

Turkish Constitutional Court: Removing a Portion of the Main Immovable Property from the Land Register without Paying a Fee after Special Parceling does not Violate the Right to Property

8 May 2020

Turkish Constitutional Court recently considered a claim arising from removing two parcels from the land registry without paying a fee after special parceling. Consequently, the court declared the claim manifestly ill-founded and rejected it.

In the present case,

- The applicants are the heirs of the property owner at the time of special parceling.
- The real estate subject to the application was subjected to special parceling twice in 1970. Two of these parcels are registered on behalf of the deceased Hüseyin Poyraz; however, were turned into roads by the Municipality of Karacabey.
- The deceased filed the lawsuit claiming expropriation price and adequate pay since the Municipality confiscated the land without expropriating.
- The court of the first instance decided to leave the title of the parcels as a road in return for the expropriation fee and adequate pay to be paid to the deceased.
- The decision was appealed by the defendant's administration. Following that, the Court of Cassation overturned the decision based on the assumption that parcels subject to the case were left as a road to reach the other parcels. Furthermore, the Court of Cassation decided that registration of these places in the name of the person in the title deed will not have any legal consequences.
- The applicants made an individual application by claiming that a part of the immovable was left to the public use as a development readjustment share; however, removal of the parcels formed in the second parcel from the land register had no legal basis. Accordingly, they argued that this situation violates the right to access the court and the right to property.

The Constitutional Court set forth that interference with the right to property can only be legitimate if it complies with the principles of legality, public interest, and proportionality. The court also stated that the principle of proportionality among these criteria consists of three sub-principles: convenience, necessity, and proportionality.

Accordingly, the Constitutional Court stated that;

- The relevant intervention was carried out within the scope of article 35 of the Expropriation Law and in the present case, the expropriation subject to the case functions as a gate to the remaining parcels within the residential area. Therefore, it satisfied the criteria of legality and public interest,
- In terms of proportionality, there should be a fair balance between the public interest in the restriction of the property right of individuals, and the individuals' rights. This fair balance will be disrupted if the applicant is "found to have endured an excessive burden",
- Even though the conversion of the real estate into the road constitutes an interference to the right to property, the parceling was made upon the request of the applicant for economic benefit. Furthermore, the applicant could foresee this parceling could not have been made without constructing a road,
- It is not possible to state that the intervention placed an excessive burden on the applicant. There was no violation of the right to property, given that the applicant benefited from the parcel made in line with his own request.

Please see this [link](#) for the full text of the decision of the Turkish Constitutional Court's decision, dated 15 January 2020, numbered 2017/37952 published in the Official Gazette dated 12 March 2020 and numbered 31066 (only available in Turkish).

Related Attorneys

- [NEJLA AYDIN ÖZER](#)
- [SEV? ?SLAMAGEÇ](#)

Moroglu Arseven | www.morogluarseven.com