

Turkish Constitutional Court: Turkish Court of Appeal Derogating From its Jurisprudence without Providing Legal Grounds Violates the Property Right

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The Turkish Constitutional Court recently ruled that the property right and the right to a fair trial are violated due to legal uncertainty when Turkish Court of Appeal derogates from its jurisprudence without providing legal grounds.

Pursuant to the application, in summary, the applicant filed an action for annulment and registration for the acquisition of the immovable claiming that the owner of the property was not certain.

In summary, the court rejected the applicant's claim to acquire an immovable by stating that;

- The immovable's title deed owner was clearly understood from the cadastral record.
- Since the term "*dead*" in the second paragraph of Article 713 of the Turkish Civil Code ("**Civil Code**") was abrogated, acquisition of immovables by acquisitive prescription is no longer possible for immovables, whose owner is certified as dead 20 years before the date of the application for acquisition.

The applicant applied to the Constitutional Court with the following claims:

- The Article 713/2 of the Civil Code, which has been abrogated by the Constitutional Court on 17 March 2011 should not be applied in terms of time to the concrete case in accordance with the case-law of the Court of Appeal.
- The fact that the owner died 20 years ago should be considered in the initial submission.
- The decisions made without consideration of the above-mentioned facts violated his property rights.
- The judgment of the first instance court breaches the Court of Appeal's jurisprudence.

As a response, the Constitutional Court ruled that:

- The word "*dead*" in the second paragraph of Article 713 of the Civil Code was abrogated by the Constitutional Court's decision dated 17 March 2011. Effects of the decision need to be discussed in respect of persons who acquire the property on the basis of the aforementioned provision.
- The Turkish constitutional system adopts the non-retroactivity of annulment decisions to avoid confusion and to enforce the principle of "*legal reliability*".
- Even though the fact that the Court of Appeal changed its jurisprudence alone cannot be regarded as a violation of the right to a fair trial, it should be considered in the case at hand that the Court of Appeal continued its outdated jurisprudence in its decisions rendered after the change in jurisprudence.
- No mechanism has been implemented to cure the effects of the difference in jurisprudence.
- A consistent and uniform application of the jurisprudence before the Court of Appeal cannot be achieved. This contradicts the principles of legal certainty and predictability as well as undermines the trust of individuals in the judicial system and court decisions.

Accordingly, the Constitutional Court ruled that the Court of Appeal derogating from its jurisprudence without providing legal grounds causes legal uncertainty and violates the property right and the right to a fair trial.

Please see this [link](#) for the full text of the Turkish Constitutional Court's decision dated 22 January 2019 and numbered 2015/17453 which was published in the Official Gazette number 30684 on 12 February 2019 (only

available in Turkish).

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