

Turkish Constitutional Court: Refusal to Return the Property to its Previous Owner following Revision in Zoning Plan Means Disproportionality between Public Interest and Protection of Property Right, and is Unconstitutional

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Turkish Constitutional Court stated that the municipality's refusal to return the ownership of the property assigned for public interest following the revision in the zoning plan violates the right to property.

In the concrete case,

- After applying to the municipality to obtain construction permit within the territory of its property, Özel İstanbul Arel E?itim Kurumlar? Anonim ?irketi (the "**Applicant**") assigned a part of the property for road construction, without receiving any compensation.
- Since that time, the immovable has not been used for 13 years. At the end of 13 years, the area has been reserved as a special cultural facility, as per a re-zoning plan.
- Hereupon, the Applicant reapplied to the municipality to obtain a construction permit for the assigned part of the property. However, the municipality allowed such transfer only in case of acquisition of such part of property against a consideration.

Upon the refusal of its request to obtain a construction permit for the assigned area without any payment, the Applicant filed a claim requesting the annulment of the title deed and registration of the immovable in his name before Bakırköy 8th Civil Court. Upon the acceptance of the relevant case,

Upon the appeal made by the municipality, the first-instance court's decision has been revoked.

- The first instance court examined the case for the second time and rejected the case.
- The rejection became final and binding upon confirmation by Court of Cassation.

The Applicant applied to the Turkish Constitutional Court following the finalization of the decision and alleged that:

- The right of property has been breached due to the refusal of returning the relevant property,
- The right to a trial within a reasonable time has been breached due to the lengthy trial period.

Upon evaluation, the Turkish Constitutional Court underlined that,

- Violation of the right to property may occur as an intervention with the right to peaceful enjoyment of property, as well as deprivation of property,
- The intervention should comply with the legality, just cause and proportionality principles as per article 13 of the Constitution,
- It is not enough for an administrative act to have abstract public interest, but the realization of the interest is expected as well.

Consequently, the Court decided that

- The fact that the immovable has not been used in line with the purpose of assignment for 13 years, has eliminated the purpose of the relevant public interest,
- The intervention imposed an excessive and extraordinary burden on the Applicant,
- The reasonable balance between public interests and the Applicant's property right has deteriorated against the Applicant.

In the light of these assessments, the Turkish Constitutional Court ruled that the right of property guaranteed under article 35 of the Constitution is violated.

On the other hand, Turkish Constitutional Court decided that the Applicant's claim with regards to the violation of his right to a trial within a reasonable time is inadmissible since the Applicant did not exhaust the remedy of compensation through the Presidency of Commission of Human Rights of the Ministry of Justice.

Please see this [link](#) for the full text of the decision of the Turkish Constitutional Court's decision, dated 29 May 2019, numbered 2016/3592, published in the Official Gazette dated 18 July 2019 and numbered 30835 (only available in Turkish).

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