

Turkish Constitutional Court: Paying 10% of Tender Price After the Verdict of the Annulment Case Violates Rights of Access to the Court

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The Turkish Constitutional Court recently decided that paying 10% of the tender price after the annulment of the tender case is rejected by the Enforcement Court, places an excessive economic burden to the applicant and interferes with the applicant's right of access to the court. Hence, the Turkish Constitutional Court ruled that the right of access to the court within the scope of the fair trial safeguarded under Article 36 of the Constitution had been violated.

Applicant demanded the annulment of tender on the basis that:

- The tender did not take place at the time specified in the auction announcement.
- Certain bidders did not pay the security deposit.
- The property is a family property.
- The appraisal report was not sent to the applicant.
- The property was sold unlawfully by the debt collection office.

However, the applicant's claim was rejected by the enforcement court based on the grounds of absence of irregularity in the tender. Moreover, the court imposed a fine to the applicant equal to 10% of the tender price. As the applicant's requests of appeal and revision of decision were also rejected, the applicant applied to the Constitutional Court on 4 December 2015.

The Constitutional Court noted the following reasons indicating the violation of the right of access to the court:

- In case of rejection of a claim for annulment of a tender, ruling the 10% fine against plaintiff will not prevent filing unnecessary cases.
- Both the sum of the fine and applicant's financial status should be considered.
- The fine will cause an excessive economic burden on the applicant and lead to financial difficulties.
- The fair balance has not been established between the benefit in the protection of the rights of the creditor and the interests of the applicant's ability to demand the annulment of tender.
- Imposing a fine on the applicant which causes excessive economic burden interferes with the applicant's right to access to the court.

Please see this [link](#) for the full text of the Constitutional Court's decision dated 22 November 2018 number 2015/18872 (only available in Turkish).

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