

The General Assembly Resolution Requirement for Shareholder Expulsion in Two-Shareholder Limited Liability Companies Annulled by the Constitutional Court



In its decision dated 25 December 2025 and numbered E.2025/128, K.2025/273 (“**Decision**”), published in the Official Gazette dated 17 March 2026 and numbered 33199, the Constitutional Court annulled, solely with respect to two-shareholder limited liability companies, the rules under Articles 616/1-h and 621/1-h of the Turkish Commercial Code No. 6102 (“**TCC**”) requiring a prior general assembly resolution in order to apply to the court for the expulsion of a shareholder for just cause.

The Decision concerns the constitutional review of the system requiring the adoption of a general assembly resolution in order to apply to the court for the expulsion of a shareholder for just cause in two-shareholder limited liability companies.

Background of the Decision

The Decision was rendered upon a referral by the Bakırköy 1st Commercial Court of First Instance within the scope of a pending case before it.

In the dispute before the court, one of the shareholders in a two-shareholder limited liability company sought the expulsion of the other shareholder for just cause. Pursuant to Articles 616/1-h and 621/1-h of the TCC, in order to apply to the court for the expulsion of a shareholder, a prior general assembly resolution must first be adopted.

Under the existing framework:

- Applying to the court for the expulsion of a shareholder is listed among the non-transferable powers of the general assembly;
- The adoption of such a resolution requires that the statutory quorums prescribed by law be met.

In two-shareholder and particularly equal-share structures, where the shareholder whose expulsion is sought votes against the resolution, the required majority cannot be obtained in practice; as a result, even where just cause exists, filing an expulsion action becomes practically impossible.

The Bakırköy 1st Commercial Court of First Instance, considering that the relevant provisions might be unconstitutional with respect to two-shareholder limited liability companies, applied to the Constitutional Court by way of concrete norm review.

The Constitutional Court's Assessment

The Constitutional Court conducted its review particularly within the framework of the right to an effective remedy guaranteed under Article 40 of the Constitution and the freedom of enterprise regulated under Article 48.

1. Right to an Effective Remedy

The Court emphasized that it is not sufficient for remedies against a rights violation to exist merely in theory; they must also be accessible and effective in practice.

In two-shareholder limited liability companies:

- Even where just cause exists,
- If the required general assembly majority cannot be obtained,
- The impossibility of applying to the court on behalf of the company

renders access to judicial review practically impossible.

The Court concluded that this structural deadlock impairs the right to an effective remedy.

2. Freedom of Enterprise and the State's Positive Obligations

The Court further stated that the expulsion mechanism in limited liability companies serves an important function in ensuring the continuity of company operations and economic activity.

The absence of an effective legal mechanism against a shareholder who obstructs company operations or renders the continuation of the shareholder relationship impossible:

- May jeopardize the company's economic existence;
- May effectively restrict the other shareholder's freedom of enterprise.

The Court held that the State has positive obligations to safeguard the freedom of enterprise and that the practical inoperability of the expulsion mechanism in two-shareholder structures is incompatible with these obligations.

Scope of the Annulment

The Constitutional Court did not annul the provisions in their entirety but limited the annulment solely to two-shareholder limited liability companies.

Through this approach:

- The general framework of the limited liability company regime was preserved.
- The structural deadlock arising in two-shareholder structures was addressed.

The Court also held that, having found the provisions unconstitutional with respect to two-shareholder companies, there was no need to conduct a separate examination under other constitutional provisions.

Practical Implications

Following the Decision, in two-shareholder limited liability companies, the prior general assembly resolution requirement should no longer operate as a barrier to bringing an action for the expulsion of a shareholder for just cause. The failure to meet the general assembly quorum should not, by itself, prevent such an action from being filed.

This development renders judicial remedies effective particularly in equal-share and long-standing deadlocked company structures. The focus of disputes may shift from procedural majority requirements to whether "just cause" exists in the specific case.

Conclusion

The Constitutional Court's Decision resolves, at a constitutional level, a structural issue long encountered in practice in two-shareholder limited liability companies. The Decision addresses the structural deadlock that may arise in such companies. Nevertheless, the operation of the expulsion mechanism remains subject to a careful judicial assessment of the existence of just cause. In this context, companies structured as two-shareholder limited liability companies should evaluate their existing shareholder relationships and potential dispute scenarios in light of the new legal framework. The Decision was rendered by majority vote and was accompanied by dissenting opinions.

The full text of the Decision is available at this [link](#).