

Inflation-Related Losses in Debt Relations and the Constitutional Court's Pilot Decision: Allegation of Violation of the Right to Property and the Right to an Effective Remedy

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In Turkish law, the creditor's inability to collect the receivable in a timely manner and at its true value, particularly due to negative economic factors such as high inflation, sudden increases in exchange rates, and the inability to compensate for the depreciation of money with interest, has adverse effects on debt payment relations and causes damage to the creditor.

In this context, numerous applications have been brought before the Constitutional Court in recent years on the grounds of violation of property rights, and the legal issues arising from similar cases have become a significant agenda item.

Constitutional Court, in its “Caner Şafak” decision dated July 8, 2025, and numbered 2024/41763, summarily assessed that the loss of value suffered by the creditor due to the late payment of debts could not be compensated by the existing interest rates, that economic indicators produced adverse consequences against the creditor in debt payment relations, and that this situation harmed the essence of the right to property. Consequently, it ruled that the rejection of the applicant's claim for excess damage constituted a violation of the right to an effective remedy.

This decision clearly demonstrates that creditors' rights cannot be adequately protected if economic conditions are not taken into account in debt repayment relationships. It shows that the legal consequences of economic factors in debtor-creditor

relationships need to be more clearly defined and that legal regulations are necessary to remedy creditors' losses.

This information note will comprehensively examine the damages suffered by creditors due to the failure to consider economic conditions in debt repayment relationships, as well as the Constitutional Court's decision in the Caner Şafak case. You can access the relevant Constitutional Court decision [here](#).

I. Subject of the Application

The applicant, Caner Şafak, initiated execution proceedings against T. Bank Inc. on November 9, 2010, for the principal amount of 48,854.00 TL. The debtor objected to the execution proceedings, upon which the proceedings were suspended, and the applicant filed a lawsuit for the cancellation of the objection. The Istanbul 2nd Consumer Court, which heard the case, ruled to cancel the debtor's objection and ordered that the proceedings should continue with regard to the principal debt, that a default interest rate of 9% per annum should be applied from the date of the proceedings, and that an enforcement denial compensation of 9,770.80 TL should be paid. This decision became final on July 1, 2020, and the debt subject to execution proceedings and litigation was paid on July 2, 2020.

The applicant filed a lawsuit with the Istanbul 10th Consumer Court, claiming excess damages pursuant to Article 122 of the Turkish Code of Obligations No. 6098,

arguing that the money lost value due to inflation as a result of the delay in payment of the debt and that the legal interest and default interest paid did not sufficiently compensate for this loss of value. The local court ruled to dismiss the case, and this decision became final after passing through scrutiny of both court of appeal and court of cassation.

The applicant filed a petition with the Constitutional Court, claiming that the court of cassation's decision violated the right to property protected under Article 35 of the Constitution and the right to an effective remedy guaranteed under Article 40 of the Constitution.

II. Local Court, Appeal, and Cassation Stages

a) First Instance Review (Istanbul 10th Consumer Court)

The lawsuit filed by the applicant for compensation for the excess damage of 100,000.00 TL that he claims to have suffered was dismissed on March 9, 2021. The local court, in its reasoning, summarized that although the applicant requested default interest in the action for annulment of the objection, legal interest was awarded, and this was not made a ground for appeal. However, it might have been possible to rule on commercial/advance interest from the perspective of the bank, which is a merchant. It stated that the fault required for the compensation debt arising from excess damage to occur is the debtor's fault in defaulting, and that the defendant bank's fault in defaulting and the conditions for excess damage cannot be mentioned.

b) Appeal Review (Istanbul Regional Court of Justice, 46th Civil Chamber)

The Court of Appeal overturned the Local Court's decision and dismissed the case on different grounds. In its decision, the Court of Appeal essentially ruled that the burden of proof regarding the debtor's fault in default lies with the debtor, that the creditor must prove the damage with concrete evidence, and that inflation and similar economic indicators are not sufficient for proving damage, thereby dismissing the appellant's appeal.

c) Appellate Review (3rd Civil Chamber of the Court of Cassation)

Following the appeal against the Court of Appeal's decision, The Court of Cassation upheld the Court of Appeal's decision on the grounds that economic indicators such as inflation and exchange rate increases alone are not sufficient to prove damages, and that claims of excess damage must be substantiated with concrete evidence.

The joint assessment of the Local Court, the Court of Appeal, and the Court of Cassation is that the proof of excess damage cannot be based solely on economic indicators. For this reason, the applicant has appealed to the Constitutional Court.

III. Claims of Applicant

The applicant submitted Consumer Price Index ("CPI") and exchange rate data for the period 2009–2024, claiming that the debt was collected approximately ten years late and that the default interest paid during this period did not cover the actual value of the claim. The applicant argued that it was not possible

to compensate for the loss in value of the claim with the default interest paid, and that the effects of inflation and exchange rate increases were disregarded, meaning that the damage was not adequately compensated.

Furthermore, the applicant stated that the strict criteria of proof applied by the courts were applied differently in similar cases and that this situation violated the principle of equality. He also stated that the right to property guaranteed by Article 35 of the Constitution and the right to an effective remedy set out in Article 40, together with the principles of equality and fair trial, had been violated.

IV. The Constitutional Court's Assessment

Article 35 of the Constitution guarantees the right to property, stating that “*Everyone has the right to property and inheritance,*” while Article 40 regulates the right to an effective remedy in cases of violation of fundamental rights. The Constitutional Court assessed that the applicant's complaint was directly related to the right to property and the right to an effective remedy.

i. Evaluation of the Right to an Effective Remedy:

The Constitutional Court has stated that, in accordance with the right to an effective remedy stipulated in Article 40 of the Constitution, the mere existence of legal remedies is not sufficient; the remedy must have a reasonable chance of success in theory and practice to remedy the grievance.

The Constitutional Court also stated that although the case for excess damage theoretically exists, it has failed to provide an effective solution due to jurisprudential uncertainty.

• The Jurisprudential Conflict and Impact of Excess Damage Claims

The Constitutional Court emphasized that there have been two different approaches since the 1980s and that there are jurisprudential differences between them. Some jurisprudence accepts that inflation is sufficient proof of damage, while others argue that it must be supported by concrete cases. It was stated that jurisprudential uncertainty prevents the establishment of a legal remedy that would effectively protect the applicant.

ii. Assessment Regarding Property Right:

The Constitutional Court has stated that if the creditor collects the debt late, the failure to compensate for the loss in value due to inflation prevents the creditor from obtaining the true value of the debt and causes the debtor to pay the debt below its true value, thereby upsetting the fair balance between the parties to the detriment of the creditor and imposing an unreasonable burden on the creditor. However, it has been stated that in order to establish a fair balance, the debtor must pay the debt at its real value, as this obligation imposes a disproportionate or excessive burden on the debtor. The decision also stated that Law No. 3095 established a legal remedy for the compensation and indemnification of value loss incurred due to the effects of inflation, but that the provisions of this law regarding interest did not have the

capacity to offer any chance of success in preventing value loss, even at a theoretical level.

- **Inadequacy of Law No. 3095**

The court ruled that the provisions of Law No. 3095 were not suitable for preventing the loss of value of the claim due to inflation, and therefore, damages exceeding the interest were sought to be recovered through a claim for excess damage pursuant to Article 105 of the repealed Law No. 818 and Article 122 of Law No. 6098. From the 1980s to the present, some court decisions have accepted these claims, considering the fact of inflation sufficient to prove damages, while other decisions have rejected claims for excess damage on the grounds that they must relate to concrete damages beyond the effects of inflation. In this context, it has been stated that the aforementioned excess damages claim does not guarantee compensation for the loss of value of receivables due to inflation and that case law in this regard has not developed in a way that indicates the existence of an effective legal remedy.

V. Findings of the Constitutional Court

- a. **Excessive Burden and Disruption of Fair Balance**

The Constitutional Court stated that the economic loss suffered by the applicant due to the late payment of the debt was detectable, but emphasized that the inferior courts' failure to consider the proof of damage sufficient based solely on general economic facts made and those to be made in the future. In this context, it decided to notify the Grand National Assembly of Turkey for the

imposed an extraordinary burden on the applicant. The Court stated that the debtor must pay the legal debt at its actual value and concluded that a more appropriate assessment was necessary for the applicant's damages to be compensated.

- b. **Structural Issue and Pilot Decision Precedent**

Although the Constitutional Court (AYM) ruled that the right to an effective remedy, as stipulated in Article 40 of the Constitution, had been violated in connection with the property rights guaranteed in Article 35 of the Constitution, in relation to this application and other pending applications, it concluded that this situation would not prevent similar applications from being made and would not put an end to the violations arising from the loss of value of claims between private legal persons due to inflation. In this context, the Constitutional Court stated that a clear legal regulation must be established to remedy the situation, which constitutes a structural problem arising from violations due to the inability to find avenues of recourse to compensate for damages resulting from the loss of value of claims between private law entities against inflation, taking into account the principle of the secondary nature of individual applications.

Furthermore, it emphasized that the application procedure to be established should be such as to prevent the loss of value of receivables between private legal entities against inflation for applications already

resolution of the structural problem in question.

Furthermore, the Constitutional Court noted that it had received numerous similar applications and that individual violation rulings would not solve the structural problem, and therefore decided that the pilot ruling procedure should be applied.



VI. Judgment

The Constitutional Court has ruled as follows:

1. That the right to an effective remedy, as provided for in Article 40 of the Constitution, has been violated in connection with the right to property guaranteed by Article 35 of the Constitution;
2. That, since the violation stems from a structural problem, the pilot decision procedure shall be applied;
3. The arbitrariness shall be reported to the Grand National Assembly of Turkey for the resolution of the structural problem.
4. The examination of applications made on the grounds of violation of the right to property until the date of publication of the decision and applications to be registered after this date shall be postponed for a period of six months from the date of publication of the decision in the Official Gazette.
5. The applicant's claim for compensation is rejected.
6. The costs of the proceedings shall be paid to the applicant.

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