

Turkish Constitutional Court: 99 Year Easement Does Not Violate Property Rights

23 May 2016

Turkey's Constitutional Court recently ruled that a 99 year administrative easement does not breach property owners' constitutional property rights. A lower court escalated the issue for consideration, arguing that easements should be limited to ten years, with expropriation preferred for long periods. However, the Constitutional Court found that Article 4 of Expropriation Law numbered 2942 did not breach the Turkish Constitution. Rather, the Constitutional Court held that the Constitution specifically empowers the State and public corporations to impose administrative easements where public interests require, provided this is done lawfully and compensation is paid in advance (Decision number 2015/2 E. and 2016/19 K. on 16 March 2016).

In these circumstances, an administrative easement had been granted over private property to the General Directorate for State Hydraulic Works for 99 years.

The Court of First Instance ruled that the easement violated the property owner's constitutional property rights. The court sought to annul Article 4 of Expropriation Law numbered 2942 before the Constitutional Court on the basis that:

- The Expropriation Law numbered 2942 had been misused.
- A 99 year easement period is longer than an average person's life.
- Long term easements remove property rights.
- Expropriation should be preferred over long term easements.
- Easements should be maximum ten years in length, with the owner and administration meeting to mutually evaluate new easement terms for following periods.

On considering the case, the Constitutional Court held that the circumstances did not violate property rights envisaged under Article 35 of the Constitution.

The Constitutional Court noted that:

- Article 35 of the Constitution imposes a negative obligation on the State to respect individuals' property rights by avoiding any unlawful interference.
- In principle, individuals are entitled to use, benefit, dispose, transfer, consume and destroy their property. Any regulations preventing individuals from doing these things constitute an interference with their property rights.
- Article 35 of the Constitution envisages that property rights can be limited where this is done lawfully and in the public interests.
- Legislators have discretion to establish administrative easements, provided these are in line with public interests and proportionality principles.
- Article 46 of the Constitution enables the State and public corporations to expropriate privately owned real estate (wholly or partially) and impose administrative easements where public interests require,

provided this is done in accordance with principles and procedures prescribed by law and compensation is paid in advance.

- The scope and implementation of each fundamental right and liberty should not be determined individually, but rather be construed in accordance with the Constitution as a whole.

Therefore, in light of Article 46 of the Constitution, the Constitutional Court held that Article 4/1 of the Expropriation Law numbered 2942 does not violate property rights granted under Article 35 of the Constitution.

Please see this [link](#) for the full text of the decision of the Constitutional Court (only available in Turkish).

Related Practices

- [Real Estate and Construction](#)
- [Administrative Procedures and Actions](#)

Related Attorneys

- [BURAK BAYDAR](#)