

Turkish Court of Appeals: Spousal Consent Not Required for Avals

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Article 584 of the Turkish Code of Obligations ("**TCO**") requires spousal consent for the validity of surety agreements. Turkey's Court of Appeals recently ruled that spousal consent is not required for validity of avals, which are regulated separately under the Turkish Commercial Code ("**TCC**").

The TCO regulates surety agreements as agreements where the surety undertakes to be personally liable for the consequences of the debtor's non-performance. Natural persons can act as sureties, provided they obtain the written consent of their spouses (Article 584 of the TCO).

Article 584 of the TCO aims to protect the unity of families. However, it has been the subject of heavy criticism on the basis that it slows down commercial life. Accordingly, some transactions have since been excluded from the spousal consent requirement.

Article 603 of the TCO states that the provisions regarding the required form for suretyship, the capacity of a surety and the spousal consent also apply to different named agreements executed by natural persons which provide personal assurance. Article 603 aims to prevent creditors from concluding contracts under different names as a way of evading provisions which protect sureties.

The TCC regulates avals as personal assurances regarding bills of exchange. An aval assures complete or partial payment of the amounts subject to the bill of exchange.

Uncertainty existed about whether spousal consent, deemed to be a form requirement for surety agreements, is also required for avals.

The General Assembly on Unification of Judgments of the Court of Appeals decided by majority that an aval is a unilateral legal transaction, which the TCC regulates separately from surety agreements (regulated under the TCO). On this basis, the court decided that Articles 584 and 603 of the TCO, which apply to all agreements providing personal assurance, do not apply to avals.

The court noted that if spousal consent is required as a validity requirement for an aval which has an economic function in addition to its assurance function, this would lead to significant inconveniences for the required legal form of both the bill of exchange and the spousal consent, as well as prevent bills circulating. The court noted that such requirement would impose severe liability on the bill's bearer to question the existence of the spousal consent and therefore contradict the "abstraction principle".

Please see this [link](#) for full text of the Turkish Court of Appeals' decision dated 20 April 2018, numbered 2017/4 E and 2018/5 K and published in Official Gazette dated 16 October 2018 (only available in Turkish).

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