

General Scope of Expropriation and Its Process in Turkish Law

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In certain cases, geographical limitations and factors, such as the need for allowing energy production may lead governments to the takings of immovables and resources from private ownerships for the general public interest. The term, “takings” in Turkish law is referred to as “expropriation”.

Expropriation refers to the taking of the possession of ownership belonging to private person or establishing a right of servitude by the State and public legal persons for public interest, with a decision taken by authorities in accordance with the procedures stipulated by law for public interest.

Although the Expropriation Law, numbered 2942, which forms the legal basis for expropriation, allows it only for the State and public entities, through the enactment of special laws, expropriation for the benefit of real persons and corporations as well are made possible. Aid to investors in all aspects, especially in the acquisition of suitable geographic areas, are necessary with respect to the benefits provided by alternate and renewable energy resources to the national economy

The expropriation procedure, to the benefit of a private person, is subject to the normal expropriation procedure set forth by the Expropriation Law numbered 2942. The Expropriation Law foresees that applications, in order to execute the expropriation, shall be made by the private persons if it is performed for the benefit of the private persons and shall be made by the board of directors or administrative councils or authorized administrative organs if it is performed for the benefit of the legal persons, to the places that are competent for inspection. Therefore, expropriation authorizations, for the sake of the private persons, belong to the villages, ministries, private administrations or municipalities that the entities are bound according to their service areas.

Conditions for Expropriation

For the expropriation to take place, the administration action must be in line with the law according to its purpose, authorization, procedure, reason and subject of the action. In addition, pursuant to Expropriation Law numbered 2942, to mention a legal expropriation the followings are needed;

- a) There should be public services that the administrations obligated to carry out pursuant to the laws.
- b) The administration, by law, is required to gain full responsibility for public services or attempts.
- c) The expropriation subject needs to be an immovable.
- d) The required amount of payment must be secured.

- e) The required amount in return of the expropriation must be paid.

Procedure

The law has foreseen administrations to perform certain procedures before expropriation. In accordance, prior to expropriation; the determination of the immovables, the exposure of its legal status, and the declaration of tax value must be announced.

Determining the Value

After this process, the expropriation value through negotiations can be determined. While on the other hand, if an agreement cannot be achieved, the administration can file suit in the Civil Courts for the determination of the expropriation value. The administration claims the registry of the immovable's subject to expropriation on behalf of the administration, in exchange of the determined value and its payment in full or installments (if the conditions are met). In the first hearing, the judge first seeks that the parties come to an agreement on the value of the immovables. If the parties cannot come to an agreement, then the Court appoints experts to determine the value of the immovable subject to the expropriation. Finally, pursuant to the expert report, the Court decides the value.

The expropriation value is determined by considering all elements that may affect the value of the immovable, such as: the type of the immovable; the surface area of the immovable and the distance from all roads and other settlements; the distance from the City's town center where the immovable is located; and the distance from the immovable to tourism locations. If the immovable or resource to become expropriated is subject to town planning, then the value is calculated as its net income. If it is not subject to any zoning, then the value is calculated as the precedent sale value of non-personal use before the expropriation.

Expropriation of an Easement

As it is possible to expropriate the entire real property, it is also possible to expropriate some parts. Moreover, if it is decided that it is enough for the needs of the administration, by leaving the right to property on the original owner of the immovable, an easement right may be established on the immovable. In this case, although the transfer of right of property does not take place, the immovable loses its value due to the established easement right. In case of the establishment of the easement right, the value of the expropriation is determined by the detection of the value lost. In case of an establishment of the easement right by expropriation and when an energy transfer line or pipeline passes, the value of the easement right refers to the value lost on the whole immovable due to the establishment of the right of servitude.

Transfer of Registry

Whether the parties conflicts in accordance to the mentioned procedures above, the cost which will be determined by the Court will be deposited into a bank account on behalf of the property owner along with a presented receipt. Then, the immovable property's registration under the administration will be executed. The decision of the Court concerning the registry is final. The parties shall only appeal to decision regarding the value.

The expropriated immovable is registered to the Treasury at the end of the expropriation. The Energy Market Law gives the right of use of the immovable to the administrator who pays its fee. However, due to the changes in the Electric Market Law, public corporations that have the privilege to expropriate in the electric market get to register the immovable under their name instead of the Treasury.

Conclusion

The right to property is protected and instituted as fundamental right by the Constitution. As a result, it is possible to restrict expropriation to what is only necessary for the public good. In this respect, partial expropriation and servitudes of immovables are just as possible as its total expropriation.