

INFORMATION NOTE ON THE CONSTITUTIONAL COURT DECISION REGARDING ADMINISTRATIVE JUDICIARY APPEAL LIMIT

The Constitutional Court, upon the appeal of Samsun Regional Administrative Court 2nd Tax Law Chamber (the “**Chamber**”), reviewed the constitutionality of the appeal limit in the administrative judiciary and with its decision dated 26.07.2023 and numbered 2023/142 D., published in Official Gazette dated 13.10.2023 and numbered 32338 (“**Decision**”), ruled that Article 46 of Administrative Jurisdiction Procedures Law No. 2577 (the “**Law No. 2577**”), which regulates the appeal limit in the administrative judiciary, is unconstitutional. The Constitutional Court decision will enter into force nine months following its publication in Official Gazette.

I. BACKGROUND

The Chamber, which applied for appeal before the Constitutional Court, argued that the appeal limit, which is increased every year at the revaluation rate, may change between the date the case is filed and the date that the court of first instance and the appellate court resolve the dispute, and that the dispute, which was over the appeal limit at the time the case was filed, may become unappealable as of the appellate decision, and that such a situation is incompatible with the right to access to court, the right to request review of judgment and the principles of proportionality and legality. In addition, the appealing Chamber argued that the lack of certainty and clarity as to which date will be considered as the basis for the monetary amount of the appeal, violates the principle of equality, considering that there may be differences in the duration of the proceedings of different courts.

II. SUMMARY OF THE CONSTITUTIONAL COURT DECISION

In the annulment case brought before the Constitutional Court through an appeal, the Constitutional Court found that the provision in the Law No. 2577 regarding the monetary limit for appeal, which is revised every year according to the revaluation rate, does not meet the requirement of legality as the legislation does not clarify which of the different dates such as the date of the administrative act or action, the date of application to the administration, the date of the lawsuit, the date of the decision of the court of first instance or the date of the decision of the appellate court, will be taken into consideration. Furthermore, according to the Constitutional Court, the prohibition of appeal for all cases with an amount below the appeal limit of TRY 581,000 applied for 2023 creates an excessive burden on individuals and a disproportionate restriction on the right to request review of judgment, which is a facet of the right to a fair trial. For these reasons, the Constitutional Court ruled that the provision on the monetary limit for appeal is unconstitutional.

The Constitutional Court decided that the Decision shall enter into force nine months after its publication in Official Gazette.

III. CONCLUSION

Until the effective date of the decision, Turkish Grand National Assembly will be required to revise the annulled rule, taking into account the Constitutional Court's decision. However, until the effective date, the monetary limit for appeals in the Law will remain applicable.

Should you have any queries on the above, please do not hesitate to contact us.

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