**Republic of Turkey**

**Energy Market Regulatory Authority (EMRA) – Department of Expropriation**

**Assessment of the Land Allocation of the Energy Projects in Turkey within the Frame of Human Rights and Social Challenges**

Energy has a critical role in the future of Turkey as well as other UN member countries. Great importance is attached to the fact that Turkey, which meets a large part of its energy need through imports, plans to use its own energy resources. Developed countries create their energy strategies by prioritizing local resources. Since Turkey is also making an effort in this direction, great steps have been taken towards the establishment of new electricity generation projects. Meeting the land needs of the facilities to be established for the realization of energy production is through expropriation.

The right to property is a Constitutional right in the Republic of Turkey. Expropriation practises are carried out according to Expropriation Law No. 2942 and land procurement transactions for electricity generation, natural gas distribution and land demands of oil markets are finalized by EMRA in Turkey. EMRA exercises its authority through the companies which it licences. The implementation is is realized in line with the Constitution, the framework of the law and other international agreements.

In this process, great attention is paid to the determination of the land price in accordance with the market conditions (real price), and efforts are made not to create any human rights violations. The authorities attach importance to the principle of equity for compensation. The rights of both the investor and the owner of the property are protected to the highest degree. The most significant issue is to fulfil the expropriation procedures by protecting the rights, rather than emphasizing the superior power of the State.

Expropriation procedures should be carried in line with Constitutions, laws, international agreements, and also in line with equity and non-violation of fundamental rights. The reason behind the intervention of the State using its authority on private property should be based on the real public interest. International development regarding the human rights should be followed and relevant laws should be updated accordingly.

**Republic of Turkey**

**Ministry of Agriculture and Forestry**

**General Directorate of the EU and Foreign Relations**

The rights of access to land of low-income and landless farmers are observed by the Ministry of Agriculture and Forestry. In this context, in land distribution and leasing transactions, agricultural lands whose ownership is registered in the name of the Treasury of State are monitored in the areas declared as “Implementation Zones” within the scope of Agricultural Reform Law No. 3083 on Land Arrangement in Irrigation Areas.

Land Distribution Projects have been implemented in many regions in order to bring these lands to agriculture production, and some of them are still in progress. It is aimed to make the farmers (who are without land or with little land) landholder with Treasury lands so that they can establish agricultural family businesses with sufficient income and thus they can operate the land efficiently in order to ensure the continuity of operation, prevent the fragmentation of agricultural land, increase agricultural production, develop employment opportunities and support/train the farmers.

**Republic of Turkey**

**Ministry of Justice**

**Department of Human Rights**

The Constitution of the Republic of Turkey, Turkish Criminal Law, Law on the Execution of Sentences and Security Measures and the Law on Human Rights and Equality Institution of Turkey involve regulations related to non-discrimination and equality. Human Rights and Equality Institution is authorized to investigate violations of non-discrimination principle and make conclusions/decisions. Furthermore, the Turkish Civil Code ensures women’s equal rights within the scope of law of inheritance and family law. Turkey discharges all its responsibilities related to protection of fundamental rights and freedoms. Legal regulations and innovations regarding the use and protection of the right to property and the prevention of violation of this right in Turkey are in line with the obligations which are expected to be realized by States, as indicated in the General Comment. The right to property is protected by the Constitution. This right may be limited by law only in view of public interest. The exercise of the right to property shall not contravene public interest. In the decisions of the ECHR, there are provisions which are similar to the regulations in Turkish domestic law regarding the right to property and limitation of this right (e.g. *Sporrong v. Lönnroth / Sweden*, No. 7151/75,23 23.09.1982).

Article 36 of the Turkish Constitution protects the access to justice. Everyone has the right of litigation either as plainitiff or defendant and the right to a fair trial before the courts through legitimate means and procedures. Article 40 states that everyone whose constitutional rights and freedoms have been violated has the right to request prompt access to the competent authorities.

Expropriation Law in Turkey intends to minimize the forfeiture of individuals stemming from expropriation. This Law is enshrined by the Article 46 of the Constitution.

*Article 46: (As amended on October 3, 2001; Act No. 4709) nThe State and public corporations shall be entitled, where the public interest requires, to expropriate privately owned real estate wholly or in part and impose administrative servitude on it, in accordance with the principles and procedures prescribed by law, provided that the actual compensation is paid in advance. The compensation for expropriation and the amount regarding its increase rendered by a final judgment shall be paid in cash and in advance. However, the procedure to be applied for compensation for expropriated land for the purposes of carrying out agriculture reform, major energy and irrigation projects, and housing and resettlement schemes, afforestation, and protecting the coasts, and tourism shall be regulated by law. In the cases where the law may allow payment in instalments, the payment period shall not exceed five years, whence payments shall be made in equal instalments. Compensation for the land expropriated from the small farmer who cultivates his/her own land shall be paid in advance in all cases. An interest equivalent to the highest interest paid on public claims shall apply in the instalments envisaged in the second paragraph and expropriation costs not paid for any reason.*

The Human Rights Action Plan, which was announced on 2 March 2021 by the President of the Republic of Turkey, H.E. Recep Tayyip Erdoğan, has some references to the inviolability of the right to property. The Action Plan has 11 fundamental principles, 9 aims, 50 goals and 393 activities.

**Aim 7 of the Human Rights Action Plan: A More Effective Protection of the Right to Property**

**Goal 7.1** Preventing Violations of the Right to Property Caused by Expropriation Practices.

Activities

1. For the effective protection of the right to property, a review will be conducted on the Expropriation Act and other relevant legislation, including the provisions related to the urgent expropriation procedure.
2. It will be ensured that the changes in the consumer price index be taken into account in the calculation of the default interest to apply in case of a delay in the payment of the expropriation price.
3. Measures will be taken to ensure that the “public interest” decision within the context of expropriation is delivered in a clear, foreseeable and understandable manner.
4. An administrative remedy of application will be introduced under the auspices of governor’s offices against legislation- or practice-based interferences with the right to property, such as acts of de facto expropriation, and administrative sanctions will be imposed on the public officials who are found to be at fault.
5. It will be ensured that the cases stemming from acts of de facto expropriation be handled as a priority and that the damages incurred by the owner be compensated as quickly as possible and without delay; and regulations will be introduced enabling that the court fees and expenses and the counsel’s fee pertaining to these cases be borne by the administration concerned.
6. The rarity and artistic value of immovable cultural assets will also be taken into account while determining the price of the expropriation.

**Goal 7.2** Preventing Violations of the Right to Property Caused by Enforcement Proceedings and Judicial Processes.

Activities

1. The Enforcement and Bankruptcy Act and the Regulation thereunder will be reviewed in a manner capable of ensuring protection of the right to property at the widest extent.
2. All stages of debt enforcement sales will be conducted over the electronic medium in order to maximise the sales price of attached properties, thus ensuring that the creditor recover their receivable and the debtor be cleared of their outstanding debt.
3. While looking out for the creditors’ interests, the debtor will be enabled to sell the properties that have been attached.
4. In an aim to reduce the costs faced by the parties during enforcement proceedings, reductions will be made in the percentage of tender security deposit, safe custody charges and other expenses.
5. Measures necessary will be taken to abolish the practices that enable the filing of actions for annulment of tender in an organised and malicious manner, which victimise the parties to the proceedings and the winner of the tender.
6. The fine to be imposed upon denial of the request for annulment of tender will be reviewed on the basis of the principle of proportionality.
7. The matters of administrative justice that affect the right to property will be resolved in a speedy manner via a summary procedure.
8. A “pilot case” procedure will be introduced in disputes of the same nature to which a public administration is party and it will be ensured that such a case is handled speedily and that the ruling delivered therein will be binding in respect of other disputes concerning the same matter.
9. The procedural guarantees will be strengthened against the problems stemming from the legislation or the practice in relation to confiscation in criminal proceedings.
10. Necessary arrangements will be made to prevent the depreciation in value of the assets which are seized over the course of criminal proceedings.

Goal 7.3 Preventing Violation of the Right to Property Caused by Zoning Practices.

Activities

1. A uniform practice in line with the principles of transparency, accountability and objectivity will be ensured in terms of the practices of contribution to planning costs and renouncement without compensation.
2. A system will be put in place to monitor and supervise zoning plans, thus it will be ensured that the grievances faced by citizens due to the application of Article 18 of the Zoning Act with regard to parcelling be eliminated.
3. In order to strengthen the legal foreseeability and certainty, measures necessary will be taken to eliminate the grievances faced in practice due to modifications to zoning plans.
4. The grievances originating from de jure confiscation and limitations placed on the right to property for the purpose of assignment for public service in zoning plans will be eliminated.

Goal 7.4. Preventing Violations of the Right to Property Caused by Administrative Practices

Activities

1. The well-established judicial case-law that are in favour of individuals will be regularly tracked by the administration, and the administrations will be given wider powers in matters such as accepting the applications submitted therewith or relinquishing their claims.
2. Property owners and persons concerned will be provided access to information over the electronic medium about the public restrictions imposed by administrations on the land registry records.
3. It will be ensured that the security deposit collected when signing service subscription contracts be determined on unit basis according to the nature of the service and be refunded in a way that preserves the value it had at the date of collection.
4. The measures necessary will be taken, including awarenessraising activities for the personnel concerned, to ensure that the case-laws of the Constitutional Court and the ECtHR concerning the right to property are effectively taken into consideration in land registry and cadastre affairs.
5. Certain practice-related setbacks will be eliminated with a view to ensuring that the collection procedures resulting from groundless/undue payments made by the public institutions are conducted on a foreseeable and equitable basis.