

20.09.2000, E.1999/46, K.2000/25

Date : 20.09.2000
Number : E.1999/46, K.2000/25
Official Gazette : 04.10.2002, 24896
Subject : Weighing of interests, General interest, Municipalities, Other limitations, Municipality, property, confiscation.

Headnotes:

The terms the public interest, the social interest, the common interest and the general interest are used interchangeably and they indicate a common interest which is superior to an individual interest.

The exclusion of some municipal property from sequestration is not contrary to the Constitution and it does not constitute an infringement of the right to property since other municipal property that is not listed in the Law may be sequestrated.

Summary:

Küçükçekmece Enforcement and Bankruptcy Court applied to the Constitutional Court alleging that Article 82.1 of Law on Enforcement and Bankruptcy and Article 19.7 of the Law on Municipalities are contrary to the Constitution.

Article 82.1 of the Law on Execution and Bankruptcy provides that property belonging to the State and the property listed in related statutes may not be sequestrated. Article 19.7 of the Law on Municipalities indicates that one right of municipalities is that municipal taxes and fees, and property devoted to public services not be sequestrated.

The applicant Court claimed that these two provisions violated the right to property and were contrary to Article 35 of the Constitution (the right to property) and 138 of the Constitution (independence of courts).

Article 35 of the Constitution states "Everyone has the right to own and inherit property. These rights may be limited by law only in view of public interest". On the other hand, Article 13 of the Constitution envisages some provisions on the restriction of fundamental rights and freedoms.

The impugned provision limits the right to property since it states that non-rentable municipal property (i.e. unrented municipal property that is devoted to public services) may not be sequestrated. However, since it is possible that rentable municipal property may be sequestrated, then the right to property is not totally restricted. If municipal property devoted to continuing municipal services were

subject to sequestration, it would doubtlessly bring about unwanted results. The aim pursued in the impugned provision is the preference of public interest over that of individuals. It is possible to sequestrate municipal property other than the property listed in impugned provision.

Therefore, the impugned provisions are not contrary to Articles 13, 35 and 138 of the Constitution.

Mr Bumin, Mr Adali, Ms Kantarcioglu, Mr Ilicak and Mr Sönmez had dissenting opinions.

Supplementary information:

Case no. E.1999/46, K.2000/25.