

Concept of Ownership in Land Arrangement Studies in Turkey

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Key words: Land Arrangement, Land Consolidation, Expropriation, Property Rights.

ABSTRACT

In this research, the concept of ownership of the real estate in Turkey's land arrangement studies is discussed. Thus, this paper discusses the legal issues of the concept of ownership in Turkey. They are, for instance, the realization of the concept by the different regions of the country and practical implications of the concept, and the problems about ownership in land arrangement methods. In particular, our focus is on land arrangement methods in urban and rural areas and we point out problems and solutions to these problems originated from the ownership. Consequently, land's ownership factor in the land arrangement implementations is held. Legal status of ownership in Turkey and its consideration regarding regions, recent conditions, problems and their effects on the land arrangement methods, are also discussed and we propose the use of the method of 'Dynamic Land Arrangement' in this study.

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1. INTRODUCTION

Public tend to arrange the places they live and manage the relations between their living areas, according to the technical, economical, ecological and socio-cultural conditions of time. Shaping and managing the areas can be done only by planning. Planning aims at carrying the common interests and benefits among publics, to the highest level. To achieve this goal in a country, complimentary arrangement of rural and urban areas; at all 'land arrangement' is indispensable (Aclar, 2000).

Land Arrangement is a formative precaution, which provides the confirmation of ownership conditions to land usage plans, can be defined as a part of land policy and its continuous relations with law, economics, environment, sociology, political sciences, geodesy planning and construction sites which are assigned to social benefits, rather than both dynamic and static meanings (Figure 1) (Seele, 1994).

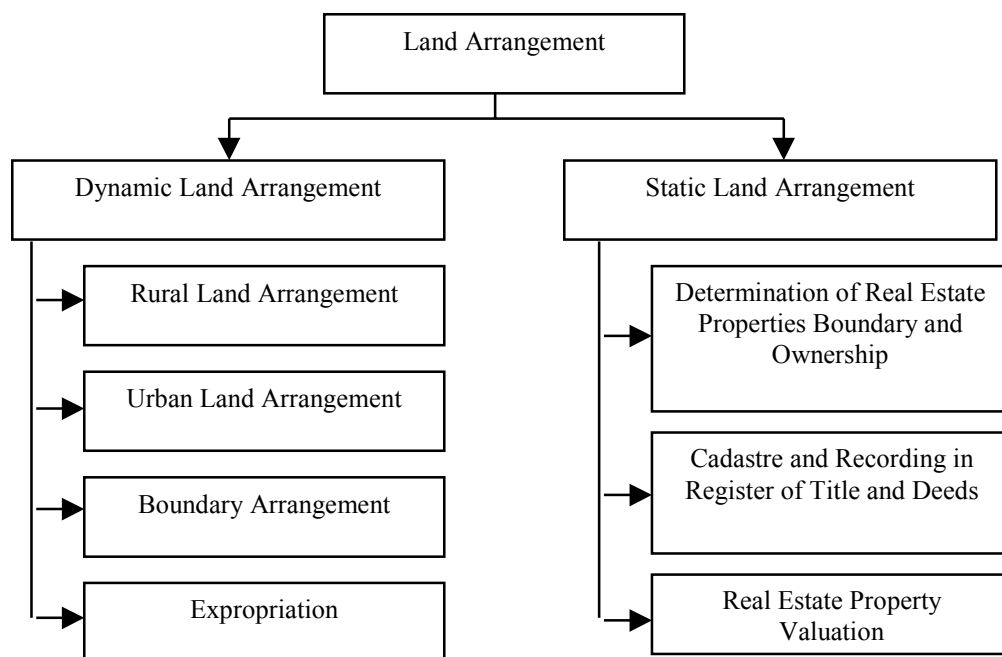


Figure 1: Land Arrangement

In Turkey, arrangement of rural and urban lands, improvements of parcel shapes and boundary (boundary corrections), expropriation of real properties which are in private ownership when the public interest is necessary, is defined as 'dynamic land arrangement', classification of real estate properties and ownership fixation, record to register of title and deeds, and appraisal are defined as 'static land arrangements'.

In this study, ‘dynamic land arrangement’ in Turkey is considered. These arrangements may consequently cancel the usage of ownership right, or limit, or obstruct, or delay it.

2. LAND OWNERSHIP IN TURKEY

In the article 683 of Turkish Civil Code, the content of ownership right is stated and it is the verdict that, a person who owns an object, has the right to use that object within the limits of regulations of law in order to benefit from or dispose.

Turkish Civil Code separates ownership into two, as independent and associated ownership. Associated ownership occurred as shared and co-operated ownership.

Shared ownership is the ownership where more than one person own actually undivided shares and each owner has the right and engagements due to his share.

Co-operated ownership is the ownership of a community which is brought together due to the laws or agreements. In that case, the shares of owners are not definite and can not be disposed of.

Land arrangements deals with redevelopment of real property ownership. The subject of real property ownership is realty, independent and continuous rights recorded at the hand registry and independent parts recorded at the condominium.

3. STRUCTURE AND POTENTIAL OF LAND IN TURKEY

Usage of land in Turkey is distributed as %35 agricultural lands, %28 grassland, %30 forests and moorland. Considered all over Turkey, general ownership distribution of 780.000 km² of equal land is as in Figure 2.

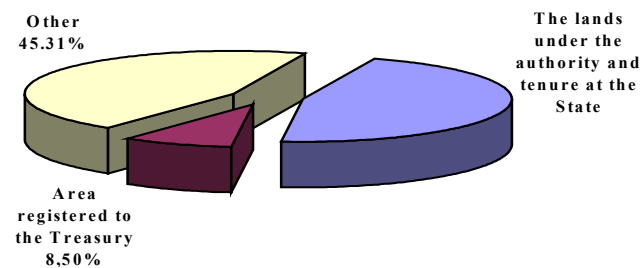


Figure 2: General ownership distribution of natural lands in Turkey (1).

94.21% of surveying in urban areas upon the number of town wards and 65.8% of surveying in rural areas upon the number of villages was completed in 1999.

3.1 Ownership Structure of Rural Area

Ownership of land in rural area is expressed by the concept ‘agricultural holding’.

Rural population ratio, which is 76% in 1927, accrued as %34 in 2000 and reached up to 22205740. However, it lied out a specified proportional decrease, the number of people living in rural areas increased up to 42% in last 50 years. The ratio of population to land, which is raising such a path, increased land participation.

Distribution of agricultural holdings in Turkey upon the number and size is shown in Table 1. Accordingly, it is seen that 67.9% of these holdings own less than 5 hectares and 84.4% of these own less than 10 hectares of equal land, where as 25% does not own any land.

Holdings Size hectares	Enterprise Number		Total Operated Land	
	Unit	%	Hectares	%
0-0	101 610	2.50	-	-
0.1 - 1.9	1 385 129	34.05	1 322 065	5.63
2 - 4.9	1 274 609	31.33	3 866 896	16.49
5 - 9.9	713 149	17.53	4 675 069	19.94
10 - 19.9	383 323	9.42	4 921 663	20.99
20 – 49.9	173 774	4.27	4 648 732	19.82
50-	36 838	0.91	4 016 662	17.13
Total	4 068 432	100	23 451 087	100

Table 1: Distribution of agricultural holdings in Turkey upon number and size (SPO, 2000)

Whereas the holdings, that own less than 1.9 hectares of equal land, which is 36.5% of total number, hold 5.6% of the land which can be planted; the holdings, that own more than 50 hectares of equal land, which is 0.9% of total number, hold 17.1% of the land which can be cultivated.

When we examine these holdings land possession according to the regions, it is understood that the land distribution through regions is also unbalanced. The holdings' land possession in Turkey lay out very important differences according to size both in and between regions (Gur, 2001).

On the other hand, whereas the average land possession of holdings, which own between 0.1-0.9 hectares of equal land, is 0.85 hectares; the average land possession of holdings which own more than 100 hectares of equal land, is 201.3 hectares.

In addition to the fact that most of the agricultural holdings are small businesses in Turkey, another handicap is the possessed lands being divided into shared parcels irregularly and non-uniformly. According to records of the Chamber of Agriculture; only 9.5% of agricultural holdings are being one piece (SPO, 2000).

In Turkey, most of the agricultural holdings are small businesses. As enterprise number has increased, the size of holdings has lessened in time. Current Civil Code Regulation's prediction of inheritance equally towards heirs causes the continual decomposition of the holdings. However The Civil Code suggests some decisions in order to protect the integrity

of the holdings, the fact that these statutory are not definite or are not commented as definite, decomposition can not be prevented.

Regions	Enterprise Groups (hectares)							Total %	
	0,1-1,9	2-4,9	5-9,9	10-19,9	20-49,9	50-99,9	100+		
A: PERCENTAGE OF ENTERPRISE NUMBER, B: PERCENTAGE OF AREA EXISTANCE									
The Aegean	A	43.08	35.32	15.08	5.11	1.31	0.06	0.04	100
	B	10.95	29.82	27.99	18.36	10.19	1.06	1.63	100
The Marmara	A	30.51	33.27	22.43	10.59	2.86	0.33	0.01	100
	B	5.29	19.8	28.64	26.68	14.28	4.04	1.27	100
The Mediterranean	A	44.17	30.09	15.74	6.6	2.83	0.38	0.19	100
	B	8.29	20.28	23.2	18.79	17.28	5.56	6.6	100
The Black sea	A	49.9	36.02	10.48	2.82	0.72	0.02	0.04	100
	B	17.57	37.52	23.65	12.48	6.17	0.47	2.14	100
The Northeastern Anatolia	A	36.21	27.49	19.19	11.03	5.27	0.72	0.09	100
	B	5.43	14.22	21.22	23.99	24.93	7.53	2.68	100
The Middle North Anatolia	A	23.33	30.89	22.32	14.66	7.91	0.78	0.11	100
	B	2.87	12.95	19.9	25.72	28.8	6.66	3.1	100
The Middle West Anatolia	A	29.75	34.43	20.52	10.42	4.16	0.56	0.16	100
	B	5.15	18.75	23.26	23.02	19.45	5.78	4.59	100
The Middle Anatolia	A	27.45	25.37	21.52	16.37	8.11	0.98	0.2	100
	B	2.8	10.05	18.2	27.5	27.3	7.45	6.7	100
South East Anatolia	A	28.23	21.2	18.61	16.43	10.45	2.58	2.5	100
	B	1.28	4.84	8.97	15.19	20.66	11.86	37.2	100
Turkey	A	36.55	31.33	17.53	9.42	4.27	0.59	0.31	100
	B	5.65	16.49	19.94	20.99	19.82	6.39	10.72	100

Table-2: Distribution of holdings' lands according to the geographical regions (SPO, 2000)

The Number of Parcels in Holdings	The Number of Enterprises	%	The Number of Parcels	%
1-3	1 761 631	43.3	3 306 000	15
4-5	927 602	22.8	4 049 000	19
6-9	777 071	19.1	5 365 000	25
10-	602 128	14.8	8 804 000	41
Total	4 068 432	100	21 524 000	100

Table3: The Situation of being Scattered Agriculture Holdings in Turkey (SIS, 1994)

At last, according to the law of agricultural reform, concerning Land Arrangement in Irrigation Areas, it is sentenced that decomposed or integrated areas can not be separated and the areas, which are left to their owners, can not be separated into shares smaller than the size which is indicated in the norms determined for the regions. This law is not valid in whole country bur valid in the places which are declared by cabinet legislation.

4. STUDIES TO RECOVER AND DEVELOPE TO OWNERSHIP STRUCTURES IN RURAL AREAS IN TURKEY

In order to redevelop and improve the ownership structure in rural areas of Turkey, the implementations, which have been applied on the basis of Old Civil Law's article numbered 678, are land integration, land reform and agricultural reform actions. When we consider these actions generally, their main effect has been integrating the immoderate parcels as far as possible. In addition, regulations numbered 1757 and 3083 regarding these actions include land reform.

4.1 Land Combination Statute, Dated 1966

Land Combination Statute dated 1996, had been in effected till 1973 and in this period, consolidation implementation executed in 9285 areas within 46 consolidation projects. Upon this constitution, demand of consolidation is from region citizens and there is no specific deduction ratio for consolidation (Gur, 2001).

4.2 The Land and Agriculture Reform, no. 1757, Dated 1973

In the period of 1973-1978; in which this law, that was enacted to compensate the immoderation in the field of agriculture and to take land consolidation precautions, remained in effect; land reform had executed only with in Sanlurfa's province boundary, in which residence with land is 40,1% of total residence. Accordingly, 1616 km² had integrated and 1218 families had been made landowners with 231 km² of equal land (Demirel, 1999).

In spite of the detailed rules about land consolidation, this law had no application about consolidation in reform areas and 27 consolidation projects was realized in 16122 lands, due to the land integration regulation of this law (Gur, 2001)

4.3 Land Consolidation Statute, no. 7/18231, Dated 1979

From 1979 till 2000, land consolidation implementation have been performed in 219892 hectares of land with 239 projects in whole Turkey except reform region and land consolidation services had given to 83875 holdings with the respect of this statute.

In these implementations, the parcel number, which was 211700, had decreased to 109375 and consolidation ratio reached to 48.2%; parcel size, which was 10.42 decares before consolidation, reached to 20.11 with an increase rate of %98.Parcel number per holding, which was 2.5, had decreased to 1.3. The average holding size in this project was 26022 decares (Gur, 2001).

According to this constitution, the person who own more than 50% of lands and whose proportion to whole owners is 2/3, should make a decision in order to execute integration actions and other owners must obey this decision.

In this constitution, deduction amounts in integration actions, neither has nor specified but deduction rate has realized as 5%-6% in order to gain the participation of all farmers (Gur, 2001).

In this statute, no obligation adjustment is present in order to save land consolidation's results. Consequently, holdings again scatter and become smaller in consolidation regions because of the heritance law.

4.4 Law of Agricultural Reform, concerning Land Arrangement in Irrigation Areas, no: 3083, dd 1984

However, no precautions related with land reform is indicated in the goals of the law, no: 3083, which was legislated to organize the agricultural reform and land integration actions in irrigation areas and in reform areas (Sanliurfa) that are judged as necessary by cabinet.; rules of expropriation and distribution of privately owned agricultural lands which pursue reform goal are handled. But no expropriation or distribution is realized in this purpose, till now. Mostly, re-deliverance of the lands which are expropriated according to the law of act 1757 to their ex-owners and distribution of treasury lands has executed in the application area of this law.

Accordingly, 950226 decares of equal land which is 2/3 of the whole expropriated lands had given back to 1319 ex-owners whose lands were expropriated. Also, distribution of 101176 decares of equal treasury land to 755 right owners in 35 villages, had realized in the extent of these integration actions (ARGD, 1997).

First land consolidation studies were started in Sanliurfa Plain in 1989 and till end of the 2000 have performed in 129177 hectares. However, voluntary integration methods could be applied when decision of integration was being made according to the regulation of the law, act of 3083; obligatory integration method wad chosen as an application method in all areas of this project.

Also, deduction limit was indicated as 10% for the areas in which land integration actions judges as necessary according to the organization made in 2000.

The law, act of 3083, stated that the agricultural lands, which are allocated or delivered to their owners as a result of land consolidation, can not be divided into smaller pieces than it is specified in the allocation norm, determined for that region.

5. OWNERSHIP STRUCTURE IN URBAN AREAS

5.1 Applications Performed by Arrangement.

In Turkey; the basis of urban land Arrangement are the article 18 of the Construction Law, dated 1985 and no 3194, and Application Instruction prepared according to article 18. In the applications those done with regulations;

- Can applied in urban areas which are in the construction plans boundary, without owner confirmation,
- All lands, in the arrangement area units, then reallocated as proper construction plot,
- Reallocation can be done in accordance to independent, shared or condominium principles.

By this method named “mixing principle” in Turkish Urban Law, all the land in the plan boundaries are in private or public ownership, are rearranged according to construction plan data so technical and social-cultural areas production are provided. Socia-cultural equipment area is known as two groups in our law; “general utility areas” and “public services areas”. General utility areas; are the places is determined such as, road, square, parks, auto-garage, kids garden, green area, mosque and police office which are prior necessities of the arrangement region. Lands needed for these areas are achieved by deduction of %35 (max.) from the each parcel of arrangement areas for the value increment because of arrangement (Açlar, 1986). In public utility areas, this application is done by sharing the land owners then, expropriation of the lands.

This ratio which had decided as 25% in former Construction Law (CL); was changed with decision of Constitution Court in 1963, for the reason that the ratio was harmless to the essence of ownership right. This ratio which could be cut as maximum 35% in 3194 (CL); was again discussed by Constitution Court; but this time not cancelled because of comments below;

- Deductions are not be earned by the foundations which had made them, so ownership was not changing hands.
- Probable value increments of lands by the construction process.
- Restrictions are legal because, they were done without touching ownership right (CCDJ, 1992).

Therefore, in Turkey’s Urban Land Arrangement; absolute usage freedom of ownership right is restricted for public benefits with this deduction rate.

However, when arrangements are taken hand according to the land values, another consequence that affects ownership right; is met. Because, deduction rate is constant in each parcel at arrangement area, but those can be distributed to the several construction parcels which have different construction conditions. Summarily, selection process of arrangement regions is not a homogeny structure.

In Turkey, it is decided by the law that, construction parcels which are achieved by urban land management must be reallocated to the former construction parcels if possible; if not; equivalent construction parcels which is in the nearest place to the old one. But “nearest place” cannot be measured concretely so, this situation causes a number of problems for the land which is distributed in this way. Urban land arrangement applications in it are a must that the land, which is under joint ownership, is to reallocate as construction parcel is about joint ownership. Although, reallocation can be done according to shared or condominium principles, because of technical and legal reason when an the assigned to an independent

owner is smaller than construction parcel of him during distribution process. This application causes problems with the land owners who become a shareholder after reallocation.

29% in 1989, 27% in 1991 and 26.7% at the lawsuits in Turkey Courts were about ownership right and cadastre sector (SIS, 1992, 1993, 1995). Share of “cancellation of multi-joined ownership” subjected lawsuit have been about 20-22 thousand/year and this has been 67% cadastre lawsuit. In spite of the comments about this problem which causes conflict between joiners must be solved by technical applications during the construction plan parcellation, precautions that provide integration between Turkish Constitution, Civil Code and other private laws have not been launched yet (Köktürk and Köktürk, 1998).

With the Construction law; a number of limitations for ownership take place. In construction programma, limitations at ownership rights valid till the expropriations for the places reserved for general services and real estate limited with private laws, or the realization of the project related to these places. In the areas reserved for general services; if there is building or construction in the area; changes or additions cannot be made. But the recent usage can go on till the place appears in construction plan.

The article 17 of Construction Law, shows the usage of surplus lands which come from expropriation applications done by municipalities. Generally municipalities are authorized for integration and separation of parcel. Law allows the selling of surplus lands to the neighbor parcel owners, reluctantly. In fact, selling depends on both of two sides will, but in this situation a land of forcing can be seen exceptionally.

Summarily, urban land arrangements in Turkey changes the ownership's structure, shape and sometimes condition.

5.2 The Construction Amnesty Application

In Turkey especially in the urban areas that population pressure is high, in the lands that seem shared in government records; shanty style constructions which used independently is being seen. In Turkey it is estimated that app. 1250000 illegal building and 575000 shanty style houses are still standing. In this situation, land arrangements are being done according to Construction Amnesty Law, not according to Construction Law, no 3194. After several implementations, 619071 m² areas have been allocated to the owners.

The main difference of Construction Amnesty from the Construction Law, no 3194/18; is the availability for allocation of multi-owned parcels to independent ownership. Money equalization between municipality and owners can be done and this makes an important difference from shared.

5.3 In Applications made by Division and Integration

In Turkey, legal basis of the applications are made by division and integration is constituted by the Construction Law. These applications are the applications that made according to the

claims of cadastre parcels which is included by construction plans, but not programmed for arrangements done by regulations.

Owner has the construction parcel right only after the priceless deduction of road and general utilization areas which are pointed out from the intersection of cadastre parcel and construction plan. Applications which cause improper constructions also cause problems about ownership.

The abandonment in different rates of cadastre parcels, road and general utilization areas take place. This brings anti-democratically results for several parcels in the same construction areas about lose of ownership. Frequently, the owner who loses minimum rate of parcel, requests construction permission by constituting minimum construction parcel without waiting urban land arrangement methods. The owner, whose abandonment rate is high, would wait for urban land arrangement. When the first owner can realize the construction on his parcels, there would be very less space remained for the second owner and providing proper construction base are would be impossible for this space (Demir, 1996).

Summarily, urban land arrangements which are applied by division and separation, causes the result opposite to the “equation of ownership” principle of Turkish Constitution.

5.4 Applications by Boundary Correction

This is the most basic system in all physical plan applications. Its legal basis is the constituted by 3194-15 and 17 (CL). Boundary correction process; new parcels are constituted, recent ownership boundaries are taken into the useful format according to construction data. In this application, agreements of all the owners whose parcels are neighbor the application boundary; is a must.

5.5 Applications by Expropriation

This is most frequently used method in Turkey which causes the most intensively interference to the ownership rights while expropriation. The main reason of this, can be defined as the expensive expropriation of the general utilization areas.

When the method evaluated about ownership;

- The method cancels ownership
- Not giving the real value to the owners affected from the application but the others get maximum benefit.

6. CONCLUSION

Government’s assurance for real estate ownership can only be provided with the updating of all the plans and registrations of real estate so updating of cadastre.

In rural land arrangements at Turkey; a number of regulations on ownership is being realized by constant rated abandonment’s from the owners, for the purpose of expropriation, lands to

the families who have not lands, or constituting the main facility areas (roads, water canal, etc.)

In Urban lands, by constructions plans applications, ownership continues sometimes in the same land sometimes in another place.

Summarily, both urban and rural land arrangements have the possibilities to change the structure, format or place of ownership. So, ownership reaches to new forms by land arrangements and cadastre is updated to survive.

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