

Review

Legal infrastructure of agricultural areas in the view of cadastre and ownership in Turkey and sustainable development

Güler YALCIN

Department of Geodesy and Photogrammetry Engineering, Osmaniye Korkut Ata University, 80000, Osmaniye/TURKEY. Tel: +90(328)8271000/3608. Fax: +90(328)8250097. E-mail: guleryalcin@osmaniye.edu.tr.

Accepted 19 December, 2011

One of the most valuable and important wealth sources of all countries is land. Land is always the strongest material and spiritual relationship, which ties the people to their native countries' land with the ownership fact. Therefore, the relationship between land and the people is closely connected with the countries' social, political and economic problems. Cadastre has been the main tool to determine this relationship between land and people. To use land registry and cadastre information as a basic support on the way of "land management" is the main subject, while land management is an important point for sustainable agriculture. Therefore, there is need to examine the cadastre and ownership on rural areas from the point of the land reform, land consolidation and sustainable development view because the interest for rural areas, such as agricultural areas has been rising with the increasing population, the developing technology, the expanding urbanization, industry and commercial investments.

Key words: Cadastre, ownership, land reform, land consolidation, Turkey.

INTRODUCTION

One of the most valuable and important resources of all countries is land. It has always been sound moral and material bond between people and their homeland. The people have property ownership and property insurance from time immemorial. Therefore the relation between land and people is an issue which is closely associated with social, political and economic problems. Real estate ownership is subject to land that is constant in its place and described as a volume of the earth under/on/over soil with air (Esmer, 1984). The ownership is right to own, it means to be able to use the real estate within the framework of the laws however he/she wants (Erkan, 1991). The "ownership" concept is as old as the history of humanity. Until now it has developed and changed. "Cadastre" is one of the ways to determine the ownership right as its main mission. Also it is a social phenomenon and reflects the relations between land and user. Exchange of production and property relations is basis for the development of societies and social change. Depending on the social development it is observed that

the scope, content, aims and main principles of the cadastre has changed to meet the needs of society. Cadastre has developed from one dimension through multiple dimensions. It is one of the most important services for land which have the roles for social, economic and political order in countries. Therefore it is a tool for real estate to indicate its actual and legal status. It is a public service to be needed over whole country. Today cadastre is made up with the social changes and it began to be referred to as concept of sustainable development. First it was aimed to ensure fair and regular tax receipt but now the relation between "cadastre" and "law"- "management"- "economy"- "environment" is mandatory (Köktürk, 2009). "Development" means changing at economic, social, cultural, and politic level of communities. "Sustainable development" is a pattern of resource use that aims to meet human needs while preserving the environment so that these needs can be met not only in the present, but also for generations to come. Today "sustainable development" is used to

explain the balance among economy-society-environment and between present and next generations.

Cadastre in the sustainable development efforts is the basis of investment projects related to land for social and economic development. It is a basic service on agricultural reform, tax gain, reconstruction movements and investments related to development. Also it is a tool for elimination of land disputes, poverty reduction, agricultural and economic development, planning and land use, land management, environmental damages mitigation, and reduction of urban and rural differences.

Rural development is to improve of living conditions, to increase income, and to ballast the preserving and using of natural resources in rural areas. Rural development and agricultural development are generally used as synonymous. Agricultural economy is an important factor especially on living, basic and structural changing of rural society (Geray, 2006).

Agricultural areas, forest areas and meadow areas are placed in the definition of rural area which is subject to the rural development. In Turkey land registry and cadastre facilities are valuable in rural areas as in urban areas. Agricultural, forest and meadow areas are indispensable elements of natural life and natural resources. These lands have big roles to determine and apply national, regional and local policies. Rural areas, rural and urban policies, local government policies and environmental policies are closely linked to each other and they interact. The border and ownership of the lands in rural areas are important as agriculture, forest and meadow areas.

SUSTAINABLE DEVELOPMENT AND RURAL DEVELOPMENT

In 1987 The United Nations released the Brundtland Report, which defines sustainable development. Sustainable development is a development policy which meets the needs of the present without compromising the ability of future generations to meet their own needs (Keleş, 1998). Also it is defined as pillar of economic development, social development, and environmental development (Keleş and Hamamcı, 2005).

Today dimension of "sustainability" is added to subjects of "environment, living quality, and sustainable natural resource criteria, development" which are the topics of rural area study and planning (DPT, 2006). In the concept of sustainability the basic facilities in rural areas are to decrease the differences between rural and urban areas, to prevent the poverty and malnutrition, to provide welfare and income, to provide equality in life and to develop the principles of justice. So land is one of the subjects related to human activities.

And cadastre, ownership and using rights in the frame of land-human relations are kept in sustainable development.

The importance of cadastre and ownership in sustainable social life

At each age, societies land has indicated wealth and economic development, and it is the fundamental of social and politic approach. Also the relation between land and human causes cultural and emotional bond (FIG/UN, 1999). The subject of cadastre is land. The cadastre is a tool that meets the needs, is accepted, and is defined with legal formulas. Once the structure and needs of the society and the structure of politics power have changed, the aims, concept and features have also changed. The evolution of society determines the evolution of cadastre (Özen, 1971). During this evolutionary process the meaning of "land" has changed from "wealth" to "social scarce resource". After this social change the cadastre has undertook the task of being a land management tool. Today societies are confronted with the problem of land shortage and resource scarcity. Therefore better land management and better land use planning are needed as mandatory. While the models for balance between ecology and economic development, and for sustainable development are suggested in "Our Common Future", (Brundtland Report, 1987) the concepts of "land management" and "land administration" are occurred. "Land management" is an interdisciplinary issue and its basic element is cadastre. A good, cadastre based and interdisciplinary land management helps social development in both rural and urban areas.

Land management consists of the combination of four functions: land tenure, land value, land use, and land development (Enemark, 2005). The strong land management which consists of these four functions and the cadastre presents positive social reflections such as formation of social order, determination of transparent and efficient land market, prevention of speculations, formation of an equitable tax system, creation of guarantee for financial institutions providing credit in investments, success for land consolidation and rural land arrangement, effective use of agricultural land, speeding up the planning and implementation processes, monitoring of illegal settlement and constructions, preparation of environmental impact assessment (EIA) reports, monitoring of project results, monitoring-controlling-changing (if necessary) of policies for the management of public and land etc.

The cadastre that affects the social life is subjected at each age and meeting, symposium, seminar and report. These activities arranged by many scientific foundations especially such as United Nation (UN) and Federation International des Geometres (FIG). FIG declared "FIG Statement on the Cadastre" that examines the cadastral importance, the role in sustainable development and environmental protection and international scope of the land in 1995. This declaration is the starting point for cadastre in sustainable development. Bogor Declaration for Cadastral Reform declared in 1996 emphasizes that

cadastre is a part of National Spatial Data Infrastructure (NSDI). In 1998 FIG published "Cadastre 2014" thinking about the future cadastre and the relation of land-human (HKMO, 2003). In 1999 UN-FIG Bathurst Declaration on Land Administration for Sustainable Development is published.

Sustainable development is discussed after multipurpose cadastre and multipurpose cadastre is the best of "cadastre and sustainable development" (Hopfer, 2003). While sustainable development has a tripod as social-economical-environmental framework, cadastre has a tripod as land tenure-land value-land use framework. The cadastre tripod serves to land development (Enemark, 2001). In the concept of cadastre-ownership-sustainable development, ownership right is not unlimited and public interest is superior to individual interest. Ownership concept in Turkish Constitution accepts that the individual ownership rights can be restricted in case of public right (Köktürk, 2003). Environmental damages and increasing social dangers which is caused by inappropriate usage of land and natural resource are tried to minimize with legal regulations that restricts the individual ownership rights (HKMO, 2003).

Today the importance of relation between cadastre and sustainable development has transformed to interdisciplinary importance. Cadastre is the mirror or the environment that is effected by human facilities and is an interface between human community and its environment. Human community is the group dealing with plans and facilities on resources such as soil, land, water, air, vegetation etc. Cadastre is a variable and complex information system because changing and continuing transformations are seen. Global human facilities and politic-demographic-environmental factors affect the new approach in land management. In another mean cadastre is return of the human facilities (Stangu, 2002). It is sure that social-economic-environmental information will be collected with a successful cadastral system (Enemark, 2005).

Cadastre has an important role in elimination of cadastral disputes, poverty reduction, acquisition of citizenship, human rights and social justice, agricultural development, land use, land planning, economic development, spatial based projects, land management and minimization of environmental damages. While the place, importance and role of the cadastre in sustainable development are discussed the subjects in previous statement cannot be distinguished sharply. Each title is closely linked to another.

Ownership on rural areas in Turkey

The subject to protect and maintain soil and land on agricultural areas always retains its place on the agenda. According to the 1982 Constitution, with the title of

"Public Interest" under the division of "Social and Economic Rights and Duties", the government is obliged to prevent unintended use and the destruction of agricultural land. In Turkey there is a sound ownership structure which determines and registers the ownership and size under General Directorate of Land Registry and Cadastre. This structure helps to establish a healthy land-people relation. After cadastral studies ownership right is gained and the problem of dereliction is solved.

LEGAL INFRASTRUCTURE OF LAND REFORM

One of the basic approaches that depends on rural development policy on ownership and aims revolution is land reform. It is also a requirement of agricultural reform (HKMO and ZMO, 2005). The main purpose of this reform is to develop agriculture in the country, to give land to poor, landless or less grounded farmers for protecting the presence of land, to ensure welfare of farmers, and to operate land in a good way (Sencer, 1999).

The 1930's are the initial years of land reform and in 1930's the government aimed to give treasury lands to landless farmer. In 1945 the studies on land and agriculture reform actually began and Making Land-Owning Farmers Law numbered as 4753 came into force. This reform is needed to develop economy and to raise the standard of living of agricultural population because the livelihood depends on the agriculture after World War II. Expropriation is shown as a tool for reform (Erdost, 2005). Bill on Land Reform in 1961 cannot become the law. It also includes breaking political, economic and social press which depends on large land ownership. Until 1960 it is perceived that land reform is only to distribute land to landless farmers. 1961 Constitution enables to think the agriculture in the view of socio-economic area. It includes both land reform and expropriation of land that will be distributed. In the initial years of 1960 Ministry of Agriculture is charged for land reform, however in the following years land reform is left its place to "agriculture reform" (Bakırcı, 2007). With the 1961 Constitution other legal arrangements are prepared. One of them is Law of Prior Precautions on Land and Agriculture Reform, dated as 26.07.1972 and numbered as 1617. It contains the description of agricultural land, studies which are not effective on land and agriculture reform, the limitation of transfer right and division right, stopping the land distribution, the obligation on giving declaration and the rules on Registry Law numbered as 766. The other one is Law of Land and Agriculture Reform, dated as 19.07.1973 and numbered as 1757. This law consists of 17 titles and 237 articles on expropriation, consolidation, distribution, land reform cooperatives. It has economic, social and political aims. The law is executed for 5 years and is selected as a pilot city. The lands are not distributed during 5 years, the law

is canceled in terms of procedural by Constitution Court in 1977 and repealed on 10th May 1978 because lack of arrangement in a year for the law. Behind the law numbered as 1757 the problems are seen.

On 22nd November, 1984 the Law of Agriculture Reform on Land Arrangement on Irrigation Areas numbered as 3083 is adopted. Its implementing regulation came into force on 29th June, 1985. At this time The Law on Establishment and Duties of General Directorate of Agricultural Reform takes effect with number 3155 in March, 1985. In this law the distribution norm are determined and announced for some villages especially in Sanliurfa. However need of this provision is not fulfilled at each village. It says that distributed land is not divided but it is possible for heirs unless the division is under distribution value. This positive expansion is a kind of measurement against fragmentation and being landless. The law allows for consolidation of small-sized lands that are under distribution norm without approval of the owner. Also it allows re-determination of grassland and pasture areas and to be returning of the expropriated lands to old owners. However it is not possible to make de facto expropriation for economic reasons (Bakırcı, 2007).

As it is seen in the explanations earlier, the most important, technical and legal implementation tool of the land reform is ownership because of expropriation and cadastre (Demirel and Gür, 2005). Cadastre is needed for the security of ownership structure on land reform that depends on agriculture reform. As it has functions that effect the production relations it is a supporting and accelerating tool for reform. The first legal and technical condition is to complete the initial cadastral studies (Börtüçene, 1978).

Legal infrastructure of land consolidation

Beside land reform land consolidation is another way to get optimum-size agricultural land for more economic and more productive agricultural facilities. Too small and multi-pieces parcels causes out of use or tenant relation or sharing the crop. In Turkey 21.3% of total agricultural land consists of parcels that have less size than 50 da, 0.7% of them consists of parcels that have more size that 500 da. It can be inferred from that this difference comes from the problems about the land ownership (TKİB, 2004). Land consolidation is to gather the shares or parcels which are on different locations in the concept of much more regular and bigger size. The final aim is economic and productive agriculture as land reform (HKMO, 2000).

In Turkey initial studies, from 1961 to 1962, on land consolidation is started in Konya -Çumra District-Karkin Village- by General Directorate of Land-Water with the Turkish Civil Law and the Law numbered as 7457. The studies are taken a break until 1966 because of

insufficient laws and lack of sufficient technical staff. On 11th July, 1966 with decree of Council of Ministers numbered as 6/6706, Land Consolidation Regulation that depends on the law numbered as 7457 is executed. Then main studies are realized and they are maintained until 1973. This regulation is repealed once The Law on Land and Agriculture Reform numbered as 1757 and dated as 17th July, 1973 comes into effect. The second regulation needed is renewed with the Decree numbered as 7/18231 on 24th June, 1979. The studies continue according to rules of the regulation numbered as 1711 and dated as 15th November, 1980 which depends on this regulation. On 29th June, 1985 The Law of Agriculture Reform on Land Arrangement on Irrigation Areas numbered as 3083 is adopted. Finally on 19th July, 2005 the Law on Protecting Land and Land Use is comes into force. Its 17th article is subjected to land consolidation and land distribution and the regulation of this law is published on 24th July, 2009.

Until today many land registry and cadastre problems have occurred during land consolidation studies: Obligation to wait for completing the cadastral studies to determine the ownership if they are not completed; wrong information on land registry deeds especially about ownership; loss of time to correct mistakes about area difference between real one and one on the deeds; delays at courts to conclude cases among people or between people and treasury on places that cadastral studies continue; ownership indefiniteness on transaction procedures which is done by documents; and multi-share parcels and migration of the owners.

For land consolidation it is needed to know the registered lands and the legal owners, and to get their consents. It means that, before land consolidation, ground research on cadastral condition of the parcels should be done, the inharmoniousness between sheet and ground should be eliminated, and negatives should be removed on land registry information and heirs' status. If the cadastre is not applied for the field it should be started and concluded (Tartar, 2005).

Land consolidation as environment protection studies related with land improvement, land combining, land use planning agriculture, forestry, and nature management supports rural development. Each of these studies is a complement of land consolidation (Ballı, 2005). This wide range of activities array moves it towards the concept of "land management" (Erkan, 2005).

CONCLUSION

Land management is one of the basic subjects of sustainable agriculture for solutions to complex problems of resource depletion, environmental degradation and the loss of farm land. "Ownership and cadastre" is the base of the land management and land management is the fundamental of the sustainable development. It means

that the main point of the land-human relationship, land management and sustainable development is cadastral system. Cadastre is not the only element of the cadastre however it is one of the cornerstones. While policies and practices on behalf of the sustainable development are mentioned in whole world, to examine ownership and cadastre in rural areas is inevitable. Therefore in this paper legal infrastructure of land reform and land consolidation in Turkey is described. The conflicts on savings on ownership and land generate legal factors of land reform. Land consolidation is one of the methods of land reform. Therefore land reform and land consolidation in the view of ownership and cadastre is examined, especially legal structure of Republican Period of Turkey.

ACKNOWLEDGEMENTS

The author would like to thank her supervisor Prof. Dr. Aysegül Mençi and the jury members of her thesis-Prof. Dr. C. Geray, Prof. Dr. R. Keles, Prof. Dr. H. Erkan and Prof. Dr. H. Tanrivermiş- and Prof. Dr. E.Köktürk for continuous support, insight, guidance and patience during research, study and writing of her thesis.

REFERENCES

- Bakırcı M (2007). Türkiye'de kırsal kalkınma kavramlar-politikalar-uygulamalar. Ankara: Nobel Yayın Dağıtım.
- Balı B (2005). Türkiye'de toplulaştırmaya yönelik politikalar ve Avrupa Birliği'nde yeni toplulaştırma ve kırsal kalkınma yaklaşımları. In: Türkiye'de Arazi Toplulaştırması Sempozyumu 15-16 Eylül 2005, ed. F. Yıldız, H. Z. Selvi, S.S. Durduran, TMMOB Harita ve Kadastro Mühendisleri Odası Konya Şubesi, 100-141. Ankara: Nobel Yayın Dağıtım.
- Börtüçene İ (1978). Toprak Reformu. In: Toprak Reformu Kongresi 1978, ed. TMMOB Harita ve Kadastro Mühendisleri Odası, 69-104. Ankara: İlyaz Basımevi.
- Demirel Z, Gür M (2005). Toprak reformu, arazi toplulaştırması ve kırsal gelişme, TMMOB Toprak Reformu Kongresi 11-13 Kasım 2005. Ankara: Şanlıurfa Harita ve Kadastro Mühendisleri Odası.
- DPT (Devlet Planlama Teşkilatı Müsteşarlığı) (2006). Dokuzuncu kalkınma planı 2007-2013, kırsal kalkınma politikaları özel ihtisas alt komisyonu raporu. Ankara: DPT Yayını.
- Enemark S (2005). Land management and development. Clge International Conference 2005 European Professional Qualifications In Geodetic Surveying Brussels, 1-2 December 2005. http://www.vugtk.cz/CLGE/seminar_brussels_2005/text/Brussels_Enemark_LandManagement_Paper.pdf, 20.02.2008.
- Enemark S (2001). Land information infrastructures for sustainable development, International Conference on Spatial Information for Sustainable Development, Nairobi, Kenya, 2-5 Ekim 2001, <http://www.fig.net/pub/proceedings/nairobi/enemark-TS10-3.pdf>, 23.02.2008.
- Erdost Mİ (2006). Osmanlı'dan günümüze yabancılara toprak satışı: yasallaşma süreçleri ve sonuçları. Memleket Siyaset ve Yönetim Dergisi, 1: 57-97.
- Esmer G (1984). Mevzuatımızda gayrimenkul hükümleri ve tapu sicili. Ankara: Olgaç Yayın Basım Dağıtım.
- Erkan H (2005). Arazi yönetimi- toplulaştırma ilişkileri. . In: Türkiye'de Arazi Toplulaştırması Sempozyumu 15-16 Eylül 2005, ed. F. Yıldız, H. Z. Selvi, S.S. Durduran, TMMOB Harita ve Kadastro Mühendisleri Odası Konya Şubesi, 164-178. Ankara: Nobel Yayın Dağıtım.
- Erkan H (1991). Kadastro tekniği. Ankara: TMMOB Harita ve Kadastro Mühendisleri Odası.
- FIG/UN (1999). The Bathurst declaration on land administration for sustainable development, FIG Publications No:21, Copenhagen, Denmark.
- Geray C (2006). Toplumsal kalkınma modeli nereden nereye?. Memleket Mevzuat Dergisi 2(13): 31-38.
- Keleş R (1998). Kentbilim terimleri sözlüğü. Ankara: İmge Kitabevi.
- Keleş R, Hamamcı C (2005). Çevre politikası. Ankara: İmge Kitabevi.
- Köktürk E (2009). Türkiye Kadastrosunun Gerçekleri. İstanbul: TMMOB Harita ve Kadastro Mühendisleri Odası İstanbul Şubesi Mayıs Bülteni.
- Köktürk E (2003). Türkiye kadastrosunun tarihsel görevi. HKM Jeodezi, Jeoinformasyon ve Arazi Yönetimi Dergisi, 89: 29-42.
- HKMO (2003). (Harita ve Kadastro Mühendisleri Odası-Chamber of Survey and Cadastre Engineers of Turkey) Kadastro 2014 - Gelecekteki kadastral sistem için bir vizyon, Jürg Kaufmann – Daniel Steudler ile 7. FIG Komisyonu'nun 1. Çalışma Grubu Raporu. Ankara: TMMOB Harita ve Kadastro Mühendisleri Odası Yayınları.
- HKMO (Harita ve Kadastro Mühendisleri Odası-Chamber of Survey and Cadastre Engineers of Turkey) (2000). Türkiye'de arazi toplulaştırması. Ankara: TMMOB Harita ve Kadastro Mühendisleri Odası.
- Hopfer A (2003). Cadastre as a compact tool for proper land use – via taxation and physical planning. FIG Working Week, April 13-17 2003, Paris, France. <http://www.eurocadastre.org/pdf/hopfer.pdf>, 25: 02-2008.
- Özen H (1971). Kadastro bilgisi. (Trabzon: Karadeniz Teknik Üniversitesi Jeodezi Bölümü Kamu Ölçmeleri Kürsüsü).
- Sencer M (1999). Toprak reformu çabaları ve tartışmaları, 75 yılda köylerden şehirlere (İstanbul: Türkiye Ekonomik ve Toplumsal Tarih Vakfı Yayınları).
- Stangu I (2002). Cadastre – the interface between the human society and the environment. FIG XXII International Congress, TS7.13 Regional Experience in the Cadastre – Countries in Transition Washington, D.C. USA, April 19-26 2002. www.fig.net/pub/fig_2002/Ts7-13/TS7_13_stangu.pdf, 22.01.2008.
- Tartar M (2005). Arazi toplulaştırma çalışmalarında mülkiyet miras ve tescil kavramları ve karşılaşılan sorunlar. In: Türkiye'de Arazi Toplulaştırması Sempozyumu 15-16 Eylül 2005, ed. F. Yıldız F, Selvi HZ, Durduran SS (2005). TMMOB Harita ve Kadastro Mühendisleri Odası Konya Şubesi, 76-78. Ankara: Nobel Yayın Dağıtım.
- TKİB (Tarım ve Köy İşleri Bakanlığı) (2004). II. Tarım şurası kırsal kalkınma politikaları komisyonu raporu 29-30 Kasım – 1 Aralık 2004. (Ankara: TKİB).
- HKMO ZMO (2005). (Harita ve Kadastro Mühendisleri Odası-Turkish Chamber of Survey and Cadastre Engineers, Ziraat Mühendisleri Odası-Chamber of Agricultural Engineers of Turkey) Toprak reformu kongresi. (Ankara: Harita ve Kadastro Mühendisleri Odası).