

## Turkish Constitutional Court Ruled That Levying Consumption Tax on Self-Manufactured Electricity and Coke Gas Breaches the Property Right

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The Turkish Constitutional Court recently ruled that levying consumption tax on the consumption of electricity that the Applicant itself has generated by using coke gas, violated the property right.

The Applicant meets his own facilities' electricity needs with electricity and vapor generated by using the coke gas -a by-product of industrial coke production from pit coal-. The Municipality has levied consumption tax based on the Law on Municipal Revenues numbered 2464 dated 26 May 2018, on the ground that the Applicant consumes electricity and coke gas in his facilities.

The Applicant submitted declarations to the Municipality and the Municipality has accordingly levied electricity and coke gas consumption tax on the Applicant. The Applicant has paid these amounts and right after, filed a case before the Tax Court for cancelation. However, the first instance court rejected the case. Supreme Administrative Court upheld the appeal and the Applicant's request for rectification of the decision was also dismissed by the Council of State.

The Applicant then applied to the Turkish Constitutional Court by alleging that his property right has been violated due to the consumption taxes levied by the Municipality.

The Turkish Constitutional Court ruled that since the legal basis of the consumption tax levied is not determinable and predictable, it breaches the property right of the Applicant.

Having regard to the fact that the tax basis and tax collection method are essential components of the tax, the Turkish Constitutional Court decided that:

- The Applicant is deprived of the constitutional guarantee provided to taxpayers.
- Levying consumption tax on the Applicant is contrary to the principle of legality.

Consequently, the Court had found this case contrary to the Applicant's property right as guaranteed by Article 35 of the Turkish Constitution.

Please see this [link](#) for the full text of the Turkish Constitutional Court's decision dated 25 October 2018 and numbered 2015/941 which was published in Official Gazette numbered 30636 on 25 December 2018 (only available in Turkish).

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