

## Turkish Constitutional Court: Long-Term Continuation of Provisional Attachment Breaches Property Rights

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Turkish Constitutional Court ruled that, with its decision number 2014/17196 Application on 25 October 2018 ("**Decision**"), a provisional attachment existing on an immovable for more than a decade causes more damage than a reasonable level, and there is no legal remedy for compensation for such damages arising from the public authorities' fault. Accordingly, the Court decided that the applicants' property rights protected under Article 35 of the Constitution had been violated.

A lawsuit for cancellation of disposal filed on 4 July 2007 with the allegation that an immovable was sold in bad faith, in order to prevent a creditor from receiving its receivable. Within the scope of this lawsuit, a provisional attachment has been imposed on the respective immovable on 10 July 2008.

Applicants demanded the removal of provisional attachment on 17 January 2014 by claiming that they have suffered from the long-term continuation of provisional attachment. The court indicated that trial took longer than normal; however, concluded that this does not necessitate removal of the provisional attachment.

Thereupon, applicants applied to the Constitutional Court and alleged that their property right was violated. They claimed the respective provisional attachment turned into a penalty rather than an interim measure.

The Constitutional Court noted that:

- The provisional attachment has been existing on the respective immovable for more than 10 years.
- This caused damage to applicants exceeding a reasonable level.
- There is no legal remedy for compensation of such damages arising from the fault of public authorities.

Further, the Constitutional Court stated that:

- The State has a broad discretionary power with respect to the limitation of judicial disposal of an immovable within the context of positive obligations.
- However; the implementation of these measures must not impose an excessive burden on proprietor nor cause an unproportionate intervention.
- Public authorities who put these measures into practice for protecting the rights of the counterparty of relevant legal relationship are required to consider the impacts of this measure on applicants' property right.

Consequently, the Constitutional Court decided that the provisional attachment placed an excessive and extraordinary burden on the applicants and therefore applicants' property right had been violated.

Please see this [link](#) for the full text of the Decision (only available in Turkish).

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