to a fair trial safeguarded by article 36 of the Constitution.

In the case at hand, the applicant applied to the consumer arbitration committee (the "**Committee**") for a refund of the amount collected by the bank due to the restructuring of the loan debt. The Committee refused the applicant's claim on 27 July 2015.

On 29 August 2015, the notification which was sent to the applicant's address returned indicating that the recipient was not recognized at the address. On 9 March 2016, the notification was delivered to the applicant by hand.

On 18 March 2016, the applicant objected to the Committee's decision. The court rejected the case on 14 June 2016 due to the statute of limitations. In its decision, the court considered 29 August 2015, which was the date of return of the notification, as the basis for the 15 days of the statute of limitations.

The applicant applied to the Turkish Constitutional Court claiming that his right of access to the court had been violated due to the rejection of the objection against the Committee's decision.

The Constitutional Court determined that the Committee considered the date of 29 August 2015 as the basis for the statute of limitations, instead of 9 March 2016 (the actual date the applicant was notified by hand). In this context, the Constitutional Court ruled that:

- The court's rejection decision cannot be considered within the predictability limits and it abolishes the applicant's ability to exercise the right to appeal.
- The burden that the applicant had to endure was disproportionate to the legitimate aims pursued.

Based on these grounds, the Constitutional Court unanimously decided that Court's decision violates the right of access to the court within the scope of the right to a fair trial guaranteed by article 36 of the Constitution.

Please see this [link](#) for the full text of the Constitutional Court's decision dated 21 February 2019 and numbered 2016/14883 which was published in the Official Gazette number 30748 on 17 April 2019 (only available in Turkish).

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