



Turkish Constitutional Court Ruled that Prolonged Preliminary Injunction Violates Right to Property

On April 13, 2021, Turkish Constitutional Court [the “**Court**”] ruled that the applicant's right to property is violated because his assets have been restricted by a preliminary injunction for 15 years. The judgement emphasized that for a preliminary injunction restricting right to property to be deemed proportionate, proportionality should be established in terms of both the scope and the duration of the injunction.

Course of Events

In the lawsuit filed against the applicant on 23.05.2006 for the cancellation and registration of the title deed based on inheritor’s collusion, which is still pending, an preliminary injunction was also requested regarding his assets, and the district court accepted this request. As a result, the applicant’s right to dispose his assets have been restrained by a preliminary injunction since then.

The applicant alleged that the preliminary injunction on his immovable properties has been effective since 2006, that the proceedings have not been concluded yet, and that his right to property has been violated given that his right of disposition on the immovables has been restricted for too long.

Court’s Assessment

The Court emphasized that the administration has a wide discretion in taking necessary measures to secure a possible receivable and has the authority to limit the power of disposition on the property for a certain period within the scope of these measures, but the implementation of these measures should not impose an excessive burden on the property owner. That is to say, the public authorities applying measures to protect the rights of the other party in the respective relationship should also consider the effects of the relevant measures on the right to property, and the measures should not lead to a disproportionate intervention in terms of both duration and scope.

In this regard, the Court rules that the preliminary injunction on the applicant's immovables since 2006 exceeded the reasonable period of time, the measure limiting the right to property imposes an excessive burden on the applicant, and as a result, the right to property protected in Article 35 of the Constitution of the Republic of Turkey has been violated.

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