

Turkish Constitutional Court Rules That Confiscation Without Expropriation Violates Property Rights

4 Feb 2019

The Turkish Constitutional Court recently ruled that building an energy transmission line on a part of the property of the applicant without expropriating, violates the constitutional property right.

The owner of the concerning land claimed that he was unable to conduct any further construction on his land due to the energy transmission line built by the administration. The applicant filed a compensation action against the administration claiming,

- the exact remuneration for the land part under the energy transmission line, and
- compensation for the decrease in the value of the immovable.

The court of first instance decided to establish and register a right of easement for the defendant administration and ruled on a compensation in favour of the applicant.

The Turkish Constitutional Court noted the following reasons regarding the unlawful and non-procedural violation of the right of property:

- The property rights stipulated under Article 35 of the Constitution are not unlimited. Rather, such rights can be restricted only by law and for the public good.
- Property rights include not only the land itself, but also the airspace above the land and the earth below it. Building an energy transmission line over the applicant's immovable property violates the property right.
- Confiscation of the airspace above the land, as it is with the case before the Court, results in the partial deprivation of the property.
- Fundamental rights and liberties stipulated under Article 13 of the Constitution can only be restricted by law, if necessary for the public interest and in accordance with the principle of proportionality.
- According to the Article 46 of the Constitution the following conditions must be met for expropriation:
 - It must be for the purposes of the public interest.
 - Procedures and rules determined under law must be complied with.
 - The actual price for the expropriation must be paid in advance and in cash.
- The Court ruled that the expropriation price was not paid in advance and the procedure for expropriation dictated under the Law on Expropriation number 2942 ("**Law**") has not been adopted. This leads to confiscation without expropriation and is against the Constitution and the Law numbered 2942, resulting in unpredictable and arbitrary practices of the administration.

On the other hand, the Constitutional Court ruled against the claim that the part of the immovable below the energy transmission line is completely unusable and ruled that given the fact that the immovable is still registered on behalf of the applicant, payment of the easement price constitutes an appropriate consideration.

However, the Constitutional Court also stated that the current practice of only enacting a material compensation equivalent to the expropriation price and not implementing any other sanction is a structural issue that may result in administrations opting for confiscation without expropriation.

Please see this [link](#) for the full text of the Constitutional Court's decision dated 25 October 2018 number 2015/12554, published in the Official Gazette number 30629 dated 18 December 2018 (only available in Turkish).

Related Practices

- [Public Procurement and Government Contracts](#)
-

Related Attorneys

- [BENAN ARSEVEN](#)
-

Moroglu Arseven | www.morogluarseven.com