

Turkish Constitutional Court Rules Successive and Aggravated Administrative Fine Unconstitutional where Notice of Initial Fine was not Duly Served

30 Sep 2021

In decision numbered 2018/12722, dated 30 June 2021, the Turkish Constitutional Court ruled that a successive and aggravated administrative fine violated article 35 of the Constitution of the Republic of Turkey because notice of the initial fine was not duly served.

In the underlying case, petitioner ("**Petitioner**"), a bar manager, violated a certain noise regulation and therefore, was subjected to administrative penalty fine of TRY 23,149 (the "**First Fine**"). Petitioner repeated the violation and consequently, was subjected to successive and aggravated administrative fine of TRY 49,092 (the "**Second Fine**").

After being duly served with notice of the Second Fine - which cited the First Fine - Petitioner applied to the court of first instance (Antalya 4th Administrative Court - "**Antalya Court**") for cancellation of the Second Fine on the grounds that notice of the First Fine was not duly served and, therefore, could not be a legitimate basis for the Second Fine. In its decision dated 15 December 2016, Antalya 4th Administrative Court held that the failure to serve notice of the First Fine rendered it non-final and, therefore, an insufficient basis for the Second Fine and therefore cancelled the Second Fine.

Public Authority, which levied the said administrative fines, appealed to the 2nd Administrative Case Chamber of Konya Regional Administrative Court ("**Konya Court**") for reversal of the Antalya Court's decision. Konya Court held that a finalized prior fine is not a condition precedent to imposing a successive and aggravated fine, and that the mere levying of the former is sufficient grounds for imposing the latter and therefore, reversed Antalya Court's decision. Furthermore, Konya Court was not persuaded by Petitioner's argument before Antalya Court and held that since Petitioner became aware of existence of the First Fine with service of the Second Fine and Petitioner had already paid the First Fine without objection.

Petitioner appealed Konya Court's reversal of Antalya Court to the Constitutional Court. The Constitutional Court decided that Konya Court erred in finding no due process violation since applicable law required the First Fine to be final before the Second Fine could be levied; and that since notice of the First Fine was not accomplished it was not final and, therefore, was insufficient grounds for imposing the Second Fine; and that due process was not satisfied when Petitioner learned of the First Fine in the notice of the Second Fine since lack of appropriate notice of the First Fine unequivocally deprived Petitioner of the opportunity file a timely response and, therefore, being unaware of the violative behavior at issue Petitioner could not have been reasonably expected remediate the situation prior to the Second Fine.

Accordingly, the Constitutional Court reversed the Konya Court and held, pursuant to article 35 of the Constitution of the Republic of Turkey, that due process requires an administrative fine to be duly served and

final before a successive and aggravated fine based upon it can be levied.

The full text of the Constitutional Court's decision numbered 2018/12722, dated 30 June 2021, published in Official Gazette numbered 31565, dated 11 August 2021, is available at this [link](#). (Only available in Turkish)

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