

Litigation

The monetary limit for the appealability in administrative jurisdiction was annulled

Turkish Constitutional Court annulled article 46/1(6) of Turkish Code of Administrative Procedure (No.2577) on July 26th 2023 via its decision E.2023/36, K. 2023/142. The decision was announced on the Official Gazette dated 13 October 2023.

The annulled article 46/1(6) of the Turkish Code of Administrative Procedure (No.2577) ("**Code**") regulates the appeal procedure before the Council of State regarding "tax actions, full remedy actions and actions filed against administrative acts, the subject matter of which exceeds one hundred thousand Turkish Liras". The amount of the subject matter, so called in the article as "one hundred thousand", is re-evaluated, determined, and announced by the Ministry of Treasury and Finance, each year and become effective as of the beginning of the relevant year. The recent ratio applicable for 2023 was designated as "TL 581,000".

The annulment claim was filed by Samsun Regional Court, 2nd Tax Litigation Department.

The Grounds for the Annulment

In its reasoned decision, Turkish Constitutional Court has explained the grounds for the annulment as follows:

- The amount of the subject matter may change every year depending on the revaluation rate, and this may lead to inequality between the persons whose cases are concluded before or after the updated amount. The applicable date should be clear and predictable under the law.
- Since the date of the applicable monetary limit is not clearly and specifically regulated, it is determined that the relevant clause does not meet the criteria for the principle of legality.
- The limit envisaged under the so-called paragraph should be prudent and measurable.
- The fact that the tax actions, full remedy actions, actions filed against administrative acts which do

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not fulfil base limit of "TL 581,000" are not eligible for filing an appeal procedure and finalization of disputes for the cases where the regional court revokes the decision of the court of first instance and renders a new decision, leads to unproportionate restriction for the freedom of the citizens to claim rights and violation of rights to legal remedies.

In brief, the clause is annulled depending on the violation of clause 13 (restriction of fundamental rights and freedoms) and 36 (freedom to claim rights) of the Constitution.

The annulment shall enter into force nine months following its publication in the Official Gazette, in other words, on July 13th 2024, since the legal gap arisen due to the annulment decision may infringe public interest. We envisage that the new regulation shall be announced before the decision comes into effect on July 13, 2024.





Practice Area News

A Cooperation between the Competition Authority and the Data Protection Authority was announced.

A protocol on Cooperation and Information Sharing was signed between the Competition Authority and the Data Protection Authority on October 23rd. The authorities agreed to cooperate on conducting joint activities in developing areas that fall within the jurisdiction of both authorities and that may cause irreparable damage in the absence of rapid and effective intervention, publishing reports, organizing joint workshops and programs and consulting on common issues.

The Minimum Capital Requirements for the Incorporation of JSC and LLC has been elevated.

The minimum capital requirements for the establishment of JSC and LLC have been increased by the Presidential Decree (No.7887) dated 25.11.2023. Accordingly, with the Decree, the minimum capital envisaged for i) LLC has been increased to TL 50,000; ii) JSC has been increased to TL 250,000 and iii) non-publicly traded JSC with registered capital system has been elevated to TL 500,000. The decree will come into effect starting from January 1st, 2024.

A New Era for Rental of Residences for Tourism Purposes. The Law on Rental of Residences for Tourism Purposes and Amendments to Other Laws ("Law"), was published in the Official Gazette (No.32357) on November 2nd, 2023. Articles of the Law regarding rental of residences for tourism purposes shall be applicable to the rentals with a period of less than one hundred days at a time. The Law introduces below conditions for the rental of residences for tourism purposes. The Ministry may also cancel the permit certificate under certain circumstances. The Articles of the Law regarding rental of residences for tourism purposes shall enter into force on **January 1st, 2024**.

In the Firm

- Gokalp Arslan is a full-service law firm founded in Istanbul in 2022 by Burcu Dal Gokalp and Alper Arslan, after many years of legal experience, to offer robust, timely, high quality and cost-effective legal services to meet its clients' needs.

The firm offers broad range of services, mainly on corporate law, M&A and dispute resolution (arbitration & litigation) and labor law.

- Gokalp Arslan was recognized in the latest edition of The Legal 500 (Legalease) and listed as the "Firms to Watch: Dispute Resolution, EMEA Region."

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