

Turkish Constitutional Court: Pro-Rata Attorney Fee in Consumer Courts is Constitutional

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The Turkish Constitutional Court recently ruled that the pro-rata attorney fee imposed on consumers is constitutional for annulment actions filed against decisions by consumer arbitration committees if the decision is annulled. The Constitutional Court stated that consumer courts can calculate an attorney's fee on a pro-rata basis, even if this results in a fee which is less than the fixed fee for that particular court.

In the case at hand, the Bursa 7th Consumer's Court applied to the Constitutional court, claiming the Attorney's Minimum Wage Tariff is unconstitutional because it only applies to consumers and this causes inequality between consumers and sellers/service providers. It argued that the provisions mean consumers are forced to pay high attorneys' fees, which mean they are reluctant to pursue legal remedies. The Consumer Court claimed these circumstances violated Article 2 and Article 10 of the Constitution.

The Constitutional Court noted that:

- The "*social law state*" principle (Article 2 of the Constitution) means the state must look out for social justice and social balance by:
 - Establishing a just legal order in all areas
 - Protecting the less powerful from the powerful.
- The "*equal protection of law*" principle (Article 10 of the Constitution) does not mean everybody will be subject to same rules; only parties with the same legal status will be subject to same rules.

In general, a pro-rata attorney's fee cannot be less than the fixed fee determined for each court (Article 13 of the Attorney's Minimum Wage Tariff). Under this approach, even if the pro-rata fee is less than the applicable fixed fee, the court must impose the (higher) fixed fee. However, the Constitutional Court stated that Article 13 does not apply to consumer courts. Therefore, consumer courts can calculate a pro-rata fee which is less than the fixed fee.

The Constitutional Court concluded that consumers (defendants) and sellers/service providers (claimants) hold different legal status within annulment actions, filed against decisions by consumer arbitration committees. Therefore, the two categories can be subject to different rules, without harming the principle of equal protection of law.

The Constitutional Court noted that the pro-rata fee mechanism actually weighs in consumers' favour, encouraging them to pursue legal remedies, on the basis that the pro rata fee will apply regardless of how much the fixed fee is.

Accordingly, the Constitutional Court ruled that pro-rate fee mechanism does not breach:

- The "*social law state*" principle (Article 2 of the Constitution).
- The "*equal protection of law*" principle (Article 10 of the Constitution)
- The state's requirement to take all precautions necessary to defend and inform consumers, as well as promote initiatives for consumers to protect themselves (Article 172 of the Constitution).

Please see this [link](#) for the full text of the Constitutional Court decision dated 15 November 2017 and numbered 2016/162 E., 2017/156 K. which was published in Official Gazette number 30264 on 8 December 2017 (only available in Turkish).

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