

## Turkish Constitutional Court: Turkish Counsel of State's Failure of Unification of Discrepancies Between Precedents in a Reasonable Time Violates the Right to Fair Trial

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Turkish Constitutional Court ruled that the applicant's right to fair trial is violated due to Turkish Counsel of State's failure to unify discrepancies between precedents in tax litigation in a reasonable time.

In the present case,

- Tax administration requested applicant to submit his legal books and documents for the calendar years 2008, 2009, 2010 for the investigation pertaining to the purchase of certain goods and services. Upon applicant's failure to submit the aforementioned books and documents without providing any valid excuse, the difference amount arising by means of the refusal of VAT deductions for the purchases made in the relevant years was assessed with a threefold amount of tax loss fine.
- The applicant filed multiple lawsuits against the assessments before Adana 1<sup>st</sup> Tax Court ("**Court**") and claimed that the refusal of lawsuit without examination regarding whether the documents related to the deducted VAT amount were recorded in the relevant books and documents would be illegitimate. The applicant requested for the examination of electronic accounting records and stated that the applicant can submit legal books and documents if a sufficient time was provided hereof.
- The Court dismissed the case on the grounds that the legal books and documents were not submitted without providing any valid excuse in the term of limitation and it was not proved that the purchase documents, which the deducted VAT amounts were based on, had been recorded in the legal books.
- 3<sup>rd</sup> Chamber of Council of State has approved the Court's decision and dismissed the applicants request regarding the revision of decision.
- Final decisions were notified on 10 February 2015 and the applicant made an individual constitutional application on 9 March 2015.

The Constitutional Court stated that there were two different judgements in the precedents of Plenary Session of the Tax Law Chambers of Counsel of State, which are summarized below, regarding lawsuits filed by taxpayers against VAT amounts and monetary fines occurred as a result of rejection of VAT deduction arising from failure to submit legal books and documents to tax audit officer without providing any valid excuse:

1. If legal books and documents were not submitted to tax audit officer, court decision will be rendered without examination of legal books and documents submitted to court, and
2. Courts are under obligation to examine legal books and documents in order to allow taxpayers to prove their claims.

The Constitutional Court further stated that the General Assembly on Unification of Judgements rendered a decision in favor of the second judgment mentioned above on 8 February 2019.

The Constitutional Court decided that Turkish Value Added Tax Law numbered 3065 was effective for more than 30 years and the discrepancy between judgments in precedents regarding this issue was not resolved in a reasonable.

In conclusion, the Constitutional Court ruled that the applicant's right to fair trial, stipulated under article 36 of Turkish Constitution, was violated since judicial fairness had been harmed on the grounds that persons were exposed to an indefinite law for a very long time period until the relevant precedents are unified.

Please see this [link](#) for the full text of Turkish Constitutional Court's decision dated 9 June 2020, numbered 2015/4255, published in the Official Gazette dated 15 September 2020 and numbered 31245 (only available in Turkish).

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