

The Constitutional Court rules that Depreciation of Receivables awarded by a Court Violates the Right of Property

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1. Introduction

On March 16, 2023, upon an individual complaint of the Applicant Volkan Kahırlı (“**Applicant**”), the Constitutional Court decided through its Decision (“**Decision**”) numbered 2019/22730 that the delayed payment of the receivable without taking the inflation into account constitutes a violation of the property right.

2. Dispute Subject to the Decision

The Applicant is a team member of the Turkish Deaf Football team. The national Turkish Deaf Football team ranked second in World Deaflympics Football Championship held in Patras, Greece. According to Article 6 of the Repealed Regulation on the Rewarding of Outstanding Achievers in Sports Services and Activities (“**Repealed Regulation**”), the team that accomplishes second prize will be entitled to acquire 400 gold for each team member.

On January 26, 2009, the General Directorate of Youth and Sports (“**Administration**” or “**Defendant**”) paid a receivable that is equivalent to 75 Cumhuriyet gold based on its value on July 12, 2008 (i.e. the date when the championship ended). The Applicant made an application to the Administration claiming the rest of the prize equivalent of 400 Cumhuriyet gold, i.e. 325 Cumhuriyet gold. The application was rejected implicitly. Afterward, the Applicant filed a lawsuit for dismissal of the implicit rejection on May 11, 2009, before Ankara 7th Administrative Court. Ankara 7th Administrative Court ruled that

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the Administration must pay the equivalent of the remaining 325 Cumhuriyet gold based on its value on July 12, 2008 with its legal interest.

On May 10, 2010, the Administration paid TRY 14.462,19, as the equivalent of 58 Cumhuriyet gold, and appealed the case; yet the appeal was rejected by the Council of State. Upon the decision of the Council of State, on November 30, 2018, the Administration paid TRY 66,750 as the equivalent of the remaining 267 Cumhuriyet gold based on its value on July 13, 2008. However, the Administration did not make any payment for legal interest.

The Applicant filed a full remedy action against the Administration for the loss of value between the date on which the payment should have been made and the date on which the payment is actually made. The lawsuit of the Applicant was rejected.

2.1.Evaluations of the Court

The Applicant filed a full remedy lawsuit before Ankara 4th Administrative Court, claiming the lacking amount borne from loss of value of the prize between the date when the payment should have been made and the date the payment is actually made.

The Applicant complained that the Administration had not even paid interest and demanded TRY 66,750 to be increased and that the amount of the monetary receivable should be determined as per the increase in the value of gold. Ankara 4th Administrative Court dismissed the case and ruled that the calculation method of the administration is in compliance with the legislation.

2.2.Evaluations of the Constitutional Court

Constitutional Court evaluated that the claim is in relation to the property right regulated within Article 35 of the Turkish Constitution. According to the Constitutional Court, in

cases where the receivables and compensations are severely devaluated due to inflation, this violates the right to property.

Based on the foregoing, considering that the receivable is paid after 10 years, the Constitutional Court determined that the receivable was devaluated. Further to this determination, it is ruled that this creates an extreme burden on the Applicant; therefore it breaks the balance between public interest and Applicant's right to property against the Applicant.

3. Evaluations on and the Effects of the Decision

The most significant aspect of the Decision is that it determines that preserving the real value of monetary receivables falls within the protection framework of the property right and that the loss of value against inflation constitutes a violation of a property right. Indeed, it is a practical reality for litigations in Turkey that they do take quite some time before a decision is rendered and then finalized. Considering that Turkey has an inflationist economy, the receivable or compensation awarded by a court may drastically lose its value while one waits for its practical payment date. So that, this can even be a strong motivation for parties of a dispute with monetary claims to settle to protect the value of the compensation without any further delay.

Based on the essence of the Decision and the effects of the Turkish economy over the monetary claims, the Decision is expected to have a positive effect on performance of justice and thereby also increase the sense of justice in the minds of the public.

4. Conclusions

Article 35 of the Turkish Constitution protects property right and ensures individuals' free enjoyment of their properties. In line with this constitutional and global right, the Constitutional Court made an accurate and realistic evaluation for protection of the benefit

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to be enjoyed through compensation and monetary claims. The Constitutional Court did so by indicating that inflation must be taken into account as the loss of value caused by inflation is a violation of the right to property.

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