

Turkish Constitutional Court: Failure to Expropriate Land for 27 Years Breaches Constitutional Property Rights

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The Turkish Constitutional Court recently ruled that an excessive personal burden had been placed on a property owner where the state had not expropriated a piece of real estate for 27 years since the expropriation had first been approved in a zoning plan. The court ruled that a fair balance must exist between protecting individual property rights and the public interest. The Constitutional Court ruled the balance had deteriorated in this case.

In the case at hand, the real estate was allocated as a road in zoning plans produced in August 1989 and February 2004. However, no expropriation process actually occurred during the following 27 years.

The Constitutional Court noted the following points in its reasoning:

- Property rights (Article 35 of the Constitution) are not unlimited. Rather, the Constitution contemplates restricting this right by law and for the public interest.
- The principles for restricting fundamental rights and freedoms (Article 13 of the Constitution) must be considered when interfering with the property rights. Accordingly, an interference with property rights must:
 - Be regulated by law.
 - Support the public interest.
 - Be proportional.
- According to the principle of proportionality, there should be a reasonable degree of fairness between the purpose of the intervention by public authorities and the means used to achieve this objective. Making this assessment should consider:
 - Convenience.
 - Necessity.
 - Proportionality.
- Legislators envisaged expropriations to be completed within five years. Property owners may be expected to bear the restrictions for a reasonable period of time in order to achieve such public interests.
- According to 2016 amendments to the Expropriation Law Number 3194 and an earlier decision from the Council of State, failure to expropriate immovable property which had been allocated to the public service in development plans within five years of approval results in uncertainty for the use of property rights.

Please see this [link](#) for the full text of the Constitutional Court's decision dated 20 September 2018 and numbered 2017/24715 which was published in Official Gazette number 30567 on 16 October 2018 (only available in Turkish).

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