

The Constitutional Court Ruled That to Hold the Plaintiff Liable for The Costs of the Litigation in The Event of the Rejection or Partial Acceptance of Compensation Lawsuits Based on non-expropriated dispossession Constitutes a Violation of The Constitution

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The Constitutional Court ruled that Article 326, paragraph 2 of the Code of Civil Procedure ("**CCP**") numbered 6100 is unconstitutional since holding the plaintiff liable for a portion of the judicial expenses in the event of a decision to be rejected or partially accepted compensation cases based on non-expropriated dispossession may lead to the plaintiff not obtaining the real value of the immovable property.

It is argued that holding the plaintiff liable for litigation costs in the event of the dismissal or partial acceptance of compensation lawsuit based on confiscation without expropriation violates and nullifies the right to property. Accordingly, it is claimed that the first and second paragraphs of Article 326 of the CCP are in violation of Articles 2, 5, 13, and 35 of the Constitution.

As per the evaluation of the Constitutional Court on first paragraph of Article 326 of the CCP, it was concluded that the restriction imposed on the right of access to the court, even indirectly, should not be contrary to the principle of the right to access the court. Upon conducting a proportionality examination, it is determined that the essence of the right to access to justice is not compromised, as different mechanisms are considered in various provisions of the CCP for individuals with limited financial means, and accordingly, the request for the annulment of the relevant provision has been rejected.

Upon the assessment on the second paragraph of Article 326 of the CCP, it has been concluded that holding the plaintiffs liable for litigation costs arising from partially rejected part of their claim in the case of partial acceptance

of a compensation lawsuit based on confiscation without expropriation prevents the plaintiffs from receiving even the partially granted compensation amount determined based on the value of the property. Therefore, it is concluded that the relevant provision imposes a restriction on the right to property.

Since holding the plaintiff responsible for a portion of the litigation costs in cases where the lawsuits are partially accepted can lead not receiving the actual value of the property, the Constitutional Court has decided that the second paragraph of Article 326 of the CCP is only inconsistent with the Constitution in terms of compensation cases based on non-expropriated dispossession and has ruled for its annulment.

In accordance with this annulment decision, in cases of partial acceptance of compensation lawsuits based on confiscation without expropriation, the plaintiff cannot be held liable for litigation costs.

Please see this [link](#) for the full text of the Constitutional Court's decision dated 30 November 2023 numbered 2023/101, published in the Official Gazette number 32433 dated 18 January 2024 (only available in Turkish).

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