

Turkish Constitutional Court Considers Lessors' Ability to Terminate Fixed Term Leases

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Turkish legislation protects lessees by imposing comparatively higher thresholds on lessors to terminate fixed term leases. A first instance court recently applied to the Turkish Constitutional Court, claiming a legislative provision enabling lessors to terminate fixed term leases without providing any reason at the end of ten years extension period violates constitutional property rights, as well as freedom of labour and contract. The Turkish Constitutional Court held that the provision is not unconstitutional.

The Turkish Code of Obligations states that on expiry of fixed term lease agreement, leases will be automatically extended for a further year unless the lessee gives 15 days prior notice of termination (Article 347). However, lessors are not entitled to terminate the lease agreement based upon the agreement expiring.

Article 347 of the Code of Obligations outlines criteria for when each party can terminate a lease:

- Fixed term leases:
 - Lessee can terminate the agreement by providing fifteen days' notice before expiry of the original lease term.
 - Lessor cannot terminate the agreement based upon the agreement expiring on expiry of the original lease term. However, at the end of ten years extension period, lessors can terminate the agreement without reason by giving three months' notice prior to the end of the next extension year.
- Unlimited term leases:
 - Lessee can terminate lease agreements at any time by providing three months' notice.
 - Lessor can terminate the agreement once ten years has passed from the beginning of the lease by providing three months' notice.

In the case at hand, the Court of First Instance filed a complaint to the Constitutional Court, claiming that the provision allowing lessors to terminate fixed term leases without reason via a three month notice after ten years of extension period violated constitutional property rights, as well as freedom of labour and contract (emphasized above).

The Constitutional Court rejected the lower court's claim, finding that the provision was not unconstitutional. It noted:

- Article 347 aims to avoid adverse consequences which could arise from a lessee being the direct holder of an asset which is subject to a long term lease agreement.
- In principle, a lessee can terminate fixed term lease agreement at the end of the lease term. However, the lessor is not permitted to terminate the agreement at the end of lease term. This mechanism protects lessors and ensures common good.
- Article 347 grants lessees the right to extend lease agreements under certain conditions. Therefore, the lessor has not been holding its asset for a duration of ten extension years. The Code of Obligations grants lessors the ability to terminate the agreement without reason once the ten year extension period expires.

- Legislation aims to ensure a reasonable balance between protecting lessees and protecting lessors' freedom of contract, by allowing lessors to terminate an agreement without reason once the ten year extension period expires.

Please see this [link](#) for the full text of Constitutional Court's decision (decision 2015/102, 7 September 2016) (only available in Turkish).

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