

## Turkish Constitutional Court: Despite the Existence of a Final Court Decision on Registration, the Land Registry's Avoidance to Execute the Decision due to Existence of an Interim Injunction Established by another Court Constitutes a Violation of the Property Right

*15 Apr 2022*

The Constitutional Court ruled that the applicant's property right was violated due to the fact that the final court decision regarding registration of a property was not executed based on existence of an interim injunction placed on the property by another court.

In the present case,

- The applicants ("**Applicants**") filed a lawsuit by using their pre-emptive rights for cancellation of title deed and registration against the person who bought the lot, which is adjoint to their jointly owned immovable.
- Another owner ("**Other Owner**"), whose property is also adjoint the sold immovable, filed a lawsuit for cancellation of title deed and registration against the buyer by using his own pre-emption right before the Applicants did. In order to prevent the sale of the immovable to third parties, an interim injunction has been placed on the immovable within the scope of this lawsuit.
- Meanwhile, the lawsuit regarding title deed cancellation and registration filed by the Applicants, which was carried out simultaneously with above-mentioned lawsuit, was finalized in favor of the Applicants. The Applicants requested the registration of their ownership to the title deed from the relevant land registry office according to the court decision that became final in their favor. After consulting the civil court of first instance regarding this issue, the relevant land registry office has rejected the applicants' request. As the reason for the refusal, the Applicants were informed that an interim injunction was placed on the title deed of the immovable within the scope of another lawsuit, which was filed before the date of their own lawsuit.
- Subsequently, the Applicants requested to be included in the lawsuit filed by the Other Owner, and they requested the dismissal of this lawsuit due to the fact that the immovable, which was subject to the lawsuit, was decided to be registered in their name. Although the applicants' requests for intervention was accepted, the relevant civil court of first instance decided the registration of the immovable under the name of the other owner. Herewith, registration decisions under the name of two different parties were made regarding the same property.
- The Applicants appealed against this decision; however, the court of appeal dismissed the request without prejudice, stating that the ruling of the court of first instance was final due to the amount of the decision.

- In the meantime, Applicants filed a lawsuit at the Administrative Court against the rejection of their registration request at the relevant land registry office. Within the scope of the request, they have stated that the interim injunction decision should not prevent the implementation of a finalized court decision. The Other Owner requested to intervene to this case and argued that his case was in the process of being finalized in his favor and therefore this case should be dismissed. The Administrative Court accepted the Other Owner's request for intervention and concluded that there was no contradiction to law in the rejection of the Applicants' registration request. The Applicants appealed against this decision. The appeal request of the Applicants was fundamentally and definitively dismissed by the Konya Regional Administrative Court.
- Applicants have also made a repeated application to the land registry directorate with a request for registration and for an opinion from the Antalya Regional Directorate of Land Registry on this matter. The land registry directorate rejected both requests and informed the Applicants that the relevant immovable was registered under the name of the Other Owner. The Applicants filed a lawsuit at the Administrative Court regarding the refusal decisions made by the land registry directorate. The Administrative Court rejected the Applicants' request on the same grounds as its previous decision. The applicants appealed against this decision and this request was also rejected by the Court of Appeal.

After the rejection of both appeal applications, the Applicants have made two individual applications to the constitutional court, one on 14 December 2018 and the other on 19 August 2019.

As a result of the evaluations made, the Constitutional Court found that the civil court of first instance's decision, which was made in favor of the Applicants initially, was based on an incomplete assessment due to their failure to consider the interim injunction decision, which was taken within the scope of the lawsuit carried out by the Other Owner, and that it then implied that the decision made by itself was incorrect in the administrative letter sent to the land registry directorate and that the execution of the court decision is obligatory even if it is legally incorrect until its removal in accordance with the procedures stipulated in the law.

In conclusion, the Constitutional Court ruled that the property rights of the Applicants were violated due to failure of the execution of the decision on registration in favor of the Applicants as this failure was contrary to the guarantee provided under article 138 of the Constitution, which stipulates that the court decisions are binding and that they should be implemented without delay.

Please see [this link](#) for the full text of Turkish Constitutional Court's decision dated 28 December 2021, numbered 2018/37136, published in Official Gazette dated 2 February 2022 and numbered 31738 (only available in Turkish).

## Related Practices

- [Corporate and Commercial Litigation](#)

---

## Related Attorneys

- [BENAN ARSEVEN](#)
- [SEVİ İSLAMAGEÇ UTKAN](#)