

Turkish Constitutional Court Ruled on the Liability of Non-Executive Board Member for the Company's Unpaid Social Security Premium Debts

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The Turkish Constitutional Court recently ruled that an applicant's right of property is not violated for being held jointly and severally liable for the unpaid public debts of the company in which he does not have the representation power.

The application stems from a payment order that had been served to the applicant in its capacity as a board member, regarding unpaid social security premium debts and the accrued default interest of a company, pertaining to the term when the applicant has been a board member of such company.

The applicant filed a lawsuit for the annulment of the payment order, claiming that he was not authorized to represent and bind the company, besides the debts were collectible from the company's assets. The first instance court dismissed the lawsuit on the following grounds:

- Board members are responsible for social security premium debts of companies as per article 88 of the Law on Social Insurance and General Health Insurance numbered 5510;
- The responsibility of board members is not associated with having the authority to represent and bind the relevant company;
- It is possible to collect the unpaid social security premium debts of a company from board members, without having to enforcement proceedings against the company first.

The applicant then applied to the Turkish Constitutional Court by alleging that his right of property has been violated due to the decision given by the first instance court.

The Turkish Constitutional Court accepted that holding the board member responsible for the unpaid social security premium debts of the company intervenes with the right of property and, evaluated whether such intervention is unconstitutional in terms of legality, justifiability, and proportionality.

In its decision, the Turkish Constitutional Court elaborated that the precedents establishing the pre-condition of having representation powers for being liable for the public debts of a company were only applicable for the premium debts incurred before the effective date of the Law numbered 5510.

The Turkish Constitutional Court ruled that being held liable for the company's social security premium debts pertaining to the term when the applicant had been a board member, does not impose a heavy and extraordinary burden on the applicant, and considering the public interest, such intervention is proportional. Accordingly, the court decided that there is no violation of the right of property as secured under article 35 of the Turkish Constitution.

Please see this [link](#) for the full text of the Constitutional Court's decision dated 30 May 2019 and numbered 2015/11192 which was published in Official Gazette number 30836 on 19 July 2019 (only available in Turkish).

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