

Turkish Constitutional Court: Imposing a Preliminary Injunction for an Unreasonable Time Violates the Right to Property

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Turkish Constitutional Court recently ruled that imposing a preliminary injunction on the applicant's immovable property for 19 years violates the right to property.

The decision relates to an application in which the applicant alleged a violation of the property right due to the imposition of a preliminary injunction for an unreasonable length of time in a case initiated against the legator and later participated by the heirs.

In the present case,

- On 21 January 1998, deed cancellation and registration cases were filed against the applicant's legator by the former owners of the immovable subject to the dispute.
- Upon plaintiffs' request, the court decided to impose a preliminary injunction on the immovable property on 20 May 1998.
- The legator has passed away while the litigation was pending, and the heirs participated in the proceedings instead.
- The case was rejected in 2006. However, the court did not rule any judgment relating to the preliminary injunction in its decision.
- Then this decision has been appealed before and reversed by the Court of Cassation. The first instance court complied with the decision of reversal and the proceedings continued. In the end, the first instance court rejected the case once more yet did not include any ruling relating to the preliminary injunction. This decision was approved by the Court of Cassation. Subsequently, the plaintiffs requested the revision of the decision as the last appellate stage. The Court of Cassation rejected the revision request and first instance court's ruling became final and binding on 18 April 2017. The preliminary injunction was not abolished until 18 May 2017.
- The applicant applied to the Turkish Constitutional Court. Turkish Constitutional Court decided that imposing a preliminary injunction on the applicant's immovable property for an unreasonable length of time would amount to a disproportionate interference. The Constitutional Court stated that since the preliminary injunction initiated against the legator and continued by the heirs, legator's ownership period should also be counted when assessing the length of the injunction period. Furthermore, the Constitutional Court also pointed out that the state is under affirmative obligations to take active actions in order to protect the property right effectively. The state has negative responsibilities not to interfere with the rights as well. Therefore, the Constitutional Court detected that the negative effects imposed on the applicant due to prolonged judgment constituted a breach of state's affirmative obligation.
- Consequently, the Constitutional Court decided on the violation to the property right, and ruled for compensation amounting net TRY 6,000 for the applicant's moral damages.

Please see this [link](#) for the full text of the Turkish Constitutional Court's decision, dated 23 July 2020 and numbered 2017/26532 published in the Official Gazette dated 10 September 2020 and numbered 31240 (only available in Turkish).

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