

## Turkish Constitutional Court: In Correction Requests Regarding Declaration-based Taxes Miscalculated due to the Applicant's Error, the Time Period for the Application Commencing from the Payment Date Violates the Right of Access to Court

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Turkish Constitutional Court, ruled that the dismissal decision adopted by the first degree court rendered due expiry of the time period of application commencing from tax payment date in correction requests for declaration-based taxes miscalculated due to the applicant's error, constitutes a violation of the right of access to courts which is an integral part and assurance of the right to a fair trial.

The applicant, who is a taxpayer of banderol fee under the Law numbered 3093, has made tax payment on 28 December 2012 based on the amount miscalculated by himself. The applicant noticed its mistake on 30 April 2013 and applied to Turkey Radio and Television Institution Headquarters ("TRT") and requested the refund of the overpaid amount valued TRY 1,108,200. However, this request has been left unanswered, neither rejected nor confirmed. Then the applicant has filed a lawsuit before Administrative Court on 30 December 2013 pursuant to article 10 of Administrative Jurisdiction Procedures Code ("?YUK") and requested the annulment of the tacit rejection. The relevant part of article 10 states that:

*"Those concerned may apply to administrative authorities to provide that an actionable transaction or act is concluded. Such request is deemed to be rejected if not answered within 60 days. Those concerned may file lawsuit cases before Council of State, Administrative or Tax courts within the term of litigation commencing from the end of 60-days period."*

The Administrative Court has dismissed the case regarding the time period stating that the applicant should have applied to TRT within 60 day-period, as regulated in article 11 of ?YUK, starting from 28 December 2012 which is the last payment date.

The relevant part of article 11 states that:

*"Before the administrative action is filed by the concerned parties, removal, revocation, amendment or a new transaction may be requested from the higher authority, if there is no higher authority, from the authority that made the transaction, within the period of filing an administrative lawsuit. This application suspends the period for filing an administrative lawsuit."*

The Applicant has appealed the decision and then requested rectification of the decision, but these requests have been rejected by the Council of State. Therefore, the applicant has individually applied to the Constitutional Court.

The core dispute of the individual application is whether it was appropriate to consider the request of banderol fee refund within the scope of article 11 of ?YUK and if dismissal of the case regarding time period was the right decision.

Applicant's violation claims have been examined by the Constitutional Court in light of article 36 of the Constitution and article 6 of the European Convention on Human Rights within the scope of the right of access to courts, which

constitutes an integral part and assurance of the right to a fair trial.

Further to the precedents of the Constitutional Court, it is detected that the right of access to courts is described as the ability to bring a dispute before courts and request that the dispute be efficiently adjudicated.

The Constitutional Court made the following evaluations as the basis of its violation decision:

- The court emphasized that the purpose of article 11 of the ?YUK is to ensure restitution of the mistakes made by the administration without need to file a claim before court. It has been evaluated that the Applicant's request for correction of an error stemming from his own fault, not from an error of the administration, casts serious doubts on whether it is a request within the scope of this article.
- The decision addressed that even if restricting the right of action with a certain period pursuing the legitimate purposes of sustaining legal predictability and stability is not solely amount to violation of the right to access to court, first instance courts still should avoid from being excessively formalistic and adopt an approach for preserving the right of action as much as possible while interpreting the commencing moment of term of litigation, under the principle that restriction is exceptional.
- The Constitutional Court has stated that the direct application of such a provision, regulated taking into account of the actions taken by the administration *ex officio*, to cases where the related action is taken based upon the declaration of the applicant instead that of the administration, does not comply with its nature. The court has assessed that it would not be realistic to expect applicant to apply to administration within the 60 day-period, which is very short, commencing from the declaration of the miscalculation. Since the applicant would not have made erroneous payment if he was aware of the error. Such a restrictive interpretation shall make it impossible to have the mistakes noticed by the Applicant after the 60-days period has expired.
- The Court has ruled that applying the period stated under article 11 of ?YUK commencing from the payment date would be an excessively formalistic approach and constitute a disproportionate interference with right of action.

Within the scope of its evaluations above, the Constitutional Court ruled that the right of access to courts which is an integral part of the right to a fair trial in article 36 of the Constitution, is violated in this individual application.

Please see this [link](#) for the full text of the Constitutional Court's decision dated 22 July 2020 with application number 2017/28013, published in the Official Gazette dated 1 October 2020 and numbered 31261 (only available in Turkish).

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