

Turkish Constitutional Court: Shareholder's Property Rights Not Breached During Company Seizure, Provided Proceeds Used to Offset Debts to Saving Deposit Insurance Fund

10 Aug 2017

Turkey's Constitutional Court recently considered a shareholder's failure to receive any revenue from sale of a company he held shares in. The company held a minority stake in another entity (a bank). The government seized the company and sold all its assets due to debts owned by the bank. The Constitutional Court ruled the limitations on the shareholder's property rights were justifiable in these circumstances and did not breach his constitutional rights, provided the sale proceeds were used to repay the bank's debts to the Saving Deposit Insurance Fund ("**Fund**").

In the case at hand, the company held minority shares in a bank. The Fund seized all of the company's assets, due to the bank's debts. The Fund sold all of the company's assets to repay the bank's public debts, with the shareholder receiving no compensation for the asset sales.

The shareholder applied to the Administrative Court seeking compensation. However, the court rejected his claim on the basis that there was no contradiction in law to offset amounts received from asset sales against the Fund's receivables (Articles 134 and 135 of the Banking Law).

The shareholder appealed to the Constitutional Court, claiming breaches of his property rights, as well as his right to be tried within a reasonable time (Articles 35 and 36 of the Constitution, respectively).

The Constitutional Court ruled that since the proceeding had lasted for seven years and 11 months, the shareholder's right to be tried within a reasonable time had been violated. Accordingly, it awarded the shareholder 8,400 Turkish Lira for non-pecuniary damages.

However, the Constitutional Court held the shareholder's property rights were not violated in these circumstances. It ruled that the present case complies with the principle of legality, aims to achieve a legal purpose, and complies with the principle of proportionality.

The Constitutional Court decided that protecting public interests outweighs the shareholder's individual interests. It sent the matter back to the Administrative Court and Ministry of Justice on the basis that:

- Property rights under Article 35 are not unlimited and can be restricted by laws, in order to support public interests.
- Limitations on the shareholder's property rights in these circumstances:
 - Are based on former Law Number 4389.
 - Aim to collect public receivables, which arose due to the bank causing damages to the public.
 - Are proportional, because holding companies acting on the bank's behalf fully responsible (rather than proportionally) for the bank's debts is not unbearable.

Please see this [link](#) for the full text of the Constitutional Court's decision (only available in Turkish).

Related Attorneys

- BURAK BAYDAR

Moroglu Arseven | www.morogluarseven.com