

Turkish Constitutional Court: Dismissal of the Objection Request due to Time Expiry Without Taking Notice Date into Consideration Violates the Right of Access to the Courts

31 Jan 2020

Turkish Constitutional Court has recently ruled that dismissal of the objection request on the grounds of time expiry without taking the date of notice into consideration violates the right of access to the courts.

In the present case,

- The applicant's proforma invoice for the diesel oil brought from abroad was determined to be higher than the price in the sales invoice issued by the seller. Therefore, additional accrual and administrative fines were imposed and written on the back of the Declaration of Free Circulation.
- The applicant filed an objection against the customs administration for additional accrual and administrative fine, yet the objections were rejected due to time expiry.
- The applicant filed cases against the rejection of both objections. Both cases were rejected on the grounds that the applicant was aware of the transactions.
- Afterward, the applicant appealed these decisions. In the case concerning the cancellation of the administrative fine. The Council of State indicated that the notification date should be taken as the basis for the objection period and reversed the case.
- Edirne Regional Administrative Court, on the other hand, upheld the decision concerning the additional accrual. Hence, the applicant filed an individual application claiming that additional accrual and rejection of the case violates his right to property and the right to access to the court.

The Constitutional Court set forth that "the right of access to court means bringing a dispute before the court and requesting that the dispute be decided effectively" and that it is "one of the most effective assurances to enjoy other fundamental rights and freedoms".

Furthermore, the Court decided that:

- The procedure of the writing on the back of the declaration aims to determinate the amount of collateral and notification date of the administrative fine is taken as the basis,
- However, Edirne Regional Administrative Court has not evaluated this matter despite objections raised.
- For these reasons cited, the applicant's right of access to the court within the scope of the right to legal remedies has been violated.

The Constitutional Court stated that the examination was only related to a violation of the right of access to the court and decided for a retrial in order to eliminate the consequences of this violation. Due to the retrial decision, the Court found no need for further assessment for the applicant's claim regarding the violation of his property rights.

Please see this [link](#) for the full text of the decision of the Turkish Constitutional Court's decision, dated 28 November 2019 and numbered 2016/14254 published in the Official Gazette dated 9 January 2020 and numbered 31003 (only available in Turkish).

Related Attorneys

- NEJLA AYDIN ÖZER
- SEV? ?SLAMAGEÇ

Moroglu Arseven | www.morogluarseven.com