



TURKISH CONSTITUTIONAL COURT ANNULLED A KEY PROVISION UNDER THE EXPROPRIATION LAW

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Seizure without expropriation is a Turkey specific concept resulting from extra-legal expropriation practices of the Turkish administration. This arises when the administration (i) constructs a structure (e.g., bridge, road etc.) on a land without carrying out the expropriation procedures; or (ii) effectively prevents the landlord from exercising his rights by not implementing the expropriation decisions required under the zoning plans. Under the Turkish precedents, such landlord can claim either (i) the market value of his land; or (ii) the losses he suffers due to the seizure.

Provisional Article 14

Under Article 367 the Civil Procedure Code No. 6100, the judgments concerning the rights in rem (e.g., ownership rights) of a land shall not be enforced until such judgement becomes final (e.g., after the appeal procedures etc.). The Court of Cassation, however, had previously ruled that Article 367 does not apply to the seizure without expropriation cases, and the landlords may immediately enforce the sums payable by the administration. In response to these precedents, the Turkish legislator introduced Provisional Article 14 to the Expropriation Law No. 2942. This Article provided that a landlord cannot enforce the judgments regarding the seizure without expropriation cases, unless and until it becomes final.

Annulment Decision

Turkish Constitutional Court annulled the Provisional Article 14 with its decision published in the Official Gazette on 7 May 2021¹. In its reasoning, the court accepted that this Article serves for the public interest as it aims to maintain the public funds and facilitate the continuity of the public services. However, having noted that the administration could intervene in the ownership rights only in exceptional cases, the court concluded that the Article caused an exorbitant limitation to the landlords' constitutional rights to have a fair trial and ownership. This is because, due to Provisional Article 14, the landlords are deprived of all remedies in the circumstances where their constitutional rights have already been hindered. The Court thus declared Article 14 unconstitutional, since, on balance, the landlords' interests outweigh the public interest under Article 14.

Conclusion

The annulment decision has two practical consequences in terms of the seizure without expropriation cases. First, the landlords are now able to enforce a court of first instance's judgement without the need to await the final judgement. Second, the enforcement proceedings, which was suspended due to the ongoing appeal proceedings, should resume.

¹ The judgement of the Constitutional Court No. 2019/89 E. 2021/10 K. and dated 4 February 2021.