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**Headnotes:**

The right to fair trial would be breached, if restrictions were imposed on the documentation to be presented to administrative courts. Any data and documentation may be used in support of a claim before the courts. Parties must have the same legal rights before the courts irrespective of whether they are plaintiffs or defendants, public bodies or individuals.

Differences in the procedural rules applying to custom duty taxpayers and other taxpayers are at odds with the equality principle of the Constitution. Custom duty taxpayers and other taxpayers must be subjected to the same rules as to the suspension of tax when a case is brought before the tax courts.

**Summary:**

The Ordu Tax Court requested a ruling from the Constitutional Court as to the compliance of Article 245.2 and 245.3 of the Customs Law with the Constitution.

**1. Article 245.2 of the Customs Law**

Under this article, only documents and data used in appeals before the customs administration can be used in appeals before the administrative judiciary.

The right to fair trial is enshrined in Article 36 of the Constitution. It bestows a universal right to litigation, whether as plaintiff or defendant, and the right to fair trial before the courts through lawful means and procedures. The natural result of that principle is that individuals are granted the right to defend themselves and to present claims before the judicial authorities. Article 13 of the Constitution, as amended by Law no. 4709, provides that fundamental rights and freedoms may only be restricted by law and for the reasons set out in the relevant parts of the Constitution. Such restrictions must not conflict with the letter and spirit of the Constitution and the requirements of democracy, society as a whole, the secular Republic and the principle of proportionality. There is no provision for restriction of the right to fair trial in Article 36 of the Constitution. Therefore constitutional principles would be breached if restrictions were imposed on the documentation and data to be presented to the tax courts.

The most effective and certain way for somebody to defend themselves against allegations or to contest actions on the part of administrative authorities is to assert these rights before the judicial authorities and to prove the claim before the courts. The right to defend oneself and to present a claim lies at the very heart of the right to a fair trial. These rights cannot be separated from each other. The right to fair trial is not only a fundamental right, but it also

guarantees and protects other rights and freedoms. The administration is equipped with far more comprehensive data and documentation than the average customs duty tax-payer, lodging or defending a claim. As a result, customs duty taxpayers must be allowed to use evidence or documentation which has been obtained after an appeal before the customs administration.

Article 245.2 of the Custom Law restricts custom tax-payers' right to defence and prevents the judicial authorities from reaching a just and correct conclusion. It is therefore in breach of Article 36 of the Constitution. There is no provision within the Constitution for restriction of the right to fair trial. The restriction brought about by Article 245.2 is out of line with Article 13 of the Constitution.

## 2. Article 245.3 of the Custom Law

Under this article, appeals before the administrative judiciary against administrative decisions shall not preclude the implementation of the decision under appeal. As a rule, under Turkish administrative judiciary procedure, bringing an action before the Council of State (High Administrative Court) or administrative courts shall not prevent the execution of an administrative act. However, in the tax courts, bringing an action arising from a tax dispute will halt the collection of the disputed part of the imposed taxes, fees, duties and other financial obligations or increases and penalties arising from these obligations. Article 245.3 of the Custom Law sought to prevent the halting of the collection of the disputed part of the custom taxes and penalties despite an action having been lodged with the tax court. The Court argued in its application to the Constitutional Court that differentiation between custom taxpayers and other taxpayer is contrary to Article 10 of the Constitution.

The principle of equality before the law is enshrined in Article 10 of the Constitution. All individuals are equal before the law with no discrimination on the grounds of language, race, colour, sex, political persuasion, philosophical belief, religion or sect. This principle prevents other rules with the same status being enacted as well as the creation of privileged groups or individuals. If different legal rules with the same status were enacted, this would be at odds with the equality principle.

In Turkey, financial obligations are regulated by a number of laws and codes and various procedures exist for the imposition, accrual and collection of taxes, fees and duties. This is because it is recognised that all these financial obligations have different characteristics. The rules governing the imposition and calculation of financial obligations are to be found in the Tax Procedures Law no. 213. Those relating to the collection of financial dues can be found in Law no. 6183.

The definitions of taxpayer in the Tax Procedures Law and the Custom Law are similar. Financial obligations such as tax, fees and duties have their own characteristics, but it is beyond doubt that taxpayers of custom duty and other kinds of taxpayers have the same legal status as litigants before the judicial authorities.

Therefore, it is contrary to the principle of equality to enact different procedural rules for custom duty taxpayers and other taxpayers. This means that Article 245.3 of the Custom Law is contrary to the Constitution and should be repealed.

One of the judges put forward a dissenting opinion.