

Turkish Constitutional Court Ruled that Non-granting of Certificate of Inheritance due to Absence of Reciprocity Between Countries Constitutes a Breach of the Property Right

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Turkish Constitutional Court recently ruled that non-granting of the certificate of inheritance to applicants who have Syria and Hashemite Kingdom citizenship due to the absence of reciprocity between countries constitutes a violation of the property right.

The application is concerning the allegation of violation of property rights due to the non-granting of a certificate of inheritance as there is no reciprocity between countries.

In the present case, Syrian and Hashemite citizen applicants filed a lawsuit before Bakırköy 11th Court of First Instance in 2010 on the grounds of confiscation of their immovable property in Zeytinburnu, İstanbul without an expropriation decision. The court asked for the submission of a certificate of inheritance. Therewith the applicants filed a lawsuit before Bakırköy 10th Court of Peace on 1 March 2010 and demanded issuance of a certificate of inheritance on behalf of them and presented to the file their certificate of inheritance drafted by Aleppo Court of Sheria on 18 April 2004. The case was rejected on 29 December 2010 due to the lack of a reciprocal agreement between Turkey and Syria.

After the rejection decision, applicants appealed before the Court of Cassation. Court of Cassation approved the decision of the Court of Peace. Upon the approval decision of the Court of Cassation, applicants applied to the Turkish Constitutional Court.

Turkish Constitutional Court stated in its reasoned decision that there are no legal grounds in either court's decision of non-granting of the certificate of inheritance and further evaluated that *"first instance court could not establish a reasonable and sufficient justification for not granting the certificate of inheritance to the applicants stating that there is no reciprocity by departing from the established case law"* and argued that *"there is no foreseeable legal ground for the breach of property rights of the applicants."*

Consequently, the Constitutional Court determined that the property right was violated due to the failure to issue a certificate of inheritance and that this violation was caused by a court decision and therefore decided to hold a retrial.

Please see this [link](#) for the full text of the decision of the Turkish Constitutional Court's decision, dated 2 June 2020, numbered 2017/16211 published in the Official Gazette dated 21 August 2020 and numbered 31205 (only available in Turkish).

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