

Legal Confiscating Based on Zoning Plan in Turkey

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SUMMARY

Right of ownership is the fundamental human right guaranteed by international conventions. This right is guaranteed by law in some countries in which the principles of private property is valid such as Turkey. Right of ownership can only be restricted by law in the name of public interest. However, the right of ownership of the immovable can be transferred to the public authority only for its price. In some cases, however, a real estate can be converted into a public service without expropriation. This process is called "confiscating without expropriation". This concept was introduced into the Turkish Legal System in 1956 by unauthorized conversion of the immovable property to the road. Today, especially in the planned area, there is a different type of confiscating without expropriation. As it is known, zoning plans are a public tool that reorganizes the properties in the name of public interest. However, the uncertainty in the implementation process of these plans negatively affects the parcel owners remaining in public use in the zoning plan. This is defined by the terminology "legal confiscating without expropriation". In this study, the subject is discussed in the light of Eurpoen Court of Human Right (ECHR) decisions and also Turkish judicial decisions. Which institutions are responsible for what kind of zoning functions were investigated. Mandatory and voluntary applications were compared. Conceptual visualizations were made on the subject. According to the results of the study, it should be stated that all public spaces in the zoning plan will cause not "legal confiscating without expropriation". The protected area, geological objectionable area, the parcels remaining in agricultural areas can be allocated as public areas in the zoning plan due to their location or characteristics. In these cases, there are no legal confiscating without expropriation. In terms of plan classification, the following explanation is made. Only in areas with a 1/1000 scale implementation zoning plan, the existence of legal confiscating without expropriation can be mentioned. Land readjustment should be made officially and urgently as a solution for solving the problem. Alternative models are also needed. Otherwise, public institutions will be subject to serious financial burdens. Granting zoning right to the cadastral parcels in the

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public areas in developmetn plan, granting all cadastral parcels in the plan the right to construction in certain amounts and development of zoning right transfer system can be given as

a few of the recommendations.

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