

## Turkish Constitutional Court: Rejection of an Appeal Request Without Considering the Inadequate Notification Procedure, Breaches the Right of Access to Court

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Turkish Constitutional Court recently decided that rejection of an appeal request without taking the inadequate notification procedure into account breaches the right of access to court.

In the dispute at hand, the applicant (the "**Applicant**") used to work in a hospital as a chief physician. The Applicant approved the Tender Commission's decision regarding a tender held on 29 December 2003 in its capacity as the chief physician. Upon the determination of irregularity in the tender process, Turkey's Ministry of Health has filed an action of debt against the Applicant as well as some of the Tender Commission members.

The first instance court decided to notice the Applicant by publication since the Applicant's registered address is in the USA and notification cannot be completed even though the necessary correspondence with foreign public offices was performed.

The first instance court has ruled against the Applicant and the other defendants. The other defendants appealed the decision and then requested the revision of the decision. In the revision of decision stage, the 4<sup>th</sup> Civil Chamber of the Court of Cassation has abolished the approval decision and reversed the judgment for the benefit of the other defendants, who appealed the decision on the grounds that an appropriate reduction in the amount of compensation is necessary pursuant to articles 43 and 44 of the abrogated Turkish Code of Obligations.

The Applicant appealed the judgment of the first instance court on 2 February 2016 which was notified by publication, stating that he had only recently been informed of the judicial process against him. He also submitted an individual application to the Turkish Constitutional Court on 10 February 2016 alleging that:

- Notification by publication was not made in accordance with the law.
- He was prevented from participating in the case due to notification by publication even though his current addresses were submitted to the case.
- He was informed about the judicial process only during the appeal stage and his appeal request was therefore rejected.

After consideration, the Turkish Constitutional Court has concluded that,

- Completion of the legal procedures without notifying the Applicant or conducting an adequate investigation to find the Applicant's addresses as specified in the law and jurisprudence and the Court of Cassation's rejection of the appeal request on the grounds that the notification procedure was conducted in accordance with the law was not foreseeable.
- As a result, the Applicant's access to court had been abolished, and thus the interference with his right to access to court had been disproportionate.

Consequently, the Turkish Constitutional Court has ruled that the Applicant's right to a fair trial stipulated under article 36 of the Constitution has been violated and has sent the case to the first instance court for re-trial.

Please see this [link](#) for the full text of the Turkish Constitutional Court's decision dated 21 March 2019 and numbered 2016/2595 (only available in Turkish).

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