

## RIGHT TO HOLD REAL ESTATE IN OTTOMAN EMPIRE

*Protocol signed at Constantinople August 11, 1874*

*Entered into force August 11, 1874*

*Proclaimed by the President of the United States October 29, 1874*

*Terminated February 15, 1933, by virtue of treaty signed for the  
United States and Turkey October 28, 1931*<sup>1</sup>

18 Stat. 850; Treaty Series 269

The United States of America and His Majesty the Sultan being desirous to establish by a special act the agreement entered upon between them regarding the admission of American citizens to the right of holding real estate, granted to foreigners by the law promulgated on the 7<sup>th</sup> of Sepher 1284, (January 18, 1867) have authorized:—

The President of the United States of America George H. Boker, Minister Resident of the United States of America near the Sublime Porte, and

His Imperial Majesty the Sultan His Excellency A. Aarifi Pasha, His Minister of Foreign Affairs, to sign the Protocol which follows:

### PROTOCOL

The law granting foreigners the right of holding real estate does not interfere with the immunities specified by the treaties, and which will continue to protect the person and the movable property of foreigners who may become owners of real estate.

As the exercise of this right of possessing real property may induce foreigners to establish themselves in larger numbers in the Ottoman Empire, the Imperial Government thinks it proper to anticipate and to prevent the difficulties to which the application of this law may give rise in certain localities. Such is the object of the arrangements which follow.

The domicile of any person residing upon the Ottoman soil being inviolable, and as no one can enter it without the consent of the owner, except by virtue of orders emanating from competent authority and with the assistance of the magistrate or functionary invested with the necessary powers,—the residence of foreigners is inviolable on the same principle, in conformity

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<sup>1</sup> TS 859, *post*, vol. 11, TURKEY.

with the treaties, and the agents of the public force cannot enter it without the assistance of the Consul or of the delegate of the Consul of the Power on which the Foreigner depends.

By residence we understand the house of inhabitation and its dependencies: that is to say, the out houses, courts, gardens and neighboring enclosures, to the exclusion of all other parts of the property.

In the localities distant by less than nine hours journey from the consular residence, the agents of the public force cannot enter the residence of a foreigner without the assistance of a Consul, as was before said.

On his part the Consul is bound to give his immediate assistance to the local authority, so as not to let six hours elapse between the moment which he may be informed and the moment of his departure, or the departure of his delegate, so that the action of the authorities may never be suspended more than twenty four hours.

In the localities distant by nine hours or more than nine hours of travel from the residence of the Consular agent, the agents of the public force may on the request of the local authority and with the assistance of three members of the Council of the Elders of the Commune, enter into the residence of a foreigner, without being assisted by the Consular Agent, but only in case of urgency, and for the search and the proof of the crime of murder, of attempt at murder, of incendiarism, of armed robbery either with infraction or by night in an inhabited house, of armed rebellion and of the fabrication of counterfeit money, and this entry may be made whether the crime was committed by a foreigner or by an Ottoman subject, and whether it took place in the residence of a foreigner or not in his residence, or in any other place.

These regulations are not applicable but to the parts of the real estate which constitute the residence, as it has been heretofore defined.

Beyond the residence, the action of the police shall be exercised freely and without reserve; but in case a person charged with crime or offence, should be arrested, and the accused shall be a foreigner, the immunities attached to his person shall be observed in respect to him.

The functionary or the officer charged with the accomplishment of a domiciliary visit, in the exceptional circumstances determined before, and the members of the Council of Elders who shall assist him, will be obliged to make out a *procès-verbal* of the domiciliary visit, and to communicate it immediately to the superior authority under whose jurisdiction they are, and the latter shall transmit it to the nearest Consular agent without delay.

A special regulation will be promulgated by the Sublime Porte, to determine the mode of action of the local police in the several cases provided heretofore.

In localities more distant than nine hours' travel from the residence of the Consular agent, in which the law of the judicial organization of the

Velayet may be in force, foreigners shall be tried, without the assistance of the Consular delegate by the Council of Elders fulfilling the function of justices of the peace, and by the tribunal of the canton, as well for actions not exceeding one thousand piastres as for offences entailing a fine of five hundred piastres only at the maximum.

Foreigners shall have, in any case, the right of appeal to the tribunal of the Arrondissement against the judgments issued as above stated, and the appeal shall be followed and judged with the assistance of the Consul, in conformity with the treaties.

The appeal shall always suspend the execution of a sentence.

In all cases the forcible execution of the judgments, issued on the conditions determined heretofore shall not take place without the coöperation of the Consul or of his delegate.

The Imperial Government will enact a law which shall determine the rules of procedure to be observed by the parties, in the application of the preceding regulations.

Foreigners, in whatever locality they may be, may freely submit themselves to the jurisdiction of the Council of Elders or of the tribunal of the canton without the assistance of the Consul in cases which do not exceed the competency of these councils or tribunals, reserving always the right of appeal before the tribunal of the Arrondissement, where the case may be brought and tried with the assistance of the Consul or his delegate.

The consent of a foreigner to be tried as above stated, without the assistance of his Consul, shall always be given in writing and in advance of all procedure.

It is well understood that all these restrictions do not concern cases which have for their object questions of real estate, which shall be tried and determined under the conditions established by the law.

The right of defence and the publicity of the hearings shall be assured in all cases to foreigners who may appear before the Ottoman tribunals, as well as to Ottoman subjects.

The preceding dispositions shall remain in force until the revision of the ancient treaties,—a revision which the Sublime Porte reserves to itself the right to bring about hereafter by an understanding between it and the friendly Powers.

In witness whereof the respective plenipotentiaries have signed the Protocol and have affixed thereto their seals.

Done at Constantinople the eleventh of August, one thousand eight hundred and seventy four.

GEO. H. BOKER [SEAL]

A. AARIFI [SEAL]

*Law Conceding to Foreigners the right of holding Real Estate in the Ottoman Empire*

[TRANSLATION]

Imperial rescript

Let it be done in conformity with the contents. 7 Sepher, 1284. (Jan. 18, 1867.)

With the object of developing the prosperity of the country, to put an end to the difficulties, to the abuses and to the uncertainties which have arisen on the subject of the right of foreigners to hold property in the Ottoman Empire, and to complete, in accordance with a precise regulation, the safeguards which are due to financial interests and to administrative action, the following legislative enactments have been promulgated by the order of His Imperial Majesty the Sultan.

ARTICLE I

Foreigners are admitted, by the same privilege as Ottoman subjects, and without any other restriction, to enjoy the right of holding Real Estate whether in the city or the country, throughout the Empire, with the exception of the Province of the Hédjaz, by submitting themselves to the laws and the regulations which govern Ottoman subjects, as is hereafter stated.

This arrangement does not concern subjects of Ottoman birth who have changed their nationality, who shall be governed in this matter by a special law.

ARTICLE II

Foreigners, proprietors of Real Estate in town or in country, are in consequence placed upon terms of equality with Ottoman subjects in all things that concern their landed property.

The legal effect of this equality is—

1° To oblige them to conform to all the laws and regulations of the police or of the municipality which govern at present or may govern hereafter the enjoyment, the transmission, the alienation and the hypothecation of landed property.

2° To pay all charges and taxes under whatever form or denomination they may be, that are levied, or may be levied hereafter, upon city or country property.

3° To render them directly amenable to the Ottoman civil tribunals in all questions relating to landed property, and in all real actions, whether as plaintiffs or as defendants, even when either party is a foreigner. In short, they are in all things to hold Real Estate by the same title, on the same condition and under the same forms as Ottoman owners and without being able to avail themselves of their personal nationality, except under the reserve of the

immunities attached to their persons and their movable goods, according to the treaties.

### ARTICLE III

In case of the bankruptcy of a foreigner possessing real estate, the assignees of the bankrupt may apply to the authorities and to the Ottoman civil tribunals requiring the sale of the real estate possessed by the bankrupt, and which by its nature and according to law is responsible for the debts of the owner.

The same course shall be followed when a foreigner shall have obtained against another foreigner owning real estate a judgment of condemnation before a foreign tribunal.

For the execution of this judgment against the real estate of his debtor, he shall apply to the competent Ottoman authorities, in order to obtain the sale of that real estate which is responsible for the debts of the owner; and this judgment shall be executed by the Ottoman authorities and tribunals only after they have decided that the real estate of which the sale is required really belongs to the category of that property which may be sold for the payment of debt.

### ARTICLE IV

Foreigners have the privilege to dispose, by donation or by testament, of that real estate of which such disposition is permitted by law.

As to that real estate of which they may not have disposed, or of which the law does not permit them to dispose by gift or testament, its succession shall be governed in accordance with Ottoman law.

### ARTICLE V

All foreigners shall enjoy the privileges of the present law, as soon as the Powers on which they depend shall agree to the arrangements proposed by the Sublime Porte for the exercise of the right to hold real estate.