

Turkey: Holding a company's legal representative liable for unpaid public debts does not violate property rights

Turkey's Constitutional Court recently confirmed that a company's legal representatives are jointly responsible with the respective legal entity for public debts if they were payable during their time of influence at the company. The court held that this does not upset the balance between public benefit and an individual's constitutional right to property.

The applicant ('Applicant') was a board member for a company ('Company') between 1996 and 1999. The Company took three different loans from Yaşarbank A.Ş. ('Yaşarbank') during 1994 and 1995, before the bank was transferred to the Savings Deposits Insurance Fund ('Fund') in late 1999. The Fund's purposes are to protect the depositors' rights, strengthen financial structures and pursue the receivables of banks which have been transferred to the Fund by the Banking Regulation and Supervision Agency ('Agency'). In this case, the Agency transferred Yaşarbank to the Fund due to mismanagement. Upon being transferred to the Fund, Yaşarbank's receivables, including the Company's loans, became

public debts.

The Fund executed payment protocols with the Company for payment of the public debts. However, the Company subsequently failed to comply with these protocols. Therefore, in May 2008, the Fund initiated execution proceedings, seeking to recover the uncollected public debts from the Applicant, as per Repetitive Article 35 of the Law on Collection Procedure of Public Receivables number 6183 ('Law'). The provision states that a legal entity's legal representatives will be personally responsible for public debts which cannot be collected from the legal entity.

The Applicant filed a lawsuit seeking to cancel the Fund's payment order. The Applicant argued that he is not liable because:

- The Company's debt became a public receivable in August 2001, after he was a board member.
- Article 35(5) of the Law does not apply because the Constitutional Court had struck out a key empowering part of the provision (Article 35(5)) for pending cases, as well as Article 35(5) itself.

However, the Istanbul 8th Administrative Court dismissed the cancellation law suit and the decision became final after being reviewed by the Supreme Court.

The Applicant then applied to the Constitutional Court on the grounds that his property rights were violated by being held responsible for the Company's

debts, which had become public debts after he resigned as the Company's representative, despite the Constitutional Court having annulled Repetitive Article 35(5).

The Constitutional Court noted that Repetitive Article 35(5) had been annulled to remove the responsibility of legal representatives for debts which were not payable when they were representatives.

In these circumstances, the Constitutional Court decided that the Applicant's liability was not affected by the enforcing article being annulled. The Constitutional Court underlined that Article 35(5) was annulled because it was causing representatives to be held liable for public debts arising from transactions which they could not have intervened in.

However, the Constitutional Court ruled that in the case at hand, the unpaid debt had been payable during the Applicant's term as a board member. Therefore, he had the chance to intervene. Accordingly, the Constitutional Court ruled that holding the Applicant responsible, in circumstances where he neglected his duty to pay the debt from the Company's sources, is not an excessive and disproportionate burden. The Court ruled that this does not upset the essential balance between public benefit and an individual's constitutional property right.

Consequently, the Constitutional Court held that legal representatives are jointly responsible with the respective legal entity, from the date the public debt became payable.

The decision is important as it sets a distinct framework for company representatives' liability in the face of property rights protected by both the Turkish Constitution and the European Convention of Human Rights. It is now crystal clear that company representatives can be held personally liable if they neglect their duty to pay public debts from the company's sources. ■



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