

## Turkish Constitutional Court: Petition Submitted in One Court for Filing in Another, and Dismissed as Untimely Based on Court's Erroneous Finding as to Petition Filing Date Violated Petitioner's Constitutional Right to a Fair Trial

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In its decision, dated 21 October 2020, and numbered 2018/7666, the Turkish Constitutional Court ("**TCC**") held that dismissal of a petition, submitted in one court for filing in another, requesting cancellation of a certain order of payment, and dismissed as untimely based on the court's erroneous finding as to the petition's filing date, which error led it to conclude that the petition was 15 days late, violated petitioner's right to a fair trial under Article 36 of the Turkish Constitution.

In the case at hand:

- The Gaziantep Tax Office issued certain payment orders, dated 25 January 2018, to petitioner (the "**Applicant**"), in her capacity as legal heir and legal representative due to the death of her husband, for collection of certain outstanding business debts.

Applicant received notice of payment order on 29 January 2018.

- Thereafter, on 12 February 2018, Applicant filed a petition in Kayseri SENTRY Tax Court, for submission to Gaziantep 1<sup>st</sup> Tax Court (the "**Court**"), which received it on 20 February 2018, seeking cancellation of the tax payment order.
- In its ruling, dated 22 March 2018, the Court dismissed with prejudice both of applicant's cases for untimeliness, citing Law number 6183 on The Collection Procedure of Public Receivables Canon 58, which provides a 15 day window, from the date of notice, within which to appeal a tax payment order. Applicant's appeal was filed on 20 February 2018, a date beyond the statutory window.
- On 25 April 2018, Applicant appealed to the TCC.

The TCC framed the issue on appeal as whether Court's dismissal violated Applicant's right of access to the courts under Article 13 of the Turkish Constitution, titled "*Restriction of fundamental rights and freedoms*," and analyzed same by considering its (i) legality, (ii) legitimate objective, and (iii) proportionality.

The TCC held that although dismissal was grounded in statute, and had a legitimate objective, it was nevertheless disproportional under the totality of the circumstances, and, therefore, violated Applicant's right of access to the court.

Furthermore, the TCC stated that pursuant to Law number 4 of the Laws on Administrative Procedure, a petition and its related documents may be submitted to presidencies of administrative and tax courts for

submission to the relevant court. Moreover, under Article 6 thereof, the date of registration in the books of the relevant court, after payment of fees and postage expenses, is the petition filing date.

In conclusion, the TCC held that the Court's dismissal of Applicant's petition as untimely was statutorily disproportional and, for reasons discussed hereinabove, in violation of Applicant's constitutionally protected right to access the court. Accordingly, the TCC remanded the case to the Court for retrial.

The full text of the CC's decision is published in Official Gazette, dated 4 December 2020, and numbered 31324, and can be accessed with this [link](#) (only available in Turkish).

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