



REPUBLIC OF TURKEY
CONSTITUTIONAL COURT

FIRST SECTION

DECISION

Application No: 2013/1205

Date of Decision: 17/9/2013

FIRST SECTION

DECISION

President : Serruh KALELİ
Members : Nuri NECİPOĞLU
Hicabi DURSUN
Erdal TERCAN
Zühtü ARSLAN
Rapporteur : Selami ER
Applicant : Hayrettin AKTAŞ
Counsel : Att. Barış KAŞKA

I. SUBJECT OF APPLICATION

1. The applicant asserted that his rights to a fair trial, property and inviolability of domicile were violated by stating that in the decision issued with regard to the case filed with the request for the determination and registry of the expropriation price of the immovable property expropriated by Beyoğlu Municipality, the expropriation price was determined as low, that the case which he filed with the request for the cancellation of the expropriation action was not made a dilatory issue, that he was not able to use his property due to the expropriation and that the decisions of the court did not have any justification.

II. APPLICATION PROCESS

2. The application was lodged on 1/2/2013 via the 7th Civil Court of First Instance of İzmir. As a result of the preliminary examination of the petition and annexes thereof as conducted in terms of administrative aspects, it was found out that there was no deficiency that would prevent referral thereof to the Commission.

3. It was decided on 6/5/2013 by the Second Commission of the First Section that as it was deemed necessary to take a principle decision in order for the application to be concluded, the admissibility examination be carried out by the Section, that the file be sent to the Section as per paragraph (3) of article 33 of the Internal Regulation of the Constitutional Court.

III. FACTS AND CASES

A. Facts

4. The relevant facts in the application petition are summarized as follows:

5. Tarlabası locality of Beyoğlu district of İstanbul province in which the immovable property that belongs to the applicant is also located was announced as an urban protection area in 1993 by the Board of Protection of Cultural and Natural Properties of İstanbul

numbered 1 which was established as per the Code of Protection of Cultural and Natural Properties dated 21/7/1983 and numbered 2863 and the framework of protection activities in the area was made conditional on a zoning plan to be prepared for the purpose of protection.

6. The area also including the immovable property that belongs to the applicant and has a size of 65 m² was determined as a restoration area through the Resolution of the Council of Ministers (RCM) dated 20/2/2006 and numbered 2006/10172 based on the Code on the Restoration, Protection, Revival and Use of Worn-Out Historical and Cultural Immovable Properties dated 16/6/2005 and numbered 5366.

7. Restoration activity was initiated in the mentioned area through the tender of restoration lodged on the date of 16/3/2007 within the framework of the procedures and principles which were unanimously ratified by Beyoğlu Municipal Council on the date of 10/11/2006.

8. Beyoğlu Municipality issued a decision of accelerated expropriation and made an appraisal performed with regard to the immovable property of the applicant based on the Code numbered 5366 and the RCM numbered 2006/10172 and wanted to come to an agreement by conveying its request for purchasing to the applicant.

9. Upon the fact that the applicant did not respond to the request for reconciliation, Beyoğlu Municipality filed a case for the appraisal and registration of the expropriation price before the 3rd Civil Court of First Instance of Beyoğlu on the date of 22/3/2010.

10. Within the process of the case, the applicant filed a case in administrative justice with the request for the cancellation of the decision of expropriation and requested from the 3rd Civil Court of First Instance of Beyoğlu to make the case which was being tried in administrative justice a dilatory issue.

11. The court made the price of the immovable property appraised by assigning an expert within the process of the case. The first expert determined the value of the immovable property as 70.282 TL through the precedents which the plaintiff, defendant and s/he determined in an *ex officio* fashion and as a result of the viewing which s/he carried out. The second expert who was assigned upon the objection of the parties determined the value of the immovable property as 60.494 TL through his/her report dated 13/10/2010. The court requested from the experts to prepare an additional report by considering the quality of the immovable property as a historical building and in the reports which were prepared accordingly, the first expert determined the value of the immovable property as 116.902 TL, the second expert as 99.613,15 TL.

12. Through its decision dated 4/8/2011 and numbered M.2010/116, D.2011/237, the court determined the expropriation price as 108.257,57 TL by considering the title deed record, diametric sketch, expropriation documents, precedent title deed records, viewing and expert reports and the depreciation of the building and decided that the immovable property be registered in the name of Beyoğlu Municipality.

13. The decision was appealed by the applicant and the administration, the 5th Civil Chamber of the Supreme Court of Appeals which made the examination of appeal approved the decision of the court of first instance through its decision dated 8/3/2012 and numbered M.2011/18331, D.2012/4342 on the ground that "*No inappropriateness was observed in the appraisal of the building by determining the superior and inferior characteristics of the expropriated immovable property and the precedent and making a comparison of them, by*

taking official unit prices as the basis and also by deducting the depreciation and in the issuing of the decision on the payment of the determined price to the defendant party by blocking it without waiting for the finalization of the judgment”.

14. The applicant's request for correction was also dismissed by the same chamber of the Supreme Court of Appeals with its decision dated 8/11/2012 and numbered M.2012/15326, D.2012/21993 and the decision became final on the same date. The finalized decision was notified to the applicant on the date of 4/1/2013 and the applicant lodged an individual application on the date of 1/2/2013 within the period of application of one month.

B. Relevant Law

15. Article 46 of the Constitution is as follows:

“When the public interest requires so, the State and public entities are entitled to completely or partly expropriate real estate under private ownership and establish administrative easement on them on the condition that their real value is paid in advance and in accordance with the principles and procedures set forth by law.

The expropriation compensation and the fee for increase as it is finally decided are paid in cash and in advance ...

...”

16. Article 63 of the Constitution is as follows:

“The State ensures the protection of historical, cultural and natural assets and takes supportive and promotive measures to this end.

The restrictions to be imposed on any of these assets and values which are subject to private ownership and the assistance and exemptions to be provided to right owners for this reason are regulated by law.”

17. Paragraph one of article 1 of the Code numbered 5366 with the side heading of *“Purpose and scope”* is as follows:

“The purpose of this Code is the fact that the regions which are registered and announced by the boards of protection of cultural and natural properties that are worn-out and are about to lose their characteristics as protection areas and the protection areas that belong to these regions are constructed again and restored in line with the development of the region, that houses, commercial, cultural, touristic and social reinforcement areas are created within these regions, that measures are taken against the risks of natural disasters, that historical and cultural immovable properties are restored, protected, revived and used by metropolitan municipalities, district and first tier municipalities within the borders of metropolitan municipalities, provincial, district municipalities and municipalities whose population is over 50.000 and by special provincial administrations outside the field of authority of these municipalities.”

18. Paragraph two of article 4 of the Code numbered 5366 with the side heading of *“Restriction of immovable property dispositions and expropriation”* is as follows:

“Negotiation shall be essential in the evacuation, demolition and expropriation of the buildings which are located in restoration areas. In cases where negotiation cannot be

ensured, the immovable properties which are owned by real and private law legal persons can be expropriated by the relevant special provincial administration and municipality. The expropriations to be made in accordance with this Code shall be considered to be an expropriation for the purpose of realizing the projects of settlement in paragraph two of article 3 of the Code of Expropriation numbered 2942. The actions of expropriation shall be carried out according to the provisions of the same article also for the immovable properties whose section for ownership is empty in the title deed and the immovable properties for which a trustee has been appointed, which are disputed, contested and on which all kinds of property rights and an incorporeal right have been established with regard to property. In the execution of the actions of expropriation, special provincial administrations and municipalities shall be authorized to make a certificate of inheritance issued, make a trustee appointed or carry out an action according to the last owner registered in the title deed."

19. Paragraph two of article 3 of the Code of Expropriation dated 4/11/1983 and numbered 2942 with the side heading of "Conditions of expropriation" is as follows:

"In the expropriations which are accepted by the Council of Ministers for the purpose of realizing large energy and irrigation projects and settlement projects, growing new forests, protecting shores and tourism, the amount of the expropriation to be paid to a real or private law legal person as shown in the General Budgetary Code of that year shall be paid in cash and in advance. This amount cannot be less than one sixth of the expropriation price. The expropriation prices which are higher than this amount shall be divided into equal installments on the condition that they are not less than the amount of advance payment and are paid together with their interests within five years at most. The highest interest limit prescribed for State debts shall apply on installments from the day following the date of advance payment."

20. The relevant paragraphs of Article 10 of the Code numbered 2942 with the side heading of "Determination of the price of expropriation by the court and registration of the immovable property in the name of the administration" are as follows:

" ...

In the event that the parties cannot agree over the price at the hearing held by the court, the judge shall carry out an on-spot viewing for the appraisal of the value of the immovable property through the experts stipulated in article 15 and all concerned parties by determining a date of within at least ten days and a date of hearing for more than thirty days later. In the viewing to be carried out, in order for the mukhtar of the village or quarter under which the place where the immovable property is located is affiliated to be present, an invitation shall also be issued for the mukhtar, it shall be ensured that s/he be present during the viewing and statement of the mukhtar shall also be taken.

The experts shall submit their reports indicating the value of the immovable property within fifteen days in line with the principles in article 11 by also considering the statement of the parties and other concerned parties. The court shall notify this report to the parties without waiting until the date of hearing. The judge shall summon the parties or their attorneys and experts to the hearing to be held. At this hearing, the oppositions, if any, of the parties against the expert reports shall be heard and the statements of the experts against these oppositions shall be taken.

In the event that the parties cannot agree over the price, if necessary, a new panel of experts shall be appointed by the judge on the condition that it will be concluded within fifteen days and the judge shall determine a fair and equitable price of expropriation by making use of the report or reports and statements of the parties and the experts. This price which is determined by the court is the price of expropriation of the immovable property, source or the

right of easement. The administration shall be granted with a period of fifteen days to deposit the amount over which the parties agree or, in the event that the parties fail to agree, the amount which is determined by the judge as the expropriation price or, in the event that the expropriation is carried out according to paragraph two of article 3 of this Code, then the first installment in cash and in advance into the bank specified in the invitation and notice to be made by the court according to article 10 in the name of the right holder or, if the right holder cannot be determined, in order for it to be given to the right holder who will appear in the future and to submit the receipt as to the effect that it has been deposited. In cases where deemed necessary, this period can be extended by the court for once only. In the event that a receipt indicating that the expropriation price has been deposited in the name of the right holder or, in the event that the right holder cannot be determined, that it has been blocked in order to be given to the right holder who will appear in the future is submitted by the administration, it shall be decided by the court that the immovable property be registered in the name of the administration and that the expropriation price be paid to the right holder and this decision shall be notified to the title deed office and the bank in which the money has been deposited. The ruling of registration shall be final and the rights of appeal of the parties as regards the price shall be reserved.

...

In the event that an action for annulment is filed by the right holders in administrative justice against the action of expropriation and a decision of stay of execution is delivered by the courts of administrative justice within the period stipulated in article 14, the case filed in administrative justice shall be accepted as a dilatory issue and an action shall be carried out according to the result thereof.

..."

21. Paragraph three of article 11 of the Code numbered 2942 with the side heading of "Principles of the determination of expropriation price" is as follows:

"As for the determination of the value of the immovable property, increases in value that the attempts of zoning and service which requires expropriation will cause and the profit that it will generate depending on the types of use envisaged for future shall not be taken into account."

22. Paragraph one of article 27 of the Code numbered 2942 with the side heading of "Accelerated expropriation" is as follows:

"As for the expropriation of the immovable properties which are required in cases where a resolution will be issued by the Council of Ministers on the need or urgency of the defense of the nation in the implementation of the Code of National Defense Obligations numbered 3634 or in extraordinary cases which are prescribed in special codes, on the condition that actions except for appraisal are completed later on, the value of that immovable property to be determined by experts who will be selected by the court upon the request of the relevant administration within the framework of the principles in article 10 and in accordance with article 15 can be deposited by the administration into the bank specified in the invitation and notice to be made according to article 10 in the name of the owner of the property and that immovable property can be confiscated."

IV. EXAMINATION AND JUSTIFICATION

23. The individual application of the applicant dated 1/2/2013 and numbered 2013/1205 was examined during the session held by the court on 17/9/2013 and the following were ordered and adjudged:

A. Claims of the Applicant

24. The applicant asserted that his rights to a fair trial, property and inviolability of domicile and article 63 of the Constitution were violated and requested that a material compensation of 1.082.570 TL, a moral compensation of 200.000 TL and the trial expenses that he had made be paid to him by stating that the tender lodged in terms of restoration activities performed by Beyoğlu Municipality within the scope of the restoration of cultural properties and within the framework of a project was kept secret, that the project was an unearned income project, that property owners were not included in the process, that the rights of property owners to restore their own properties through their own facilities were dispossessed of them, that the expropriation price was determined as low in the decision of accelerated expropriation issued in a way which was contrary to law and the decision issued in the case filed with the request for the determination and registry of the expropriation price of the immovable property which belonged to him, that the restoration project was ignored in the expert reports, that the precedents which he suggested were not taken into consideration, that the depreciations were determined as higher than what they should have been, that the case which he filed with the request for the cancellation of the action of expropriation was not made a dilatory issue, that the decisions of the courts did not have any justification and that he was not able to make use of his property due to the expropriation.

B. Evaluation

25. Paragraphs three and four of article 148 of the Constitution are as follows:

"...In order to make an application, ordinary legal remedies must be exhausted.

In individual application, examination cannot be done on matters that need to be taken into account in the legal remedy."

26. Paragraph (2) of article 45 of the Code on the Establishment and Trial Procedures of the Constitutional Court dated 30/11/2011 and numbered 6216 with the side heading of "Individual application right" is as follows:

"All of the administrative and judicial application remedies that have been prescribed in the code regarding the transaction, the act or the negligence that is alleged to have caused the violation must have been exhausted before making an individual application."

27. Paragraph (2) of article 48 of the Code numbered 6216 with the side heading of "The conditions and evaluation of admissibility of individual applications" is as follows:

"The Court, ... can decide on the inadmissibility of the applications which are clearly devoid of basis."

28. Paragraph (6) of article 49 of the Code numbered 6216 with the side heading of "Examination as regards the merits" is as follows:

"Examination of the sections of individual applications regarding a court decision shall be limited to whether or not a basic right has been violated and the determination of how such violation can be remedied. Examination on issues that have to be observed in legal remedies shall not be performed."

1. In Terms of the Applicant's Complaints Which He did not Make the Subject of a Case or Whose Case is being Tried

29. According to the provisions of paragraph three of article 148 of the Constitution and of paragraph (2) of article 45 of the Code numbered 6216, in order to be able to apply to the Constitutional Court via individual application, usual legal remedies must be exhausted. The respect to fundamental rights and freedoms is a constitutional obligation of all state organs, the correction of rights violations that emerge as a result of neglecting this obligation is the duty of administrative and judicial instances. It is essential that the claims to the effect that fundamental rights and freedoms have been violated be brought forward first before the courts of instance, that they be evaluated and resolved by these instances.

30. For this reason, individual application to the Constitutional Court is a legal remedy of secondary nature to be seized in the event that the alleged rights violations are not rectified by courts of instance. Due to the secondary nature of the individual application remedy, the ordinary legal remedies must be exhausted in order for an individual application be lodged at the Constitutional Court. In accordance with this principle, the applicant needs to primarily convey the complaint which she has filed before the Constitutional Court to the administrative and judicial authorities of venue within due period in accordance with the due procedure, to submit the information and evidence that she has about this subject within due period and to pay required attention to following her case and application in this process. (App. No: 2012/403, 26/3/2013, § 17).

31. The applicant asserts that his right to property and his freedom to claim rights were violated by stating that the tender lodged in terms of the restoration project performed by Beyoğlu Municipality in the region in which the immovable property that belonged to him was also located within the scope of the restoration of cultural properties and within the framework of a project was kept secret, that the project was an unearned income project, that property owners were not included in the process, that the rights of property owners to restore their own properties through their own facilities were dispossessed of them, that the decision of accelerated expropriation was issued in a way which was contrary to law .

32. It was necessary for the applicant to firstly state his complaints with regard to the project implemented in the region in which his own immovable was also located before the competent court of first instance of venue, in the event that he was not satisfied with the decisions of the court of first instance, to resort to the remedy of appeal within due time and in accordance with its procedure. The applicant did not submit any document indicating that he previously made the subject of a case his complaints with regard to the mentioned project, he only mentioned that he filed a case in administrative justice with the request for the cancellation of the decision of expropriation and that this case was going on. In this case, it cannot be said that the application remedies of the applicant have been exhausted in terms of his complaints with regard to the mentioned project.

33. Due to the reasons explained, as it is understood that an individual application was filed before all judicial application remedies prescribed in the code against the action which is the subject matter of the application were not exhausted, it should be decided that the application is inadmissible due to *“the fact that application remedies were not exhausted”* without examining it in terms of other conditions of admissibility.

2. In Terms of the Applicant's Complaints With Regard to the Result of the Case for the Determination of the Expropriation Price

34. The applicant asserted that his right to property and his freedom to claim rights were violated by stating that the expropriation price was determined as low in the decision

issued in the case filed with the request for the determination and registry of the expropriation price of the immovable property which belonged to him, that the restoration project was ignored in the expert reports, that the precedents which he suggested were not taken into consideration and that the depreciations were determined as higher than what they should have been, that the case which he filed with the request for the cancellation of the action of expropriation was not made a dilatory issue.

35. As the subject of the case was the determination of the price of the expropriated immovable property on the date of the case, the court did not take into consideration the matters which would increase the value of the immovable property in the future such as project except for this in accordance with article 11 of the Code numbered 2942.

36. The right to acquire the ownership of a property which a person does not own currently in a way which will also cover the increase in value for this property in the future is not within the concept of property stipulated and protected in the Constitution no matter how strong the interest of the person is in this matter. Unless an earning to be obtained in the future is acquired or there is a claim whose execution is possible for this earning, it cannot be considered as a property. (For the decision of the ECtHR in the same vein, see *Denimark Ltd v. the United Kingdom*, Application Number: 37660/97, 26/9/2000)

37. In this case, the essence of the applicant's complaints with regard to the right to property which he asserted in relation to the case for the determination of the expropriation price is related to the fact that the decision of the court was erroneous. In its current form, the applicant's complaint of the right to property is essentially related to the result of the decision of the court and is a complaint based on his complaint of the right to a fair trial. For this reason, it was not deemed necessary to conduct a separate examination in terms of the right to property.

38. In paragraph four of Article 148 of the Constitution and paragraph (6) of Article 49 of the Code numbered 6216, it is stated that the matters that need to be taken into account in the legal remedy in examinations as regards individual applications cannot be subjected to an examination; in paragraph (2) of article 48 of the Code numbered 6216, it is stated that a decision can be issued on the inadmissibility of the applications which are clearly devoid of basis by the Court.

39. It is clear that applications, which do not contain a claim of violation of a constitutional right, where it is simply requested that the decisions of the courts of instance be reexamined, are clearly devoid of basis and that they relate to matters, which are left outside the venue of the Court by the Constitution and the Code. (App. No: 2012/1056, 16/4/2013, § 34).

40. In accordance with the aforementioned rules, the certainty of the incidents which are made the subject matter of a case before the courts of instance, the evaluation of the evidence, the interpretation and implementation of legal rules and whether the consequence reached as regards the dispute by the courts of instance is fair in terms of merits or not cannot be a subject matter of the examination of an individual application. As long as the rights and freedoms stipulated in the Constitution are not violated and unless they contain any obvious arbitrariness, material and legal mistakes in decisions of courts of instance cannot be handled in the examination of an individual application either. In this framework, unless an obvious arbitrariness is present in the appreciation of the evidence by the courts of instance, the

Constitutional Court cannot intervene in this appreciation. (App. No: 2012/1027, 12/2/2013, § 26).

41. In the case which is the subject of the application, the Civil Court of First Instance conducted a viewing on the immovable property which was the subject of expropriation in accordance with article 10 of the Code numbered 2942, assigned an expert for the determination of the expropriation price, assigned a second expert upon the objection of the parties. The experts considered all precedents which the applicant and the administration showed; in contrary to the claims of the applicant, they just did not use the precedents which constituted a situation against him and had low values out of the precedents which the applicant showed by himself. Furthermore, the court requested additional reports from the experts by considering the quality of the immovable property as a historical building, determined the value by taking into consideration the quality of the immovable property as a historical building, the value of the precedent immovable properties, expert reports and depreciations. The court dismissed the request that the case for the cancellation of the action of expropriation be made a dilatory issue within its discretionary authority.

42. In the incident which is the subject matter of the application, the determination of the expropriation price, the method used in this determination, the determination of depreciations and whether or not another case should be made a dilatory issue are within the discretionary authority of the judge within the framework of the procedures which the law prescribes. Moreover, the fact that an increase which will occur in the value of an immovable property due to a project to be performed in the future is not taken into consideration in the determination of the expropriation price is a consequence which needs to be expected in the face of the clear provision of paragraph three of article 11 of the Code numbered 2942. Unless an obvious arbitrariness is present in the decisions that the courts of instance have issued in the case for the determination of the price of expropriation, the Constitutional Court cannot intervene in this discretion.

43. Due to the reasons explained, as it is understood that the claims of the applicant as regards the freedom to claim rights in relation to the case for the determination of the expropriation price are related to the matters which need to be taken into account in the legal remedy, that the decisions of the courts of instance do not contain any obvious arbitrariness either, it should be decided that the application is inadmissible due to the fact that "*it is clearly devoid of basis*" without examining it in terms of other conditions of admissibility.

3. In Terms of the Right to a Reasoned Decision

44. The applicant also asserted that the right to a fair trial was violated due to the fact that the decisions of the courts did not have any justification.

45. According to paragraph (2) of article 48 of the Code numbered 6216, it can be decided by the Court that the application which is clearly devoid of basis is inadmissible. Applications in which the applicant cannot prove his/her claims of violation, his/her claims are related to the matters which only need to be taken into consideration in the legal remedy, there is no intervention in fundamental rights or it is clear that the intervention is legitimate and applications which are composed of complicated or forced complaints can be considered to be clearly devoid of basis.

46. In the incident which is the subject matter of the application, in the justification of the Civil Court of First Instance, it was explained that tax statements and the unit prices of the precedent immovable properties were made to be brought, that a viewing was conducted in

the immovable property with the expert panel and that the expert made an appraisal, that upon objection, the second expert was assigned and the second viewing was conducted, that an additional report was taken from the experts by considering the quality of the immovable property as a historical building and that the appraisal was made according to this. The 5th Civil Chamber of the Supreme Court of Appeals which made the examination of appeal of the decision approved the decision of the court of first instance through its decision dated 8/3/2012 and numbered M.2011/18331, D.2012/4342 on the ground that *“No inappropriateness was observed in the appraisal of the building by determining the superior and inferior characteristics of the expropriated immovable property and the precedent and making a comparison of them, by taking official unit prices as the basis and also by deducting the depreciation and in the issuing of the decision on the payment of the determined price to the defendant party by blocking it without waiting for the finalization of the judgment”*.

47. Although the applicant asserted that the decisions of the courts did not have any justification, as it is seen that there was sufficient justification to have a judgment in both the decision of the court of first instance and that of the 5th Civil Chamber of the Supreme Court of Appeals which made the examination of appeal, it is clear that there is no violation in terms of the right to a reasoned decision.

48. Due to the reasons explained, as it is clear that there is no violation in terms of the applicant's claim of the right to a reasoned decision, it should be decided that the application is inadmissible due to *“the fact that it is clearly devoid of basis”* without examining it in terms of other conditions of admissibility.

4. In Terms of the Right to Inviolability of Domicile

49. It is stipulated under article 21 of the Constitution that no one's domicile can be violated, under article eight of the Convention that everyone has the right to respect for his private and family life, his home and his correspondence. The right to inviolability of domicile which is an element of the right to respect for private and family life stipulated in article eight of the Convention is included as an individual right in article 21 of the Constitution. For this reason, the right to inviolability of domicile included within the common field of protection of the Constitution and the Convention is among the rights which can be made the subject of an individual application.

50. The applicant asserted that his right to claim respect for his private life stipulated in the Convention was violated by stating that he and his family were thrown in the street through the action of eviction applied on him following the expropriation.

51. According to paragraph (2) of article 48 of the Code numbered 6216, it can be decided by the Court that the application which is clearly devoid of basis is inadmissible. Applications in which the applicant cannot prove his/her claims of violation, his/her claims are related to the matters which only need to be taken into consideration in the legal remedy, there is no intervention in fundamental rights or it is clear that the intervention is legitimate and applications which are composed of complicated or forced complaints can be considered to be clearly devoid of basis.

52. The region in which the immovable property that the applicant used as a house was also located was announced as an urban protection area by the Board of Protection of Cultural and Natural Properties of İstanbul numbered 1 in 1993 in accordance with the Code numbered 2863, then, it was determined as a restoration area through the Resolution of the Council of Ministers (RCM) dated 20/2/2006 based on the Code numbered 5366. Based on

these regulations, the tender of restoration was lodged within the framework of the procedures and principles which were unanimously ratified by Beyoğlu Municipal Council on the date of 10/11/2006 and many immovable properties including the immovable property which the applicant used as a house were expropriated. The action of expropriation performed was carried out in line with the current regulations and in accordance with its procedure, the price of expropriation was determined by the court and paid to the applicant.

53. The eviction of the applicant from the immovable property which he used as a house is a natural consequence of the action of expropriation performed. Although it is clear that the activity of expropriation and the action of eviction were an intervention in the property and inviolability of domicile of the applicant, it should be examined whether or not this intervention violated the applicant's right.

54. First of all, the intervention made in the house of the applicant was carried out based on the aforementioned codes and within the framework of the procedure prescribed in the Code numbered 2942. In this context, the intervention has a legal basis. Moreover, the intervention was carried out within the scope of a large restoration project with the purpose of protecting cultural and natural properties and through the decisions of accelerated expropriation which were taken for this legitimate purpose. Therefore, the intervention has a clear legitimate aim. Furthermore, as no agreement could be reached in terms of the price following the decision of expropriation, the price of expropriation which was determined through the decision of the court and in accordance with its procedure was paid to the applicant. As a result of the payment of the price of expropriation, a reasonable balance which needed to be struck between the public interest for the purpose of protecting cultural properties and the applicant's right to property was protected. In this case, it is seen that the intervention made is proportionate.

55. As the ownership of the immovable property which the applicant used as a house and which is the subject matter of the expropriation passed to Beyoğlu Municipality following the action of expropriation, the right to use depending on the right to property also passed to the mentioned Municipality. The eviction of the applicant from the immovable property which is the subject of the expropriation in order for Beyoğlu Municipality to restore and use it in accordance with the aim of expropriation is a natural consequence which needs to be expected out of the action of expropriation performed in line with the mentioned aim.

56. In conclusion, as the eviction of the applicant from the immovable property which he used as a house is a natural consequence that needs to be expected out of the action of expropriation performed and it is understood that the intervention made is not disproportionate, it is clear that there is no violation towards the applicant's right to inviolability of domicile.

57. Due to the reasons explained, as it is clear that there is no violation in terms of the applicant's claims of the right to inviolability of domicile, it should be decided that the application is inadmissible due to *"the fact that it is clearly devoid of basis"* without examining it in terms of other conditions of admissibility.

5. In Terms of Article 63 of the Constitution

58. According to the provisions of paragraph three of article 148 of the Constitution and paragraph (1) of article 45 of the Code numbered 6216, in order for the merits of an individual application made to the Constitutional Court to be examined, the right which is claimed to have been violated in by public power must fall within the scope of the European Convention on Human Rights (ECHR) and the additional protocols to which Turkey is a party, in addition to it being guaranteed in the Constitution. In other words, it is not possible to decide on the admissibility of an application which contains a claim of violation of a right that is outside the common field of protection of the Constitution and the ECHR (App. No: 2012/1049, 26/3/2013, § 18).

59. The applicant asserted that article 63 of the Constitution was violated through the expropriation and restoration of his immovable property which had the quality of a historical building within the scope of a project. The protection of historical, cultural and natural properties which the applicant specified in his application petition is imposed on the state as a duty in the Constitution and it is prescribed that the restrictions to be imposed on private property to this end will be regulated by law. As the regulation of an individual right is not included in this provision, is the right to the protection of historical, cultural and natural properties not included in the ECHR and the additional protocols thereto to which Turkey is a party, either.

60. Due to the reasons explained, as it is understood that the applicant's claims as to the effect that article 63 of the Constitution was violated remain outside the common field of protection of the Constitution and the ECHR, it should be decided that the application is inadmissible due to *"the lack of venue in terms of subject"* without it being examined in terms of other conditions of admissibility.

V. JUDGMENT

A. It is **UNANIMOUSLY** decided on 17/9/2013 that the application's

1- Parts relevant to the complaints with regard to the matters which are not made the subject of a case or whose case which is being tried is not concluded are **INADMISSIBLE** due to the fact that *"application remedies are not exhausted"*,

2- Parts relevant to his complaints as to the effect that his freedom to claim rights and right to property were violated with regard to the case for the determination of the price of expropriation and relevant to the right to a reasoned decision and right to inviolability of domicile are **INADMISSIBLE** due to the fact that *"they are clearly devoid of basis"*,

3- Parts relevant to article 63 of the Constitution are **INADMISSIBLE** due to *"the lack of venue in terms of subject"*,

B. That the trial expenses be left on the applicant.

President

Member

Member

Application Number : 2013/1205
Date of Decision: 17/9/2013

Serruh KALELİ

Nuri NECİPOĞLU

Hicabi DURSUN

Member
Erdal TERCAN

Member
Zühtü ARSLAN