

Turkish Constitutional Court: The Crossover Bridge Causing Decrease in Immovable's Value Violates the Right to Property

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The Turkish Constitutional Court ruled that the crossover bridge built near an immovable decreases the immovable's value due to noise pollution, and therefore violates the owner's right to property.

The applicant applied to the General Directorate of Highways for compensation of her loss due to adverse effects incurred by her immovable as a result of the crossover bridge built near her immovable. Her application was rejected so she filed a lawsuit before the administrative court.

The applicant claimed pecuniary compensation with legal interest starting from the date of application to the administration alleging that the noise pollution has increased and the view of her immovable was blocked because of the crossover bridge.

The administrative court dismissed the case on the following grounds:

- The expert report obtained during trial determined that the view of the independent section subject to the case was not blocked and that noise pollution exposure will fairly increase; therefore the immovable's value will decrease by 10%. However, since the respective loss is valid for owners of all workplaces and flats located on the same road; the applicant must bear this general public burden as other owners in accordance with the principle of equality.
- Considering that the applicant could benefit from transportation opportunities created by the new crossover bridge, the respective crossover bridge leads no public burden. Therefore, there is no pecuniary damage incurred by the applicant, who is also benefiting from this public service.

The applicant's appeal against this decision was rejected and consequently, the applicant applied to the Turkish Constitutional Court.

As a result of the examination, the Constitutional Court stated that;

- Constructions by the administration such as new roads, crossovers or bridges for the organization of traffic have a legitimate purpose serving to public benefit,
- The state has positive obligations with respect to the protection of the right to property as per articles 5 and 35 of the Turkish Constitution,
- Within this context; in case of interference to the right to property, the state is responsible for reinstating adverse effects of such interference on the owner if possible or, otherwise, for compensating the owner's damages and losses.

Within this context; the Constitutional Court decided that the verdict of the administrative court, requiring the applicant to bear the loss in her immovable as a result of the construction of the crossover bridge, has no legal basis and that the loss of the owner must be compensated in the light of the state's positive obligations regarding protection of the right to property.

Please see this [link](#) for the full text of the Constitutional Court's decision dated 3 July 2019 and numbered 2016/69236, which was published in Official Gazette numbered 30848 on 31 July 2019 (only available in Turkish).

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