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Legal State of Land Consolidation in Turkey and Problems in Implementation

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Abstract: Rearrangement of agricultural ownership and improvement in the farm structure indicates the classical meaning of land consolidation. However, accomplishing development in agriculture and rural area needs a broader conception of planning. Within such conceptualization of planning land consolidation should be considered in an integrated approach and rural development should be included. Land consolidation works in Turkey, which are carried out by various laws and by numerous institutions, should be studied under a broader program. In this paper it would be argued that all agricultural, environmental and rural regulations should be done collectively under the framework of a special consolidation law.

Key words : Land consolidation, land consolidation in Turkey, land consolidation law

Introduction

Land consolidation, in its narrowest sense, is a practice unifying the lands of divided agricultural enterprises, their connection to roads and irrigation networks. In the course of implementation there have been gradual changes in scope and content of consolidation. It became necessary to make plans for the rural area where the agricultural enterprise is located and furthermore, to do this in a broader planning perception. In its broadest sense consolidation is seen as measures with regard to the organization of rural areas. Such a planning understanding encompasses structural improvement of agricultural lands, measures with regard to protection of environment and nature, organization of rural settlements. The land consolidation practices in Turkey have started in 1961. No special law on consolidation has been promulgated; the works on the issue have been done in accordance with the founding statutes of the governmental bodies taking part in the implementation, concurrent regulations and agricultural reform laws. Today, consolidation projects in the agricultural reform areas are realized according to the Law no. 3083; beyond these areas they are implemented according to the Statute No. 7/18231. In Turkey, land consolidation is implemented in an area of total 425.188 hectares; between 1961-2000, outside the agricultural reform areas 290.935 ha land; between 1988-2001, within the agricultural reform regions 134.253 ha land (Anonymous, 2000 and 2001).

Concept of land consolidation: Land consolidation, the most important function of which is to re-arrange the borders, consists of practices such as the organization of contours of the divided enterprises, decreasing the number of pieces and taking measures simplifying the management (Thompson, 1963 and Sara, 1977).

With the purposes of diminishing the disparities between urban and rural areas and realizing a balanced development between the regions, rearrangements of agricultural property and of rural area are taken up together under the practices of consolidation (Yildiz, 1983). To put it differently, consolidation means unifying the land pieces and moreover the operations covering the re-organization of rural area necessary for eliminating the structural shortcomings of agriculture (Gün, 1996). With this definition, which comprises measures with regard to restructuring and reorganization of rural area, the scope of consolidation exceeds the agricultural enterprises. It deals with all of the structural arrangements and improvements related to rural area where the agricultural enterprises are situated. From this point of view "land consolidation" might become insufficient as a term. In this case labeling as "organization of rural area" would be more accurate. Considered in such a broad scope consolidation becomes the sum of agricultural, environmental and rural arrangements within the frame of legal sanctions. Its purpose is to improve agricultural structure and increase the life standards of people living in rural areas. (Kroles, 1971).

The issues that should be considered under this kind of land consolidation practices are:

- Effective realization of all planning with regard to use and protection of rural lands aiming the protection of agricultural lands and forest fields
- Taking measures against erosion and achievement of necessary improvements
- Accomplishing infrastructure necessary to attain a healthy setting for rural people in an environment-friendly manner

- Planning and renovation of rural settlement areas, protection of historical and cultural assets
- Constitution and protection of ecological areas

In order to prevent the exploitation of agricultural lands for purposes other than cultivation it is necessary to organize the rural settlements. There is need for planning which deals agricultural functions of rural lands primarily and investments such as housing construction, industrial and tourism investments, transportation networks. Here land consolidation appears in the sense of a planning, which arranges land and human relations. Bringing about the urban life and infrastructure facilities by protecting the authentic characteristics of rural areas helps ensuring the continuity of natural landscape and protecting the environment.

Performing land consolidation in a manner that facilitates the recreation and reshaping of agricultural landscape and environment is important in the sense of preserving the capacity of nature to create and renovate. In this perception, the interaction of ecological, economic and aesthetical components should be considered altogether and having the primary priority, natural and landscape assets should possess the ability to steer the planning (Anonymous, 1992). In planning, paying attention to protect the ecological equilibrium and to the estimates with regard to environmental consequences of investments is necessary in order to keep the damages of these human practices to the ecological equilibrium at the possible lowest level.

Legal regulations on land consolidation: The land consolidation practices in Turkey started in 1961 and in general had limited scope of implementation. The reason to start consolidation was that Work Bank set forth land consolidation as a condition to the use of its credit. However, as soon as 40 years of land consolidation practice is analysed, it would be seen that works are carried out without taking into consideration the reasons necessitated consolidation in Turkey. It is realized that an efficient land consolidation policy has not been implemented in Turkey during this process.

The legal regulations with regard to consolidation in Turkey are quite unsystematic. There is no special consolidation law in force. Consolidation projects are implemented in line with various legal regulations: (within the sphere of agricultural reform according to Law No. 3083 by Directorate General of Agricultural Reform, in other fields in accordance with Statute No: 7/18231 by General Directorate of Rural Services)(Anonymous, 1979, 1984). Examination of the legal regulations in force on land consolidation the following conclusions are drawn:

Law No. 3083 regulates the rules with regard to

agricultural reform measures to be taken in irrigation zones and other areas designated necessary by Council of Ministers. The rules under the scope of this law are taken in hand as general titles. This law aims both eliminating the reasons necessitating consolidation and organization of agricultural lands by means of consolidation. However, the definition given in the implementation regulations with regard to the scope of consolidation is interesting (Anonymous, 1985). Consolidation covers also the practices essentially to be taken up under the land reform measures such as, expropriation, providing land to farmers with no land or having small land, determining the lands that will be given to the proprietor. It is obvious that there is a high level of conceptual confusion in the rules of Law no. 3083 and its implementation statute with regard to consolidation.

Participation of landowners to the consolidation works is organized under the Statute dated 1979 and Law No. 3083 by taking place in the council for gradation. However, it is obvious that this type of participation is not sufficient to guarantee active participation. Since the professional or other types of organization of farmers in rural regions is insufficient both in terms of scope and effectiveness, they the means to defend their rights during the stages of consolidation processes. Naturally, the implementation of consolidation works in accordance with the decisions of project institution without the active participation of farmers to planning and implementation has a great impact on the success of consolidation. In case of objection to the consequences of gradation and consolidation there is no way to take it courts under the legal regulations, those interested parties do not have the right to sue.

With the statute of 1979 it is stated that common usage areas would be gathered from the lands given to proprietors commensurate to the size of their lands. However, it is not indicated what would be the proportions of land loss of proprietors. Designation of this proportion is necessary for the reason of equivalence rule, which is one of the fundamental principles of land consolidation. According to the Law No. 3083 it is envisaged to register the agricultural land, which is distributed or left to the proprietor as a result of consolidation, in the name of the proprietors. From this rule it is understood that legislator has confused expropriation with consolidation. According to the equivalence rule there shouldn't be any change in the size of proprietors' land as a result of consolidation. As the law doesn't take into consideration of this rule, at the same time it adopts the rule to register agricultural land distributed or left to the proprietor, after consolidation as if there had been an expropriation process. It appears from this clause that in a consolidation project first of all an

expropriation would be realized in line with reform purposes and then, consolidation would be practiced on the rest of the lands. (Though, there has been no expropriation aiming land reform as envisaged in the law since 1984 when the law was enacted.) In such an implementation it is obvious that the lands of pre-consolidation and after that wouldn't be equivalent. How to acquire common usage areas is another issue forgotten in the law and statutes. This shortcoming was tried to standardize by preparing a regulations booklet and Law No. 4626 that came into force on 13.02.2001 fulfilled the legal vacuum.

While consolidation statute of 1979 in deciding for consolidation adopts voluntary method, Law No. 3083 assumes both voluntary and obligatory methods. Law No. 3083 gives priority to voluntary consolidation in proportion to other method. In order to encourage voluntary consolidation implementer body is able to take supportive measures such as widening the land and giving more credit opportunities to the concerned. However, in the implementation statute of Law No. 3083 the prior significance of voluntary method disappeared, its priority is limited only to being the first method used in the course of implementation. It is possible to apply obligatory consolidation in cases where double majority necessary for voluntary consolidation cannot be reached. It becomes clear from this rule that actual method the statute adopts is obligatory consolidation. Whether landowners accept it or not consolidation would be accomplished. In cases they accept consolidation they will be the ones who decide for consolidation, in cases where they don't accept consolidation would again be realized, as law requires it. Since it is aimed to organize the whole agricultural structure in reform areas it might be more appropriate to use obligatory method in these areas. On the other hand, it is essential that in this method the body implementing the project should work thoroughly. This compulsory intervention to land tenure without the consent of concerned might create a negative atmosphere in the project area. For this reason during the course of implementations measures that would win the voluntary participation of land proprietors to consolidation should be taken.

In case of division of lands after consolidation Law No. 3083 has determined the extent of land to be given in the distribution as minimum enterprise size. Yet beyond the agricultural reform areas, rules preventing or restricting the splitting up for the project areas of voluntary consolidation don't take part in 1979 dated consolidation statute. Continuation of splitting up results in waste of investments. This situation in turn results in the diminishing interest in consolidation and even prevents

the necessary importance given to consolidation. Particularly in the areas of voluntary consolidation there is a need for legal regulations to preserve the outcomes of consolidation.

Implementation statute of Law No. 3083 envisages that in the implementation areas agricultural lands cannot be used for purposes other than farming. Nonetheless these lands can be used for purposes other than agriculture with the permission of Directorate General in cases when they are deemed necessary to use for agricultural industry and industrial regions, airports, dams and puddles, energy centres, touristical places, sportive areas, mineral mines, stone, sand, brick quarries or similar investments and national security needs. Besides agricultural lands can be left at the disposition of Treasury to reserve for other public bodies on the condition that they are going to be used for purposes other than agriculture. These principles are not for protecting the agricultural lands rather they appear as rules regulating their exploitation for purposes other than agriculture. In the statute of 1979 there is no such rule anyhow.

The implementation statute of Law no. 3083 regulates also some rules relating to consolidation. Organization of village settlement areas and identification of extension areas is closely related to consolidation. It has been foreseen that village extension and new village settlement areas would be selected in the appropriate areas within the implementation region. Certainly the principles with regard to rural settlement organization should have been dealt in more detail. Nevertheless, the statute's absorption of this matter, which was not dealt within the previous laws and statutes, can be considered as a novelty.

The primary concern of land consolidation projects in Turkey eradicate the negative effects caused by dividedness. However, nothing is done with regard to the size of small enterprises, which is a general characteristic of Turkish agricultural enterprises.

In Turkey the business of agricultural lands does not always have agricultural purposes. By instituting a governmental land body, which will purchase agricultural lands and sell them to landowners aspiring to widen their enterprises under convenient terms, the purpose of consolidation to increase the size of enterprise can be accomplished. Bringing together the agricultural lands in this way into one area both might prevent the utilization of agricultural lands for other reasons and makes it possible for an organization of enterprise sizes within the consolidation areas.

Both legal regulations are far away from finding solutions to problems emerging from consolidation practices. Fundamental problem is that the implementation of land consolidation is realized various legal regulations and

several institutions. In order to overcome the structural problems of Turkish agricultural enterprises consolidation projects should be dealt within the framework of rural are planning. Legal state of consolidation should be considered within the limits of this planning, a special consolidation law should be enacted and a legal regulation aiming the implementation of such investments by only one body should be constituted.

Other principles necessary to take place in the consolidation law to be enacted, along with eliminating the shortcomings of legal regulations in force, are as in the followings:

- Regulations aiming at increasing the size of enterprises Principles having an effect of preventing division and shrinking of agricultural properties to the extent that it becomes insufficient to utilize family labour force
- Rules organizing consolidation of the multi-year plants and dry agricultural lands
- Rules aimed at situating consolidation projects within the framework of environmental consequences and protection of nature
- Rules ensuring farmer participation to the consolidation costs

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