

Turkish Constitutional Court: Rejection of the Case on the Grounds of the Lack of Capacity to Sue and Applicants' Interest by Means of Categorical Approach of the Court, Violates the Right of Access to Court

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The Constitutional Court ruled that the rejection of the case regarding the cancellation of the decision of *EIA is not required* dated 21 March 2008 on the grounds of the lack of capacity to sue and interest of the applicants' by means of categorical approach of Aydın 2nd Administrative Court violates the right of access to the court.

In the present case,

- It has been decided for urgent expropriation of the immovable properties of the applicants in the Savuca district of Söke sub-province of Aydın province for the purpose of the construction of Çatalbük Wind Power Plant (WPP) Generation Facility by the decision of the Council of Ministers dated 22 September 2014 numbered 2014/6820.
- A case was filed before the Council of State with the request of the applicants to cancel the relevant decision of the Council of Ministers. 6th Chamber of the Council of State ruled the cancellation of the proceedings due to the fact that the urgent expropriation procedure was not executed, and the price determination and the registration cases were not filed before the civil court.
- Following the applications made by the applicants, it was understood that the decision of *EIA is not required* has been rendered for the Söke- Çatalbük WPP Project (Project-1) and Çatalbük WPP Project (Project-2).
- Separate cases were filed by the applicants with the request of the cancellation of decisions of *EIA is not required*, stating that there are vast number of WPP projects that the potential of the Aegean Region cannot bear, the immovable properties close to the project area comprises of cotton fields and olive groves and that the natural / ecological environment would be damaged due to the project.
- The case was rejected in terms of capacity on the grounds that applicants' immovables were not covered by the WPP project and that being a citizen or an individual would not be sufficient for the capacity to sue against an administrative action. The decision has been approved by the decision dated 6 April 2016 of 14th Chamber of the Council of State. Thereupon, the applicants filed individual applications.

The Constitutional Court stated that the right to a fair trial would also be applied to the proceedings regarding the resolution of a person's civil rights and obligations yet, determined that there should be a right or at least a defensible basis to be applied to civil matters. In the present case, the Constitutional Court found that the applicants' certain civil rights, particularly property right, were affected due to the relevant action.

The Constitutional Court concluded that:

- The failure to conduct substantial examination of the dispute constituted an intervention to the applicants' right of access to court in the case filed with the request to cancel the decision of the *EIA not required* for the WPP generation facility planned to be built very close to the area where the applicants' immovable property is located.
- The condition of interest is one of the elements of the capacity to sue against an administrative action and hence the intervention had a legal basis,
- The legal purpose is present since it is a procedural rule regarding administrative procedure requiring not to conduct substantial examination when the claimant does not have interest which prevents both the judiciary and the administration from being constantly and unnecessarily being busy and unable to work, and

- The intervention to the applicants' right of access to court is disproportionate as it rendered impossible for people who have the potential to be affected by the project to file a case by stating the decision of Aydın 2nd Administrative Court involves a categorical approach that those who do not own a property in the project site cannot take action against the project, regardless of the subjective conditions such as the closeness of the claimant's properties to the project site or the purpose of use.

In this regard, the Court ruled that the rejection of the case in terms of capacity violated the applicants' right of access to the court. As regards the applicants' claims regarding the necessity to execute EIA process for each project, it is not necessary to evaluate separately, since it was concluded that the decision subject to the application violated the right of access to court under Article 36 of the Constitution.

Please see this [link](#) for the full text of the decision of the Turkish Constitutional Court's decision, dated 5 March 2020, numbered 2016/13846 published in the Official Gazette dated 12 May 2020 and numbered 31125(only available in Turkish).

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