

Turkish Constitutional Court: Exception to Investment Allocation Threshold Contradicts National Assembly's Powers and Public Procurement Legislation

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Turkish legislation requires projects in the 2015 Investment Program's additional investment list, as well as projects which are predicted to extend for more than one year and whose allocation is paid in lump sum, to only begin if the 2015 investment allocation is 10% or more of the project cost. The threshold is intended to prevent government bodies tendering projects without sufficient investment funds and also to reduce the average duration of projects. The Turkish Constitutional Court has recently struck out an exception to this restriction as being unconstitutional because only the National Assembly is authorized to make such an exemption and it contradicts provisions in public procurement legislation.

The exception in Article 9 of the 2015 Centralized Administration Budget Law applies excluded the following projects from the 10% investment allocation requirement:

- Hydroelectric plant and dam projects whose installed capacity is more than 500 MW.
- Project regarding improvement of railway route of Gebze-Haydarpaşa, Sirkeci-Halkalı
- Construction Project of Submerged Tube Tunnel, Rail transportation, Metro and Other Railway Transportation Projects of Ministry of Transport, Maritime Affairs and Communications.

With its recent decision, the Constitutional Court held that the legislative exception contradicted Article 87 and 161 of the Constitution. These provisions outline the Turkish Grand National Assembly's organization and duties, as well as authority to prepare and implement the budget. According to these provisions, exclusions can only be made by the National Assembly.

The Constitutional Court also noted that the exception contradicts Article 62 of the Public Procurement Law No: 4734. This provision outlines a 10% allocation threshold, intended to prevent projects being tendered without sufficient investment funds and also to reduce the average duration of projects.

Please see this [link](#) for full text of the Constitutional Court's decision 2015/7 and 2016/47, dated 26 May 2016 (only available in Turkish).

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