

Turkish Constitutional Court: Strict Interpretation of the Procedural Rules for Term of Litigation Breaches the Right of Access to a Court

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Turkish Constitutional Court ("**Constitutional Court**") recently ruled on a case in which the administrative court rejected the applicant's claims against an Environmental Impact Assessment decision ("**EIA Decision**") due to the expiry of the term of litigation based on the decision's announcement date by the Governorate. The Constitutional Court ruled that:

- Governorship's announcement date had not provided the opportunity to the applicants to be aware of the decision.
- This was a strict interpretation of the procedural rules and violated the applicants' right of access to the court.

The application relates to a lawsuit filed for cancellation of an affirmative EIA decision regarding a hydroelectric power plant project planned to be built within the border of a village in Rize.

The EIA decision was announced on the notice board of the Governorate for ten days as of 21 May 2009. The applicants were informed about the decision on 16 October 2009 and brought an action before the administrative court. However, the administrative court dismissed the action on the grounds of the expiry of term of litigation by arguing that the term of litigation commenced as of the EIA decision's announcement on the notice board of the governorate. Further actions of the applicants for appeal was rejected on the same grounds.

Thereupon, applicants applied to the Constitutional Court with the claim that their right to fair trial had been violated. The court reviewed the application under the right of the access to courts within the scope of the right to a fair trial.

The Constitutional Court noted that the commencement of the term of litigation when the claimant is not informed and cannot be rightfully deemed to be informed of his/her right of litigation may render the right of litigation impracticable.

In its decision, the Constitutional Court noted that:

- The right holder was not informed about his/her right of litigation at the time of the lawsuit,
- The litigation process has started without rightful reasons for acknowledging the fact that right holder was aware of his/her right of litigation,
- This may make the right of litigation pointless and adversely affect the principle of proportionality.
- The legislation on EIA stipulates that the announcement regarding EIA should be accessible by the local people that may be affected by such decisions.

The Council of State precedents that do not accept the date of announcement by the governorate as the date the locals are informed of the EIA decision, announcement of the EIA by the Governorate is insufficient to deem that the locals or the claimants are informed of such decision.

The Constitutional Court concluded that the commencement of the term of litigation from a date the claimants cannot be expected to be aware of their right to litigation is a strict interpretation of the procedural rules by the administrative court and ruled that it violates the right of access to courts within the scope of the right to fair trial.

Please see this [link](#) for the full text of the Constitutional Court's Decision dated 25 December 2018 and numbered 2014/14359.

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