

## Turkish Constitutional Court: Holding a Company's Legal Representative Liable for Unpaid Public Debts does not Violate Property Rights

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Turkey's Constitutional Court recently held that legal representatives are jointly responsible with the respective legal entity for public debts which were payable during their time of influence. The court held that this does not upset the balance between public benefit and an individual's constitutional right to property.

The applicant ("**Applicant**") was a board member for a company ("**Company**") between 1996 and 1999. The Company held a 10% stake in Yurtbank A.Ş. ("**Yurtbank**"), which was transferred to the Savings Deposits Insurance Fund ("**Fund**") in late 1999. The Applicant was also a board member of Yurtbank from 1998 to 1999. In May 2008, the Fund initiated execution proceedings against the Company, seeking to recover Yurtbank's uncollected public debts (based on Repetitive Article 35 of the Law on Collection Procedure of Public Receivables No. 6183).

The Applicant argued that he is not liable because the debt became a public receivable in August 2001, after he was a board member. He also argued that Article 35(5) did not apply to him because the Constitutional Court had struck out a key empowering part of the provision (Article 35(5)) for pending cases.

The Constitutional Court noted that repetitive Article 35(5) had been annulled to remove the responsibility of legal representatives for debts which were not payable when they were a representative.

In these circumstances, the court held the Applicant is responsible for the debt because:

- The Applicant's liability was not affected by the enforcing article being annulled, nor the sub-article later added to the Law.
- The unpaid debt had been payable during his term as a board member.
- The debt arose during a period when the Applicant had the chance to intervene.
- Holding the Applicant responsible for the debt is not an excessive and disproportionate burden on the Applicant. It does not upset the balance between public benefit and an individual's right to property.

Therefore, the court held that legal representatives are jointly responsible with the respective legal entity from the date when the public debt was payable and this responsibility does not upset the balance between public benefit and an individual's right to property.

Please see this [link](#) for the full text of the Constitutional Court's Decision, published in Official Gazette number 30142 on 2 August 2017, regarding application B. No. 2014/15237 (only available in Turkish).

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