

Turkish Constitutional Court Considers Whether Partial Annulment of Basis for Earlier Court Decision Leads to Breach of Constitutional Rights

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The Turkish Constitutional Court recently considered a claim that since part of the legislative basis for an earlier decision had been struck out, the decision now breached the applicant's constitutional rights. The Constitutional Court held that the applicant's rights were not violated. It held that Constitutional Court annulment decisions cannot have retrospective effects and the earlier decision served the legitimate purpose of ensuring definitiveness for property rights. The Constitutional Court also noted that the applicant's delays in pursuing the matters meant that equity leads to him losing the ownership rights.

The applicant claimed that he had inherited property in 1956 from his father, but informal squatters' housing ("**Gecekondu**") had existed on the site since the 1970s. The Gecekondu owners bought a case against the son in 2001, claiming that they had acquired ownership via extended occupation (extraordinary prescription). The court held in 2003 that the Gecekondu owner did not violate the son's property rights.

According to Article 713 of the Turkish Civil Code number 4721, in certain conditions, an occupant who has remained uninterrupted on the site for at least 20 years can request property be registered in their name if the owner cannot be identified from land registry records and has been either dead or absent for the past 20 years. In 2011, the Constitutional Court partially annulled this provision, striking out the reference to death.

The son claimed in 2013 that since part of the legislative basis for the court's earlier decision had been struck out, the decision now breached his constitutional rights.

The Constitution states that property rights can only be restricted by law and in the name of public interest. Further, the Constitution, as well as the European Human Rights Convention, give Turkey the authority to control disposal of property rights in the interests of the general public.

The Constitutional Court held that the partial annulment of Article 713 in 2011 did not violate the applicant's rights because:

- Annulment decisions by the Constitutional Court cannot have retrospective effect (Article 153 of the Constitution).
- The 2003 decision serves the legitimate purpose of ensuring definitiveness for property rights by applying the provision on extraordinary prescription (Article 713).
- If an individual's property rights are restricted, an equitable balance must be struck between the public good and the individual's rights. The Constitutional Court held that overall, since the son did not attempt to exercise his succession rights for 46 years, nor his right of action for 26 years, he had lost ownership of the property.

The Constitutional Court's decision dated 10 December 2015 with the application number 2013/604 was published in Official Gazette number 29593 on 14 January 2016. Please see this [link](#) for the full text of the Constitutional Court's decision (only available in Turkish).

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