

## Turkish Constitutional Court: Determining Expropriation Values Based on Actual Expropriation Date Violates Property Rights in Price Determination Lawsuits

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The Turkish Constitutional Court recently considered which date should be used to assess a property's expropriation value. It held that for price determination lawsuits, it is unconstitutional to determine a property's expropriation value based its location and conditions at the actual expropriation date, since the property's qualities may change between the expropriation date and the lawsuit. Therefore, it held that the phrase "...on the expropriation date..." in the Expropriation Law numbered 2942 ("**Expropriation Law**") should be struck out because it violated property rights under Articles 35 and 46 of the Constitution.

In the case at hand, the Court of First Instance filed a complaint to the Constitutional Court, claiming the Expropriation Law violated Articles 35 (property rights) and 46 (expropriation) of the Constitution.

The Constitutional Court ruled that the phrase "...on the expropriation date..." (used to determine expropriation value) violated constitutional property rights and expropriation rules granted under Article 35 and 46. The court held that during expropriations, the period when the administration can bring a lawsuit is ambiguous and the qualities of a land may change between the expropriation date and the lawsuit. Therefore, for price determination lawsuits, it is unconstitutional to determine a property's expropriation value based its location and conditions at the expropriation date.

Therefore, the Constitutional Court held that legislation should take into account the time difference between the administrative and judiciary processes when determining the expropriation value. Therefore, legislators must remove the phrase "...on the expropriation date..." to accurately determine the date for assessing a property's expropriation value.

However, the Constitutional Court held that the phrase about not considering the "*increase in value and revenue to be generated in the future considering the future use*" does not violate the Constitution. It reasoned that property rights protected by Article 35 of the Constitution do not include changes that could occur for immovable property in the future or future expectations that have not yet occurred yet. Therefore, when determining expropriation value, increases caused by zoning and service providers, or possible future revenue, should not be taken into account.

The Constitutional Court's decision (dated 26 May 2016, with application number 2015/55 and decision number 2016/45) was published in Official Gazette number 29756 on 28 June 2016. Please see this [link](#) for the full text of the Constitutional Court's decision (only available in Turkish).

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