

Turkish Constitutional Court: Ruling Imposing Proportional Attorney Fees Based Upon Legislation not in Effect at The Time of The Ruling was in Violation of Applicant's Constitutional Right of due Process

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The Turkish Constitutional Court (the "**TCC**") ruled that the trial court's ruling imposing proportional attorney fees based upon legislation not in effect at the time of the ruling was in violation of the applicant's constitutional right of due process.

In the case at hand, applicant-owner (the "Applicant") filed in the trial court a claim for damages in the amount of TRY 1.000, for confiscation without expropriation of certain real property, and without prejudice to his right to any surplus.

During the proceedings, Applicant, based upon an expert's report, amended the claim to state damages of TRY 174.150. Interpreting the same expert report, the trial court, in a decision dated 13 November 2014, granted in part the relief requested by Applicant; awarding damages of TRY 51.988, and ordering Applicant to pay fixed attorney fees in the amount of TRY 1.500.

On appeal of both parties, the Court of Cassation upheld the trial court's decision only as to damages. As to attorney fees, the Court of Cassation explained that legislation stipulating payment of fixed attorney fees attributable to denied claims in lawsuits filed for confiscation without expropriation was annulled by the TCC's decision dated 13 November 2014, and numbered 2013/95 E., 2014/176 K., published on the Official Gazette dated 13 March 2015, and numbered 29294; and, accordingly, applicant is liable for proportional attorney fees, attributable to the denied parts of his claim, in the amount of TRY 12.172,86.

Applicant appealed to the TCC. The grounds for appeal were as follows: Applicant amended his damages claim in the trial court based upon legislation requiring payment of fixed attorney's fee in lawsuits filed for confiscation without expropriation, and the annulment cited by the Court of Cassation occurred after the trial court's decision; accordingly, the Court of Cassation's decision to impose proportional attorney fees of TRY 12.172,96, was in violation of Applicant's constitutional right to due process.

The TCC ruled in Applicant's favor, finding that the legislation upon which the trial court based its ruling, requiring proportional attorney fees in lawsuits filed for confiscation without expropriation was not in force at the time of the trial court's ruling, which, therefore, lacked a basis in statute, and violated applicants constitutional right to due process under Article 36 of the Constitution of the Republic of Turkey.

Please see this [link](#) for the full text of the decision of the Turkish Constitutional Court's decision, dated 29 September 2020, numbered 2017/5056 published in the Official Gazette dated 18 November 2020 and numbered 31308 (only available in Turkish).

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