

Turkish Constitutional Court: Municipality Re-Zoning and Failing to Return Property Gifted for Specific Purposes Breaches Constitutional Property Rights

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Turkey's Constitutional Court recently considered circumstances where an applicant had gifted land to the local municipality for road construction, without receiving compensation. The municipality later re-zoned the property as a residential area, merging it with another land parcel in the process. The Constitutional Court ruled the municipality had breached the applicant's constitutional property rights by failing to return the land, sending the matter back for a re-trial. It held that, in these circumstances, the burden imposed by the municipality's failure to return the property outweighs public interests.

The applicant filed a civil law suit against the municipality, seeking to cancel registration for the re-zoned and merged property, as well as other remedies. However, the First Instance Court rejected the applicant's claim, stating that:

- Title or price claims cannot be made for property allocated for public services and facilities, which was transferred with the previous owner's consent (Article 35, Expropriation Law)
- Municipalities are entitled to transfer the properties in their development plans to real persons (Article 18, Construction Law).

The applicant appealed the case to the Constitutional Court, claiming a breach of their property rights under Article 35 of the Constitution. The Constitutional Court held the municipality had breached the applicant's constitutional rights by failing to return the property.

It sent the matter back to the First Instance Court for a re-trial, based on the following reasoning:

- The legitimate expectation to acquire property is within the scope of the right to acquire property, so is protected under the Constitution.
- The applicant holds a legitimate expectation to receive their gift back, if it was not used for the original donation purposes (Article 244, Code of Obligations numbered 818).
- The land was donated on the condition it would be used for a road.
- Re-zoning the land into a housing area should be considered as an intervention into beneficial property ownership rights.
- Statutory basis exists for intervention into beneficial property ownership rights (Expropriation Law; Construction Law).
- A reasonable balance must be found between:
 - Public interests.
 - Protecting private property rights.

- In these circumstances, protecting the applicant's individual constitutional property right should take priority.

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

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