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Comparison of the Methods Used in Acquisition of Private Property in the Scope of Public Interest

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by

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Date: 23.06.2023

COMPARISON OF THE METHODS USED IN ACQUISITION OF PRIVATE PROPERTY IN THE SCOPE OF PUBLIC INTEREST

Abstract

Public institutions need movable and immovable property, resource and altitude rights in order to perform their duties and services imposed on them by the constitution and laws. It is possible for public institutions to obtain these needs by renting or purchasing them by making a contract like all other real and legal legal persons. However, if the person who owns the properties or rights required by the Public Institutions does not want to make a contract, or if the price cannot be agreed upon, it will lead to the disruption or non-fulfillment of the duties and services required to be fulfilled by the public institution. For this reason, Public Institutions may have to use the public power witnessed by the Constitution in order to have the properties or rights they need in order to perform their duties and services.

Article 35 of the Constitution states that "*the property right can only be limited by law for the purpose of public benefit*", in accordance with the provision, it is possible with the decision of public interest to own the immovable properties owned by private and legal law persons who are needed and not belonging to the public.

In this thesis study; the methods of private owned immovable property acquisition required by the Public Institutions in the scope of public interest decision will be outlined and these methods will be compared according to various criteria and various recommendations will be made as a result.

Keywords: Ownership, Property, Public Interest, Expropriation, Land Consolidation, Land Arrangement, Land Acquisition

KAMU YARARI KAPSAMINDA ÖZEL MÜLKİYETİN EDİNİMİNDE KULLANILAN YÖNTEMLERİN KARŞILAŞTIRILMASI

Öz

Kamu Kurumları, kendisine anayasa ve kanunlarla yüklenen görev ve hizmetlerini gerçekleştirmek için taşınır ve taşınmaz mallar ile kaynak ve irtifak haklarına ihtiyaç duyarlar. Kamu kurumlarının bu ihtiyaçlarını, tüm öteki gerçek ve tüzel hukuk kişileri gibi sözleşme yaparak kiralamak ya da satın alarak elde etmesi mümkündür. Ancak Kamu Kurumlarının ihtiyaç duyduğu mal ya da hakkın sahibi olan Kişi, sözleşme yapmak istememesi, ya da bedel konusunda anlaşılamaması durumu kamu kurumunca yerine getirilmesi gereken görev ve hizmetlerin aksaması veya hiç yerine getirilememesine yol açacaktır. Bu nedenle Kamu Kurumları görev ve hizmetlerini yerine getirebilmek için ihyitaç duyduğu mal veya haklara sahip olabilmek için Anayasanın kendisine tanığı kamu gücünü kullanmak zorunda kalabilir.

Anayasanın 35. Maddesi "*mülkiyet hakkı ancak kamu yararı amacıyla kanunla sınırlabilir*" hükmü uyarınca, gereksinim duyulan ve kamuya ait olmayan özel ve tüzel hukuk kişilerinin sahibi olduğu taşınmazların kamuya mal edilmesi kamu yararı kararı ile mümkün olabilmektedir.

Bu tez çalışmasında; Kamunun ihtiyaç duyduğu özel mülkiyetteki taşınmazları, kamu yararı kararına istinaden elde etme yöntemlerine ana hatlarıyla değinelecek ve çeşitli kriterlere göre bu yöntemler karşılaştırılacak ve sonucunda çeşitli önerilerde bulunulacaktır.

Anahtar Kelimeler: Mülkiyet, Kamu Yararı, Kamulaştırma, Arazi Toplulaştırması, Arazi ve Arsa düzenlemesi

This thesis work is dedicated to my beloved family and the others who supported and encougered me.

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List of Abbreviations

UTM	Universal Transverse Mercator
ITRS	International Terrestrial Reference System
CPAS	Central Population Administration System

1. Introduction

The state has formed public institutions and public legal entities each of which is specialised in its own field, in order to implement investment programs and provide the best level of service to its citizens within the framework of development policies. Public institutions need immovable properties in order to carry out the projects comprised in these investment programs. These immovable properties are acquired;

Permanently by;

-Expropriation (purchase method)

-Barter (exchange)

-Grant (donation)

-As a result of court Decision (de jure)

-Land (terrain and plot) Arrangement in accordance with Article 18 of the Zoning Law No. 3194)

- Establishment of easement right by expropriation

And temporarily by;

-Allocation

- Establishment of easement in forest land

-Rental

-Temporary occupation

-Establishment of easement right by expropriation

- Establishment of easement right in accordance with the provisions of the Turkish Civil Law.

Since focusing on the methods of acquiring private property by public institutions; the immovable properties registered in the name of the State Treasury or immovable properties in public domain such as pastures, forest, other immovable properties belonging public institutions, allocation, transfer or permission easement to another public institution shall not be mentioned in this study.

Local governments such as municipalities or provincial administrations and public institutions or public legal entities such as General Directorate of State Hydraulic Works, General Directorate of Highways, General Directorate of State Railways, Petroleum Pipeline Corporation, Electricity Distribution and Transmission Corporation carrying out the projects mostly use as a method of expropriation, easement establishment, land arrangement and land consolidation methods as they are more prone to multiple property acquisition.

Although the way of barter, grant, rental and temporary occupation methods can be preferred mostly in the acquisition of single property or in special cases, they are not the most applied methods of acquiring property compared to expropriation, establishment of easement expropriation, land arrangement or land consolidation.

In this study, expropriation, land consolidation and land arrangement, which are mostly preferred in the acquisition of immovable private property by public institutions shall be examined as well as the other methods even they are limited and featured in use. The process stages in expropriation, consolidation and arrangement methods shall be mentioned in brief and immovable private property acquisition methods shall be compared with such as legal status of the acquired property, legal regulations or legislations on which they are complied with, practising authorities, ownership, application area, deductions, price, etc.

2. Property Rights and Public Interest Concepts

2.1 The Concept of Property Rights

The concept of private property has undertaken in our country with the "Land Law" in 1858. The concept of private property is terminally regulated by article 35 of the 1982 Turkish Constitution. Therefore, the recognition of private property forms the basis of the Constitution.

The right of ownership in terms of immovable properties is regulated in article 683 of the Turkish Civil Law and hereunder [1, 2].

Property is defined as the most comprehensive absolute, real right that provides the owner with the dominance of using the thing, benefiting from its opportunities and disposing within the limits drawn by the legal order and the duties assigned. As it is also understood from this definition, property is not only a concept that holds benefit and power it is also a concept that holds assignments therewhile. Due to these assignments which is also referred to as the legal restrictions of the property right, the owner has undertaken the assignments of doing, not doing or resignation within the limits of the law [16].

The practice for the reason of acquiring private property methods by Public institutions that the owner is exposed to, is one of the assignments that the owner is obliged to resignate.

The right of property is only to be limited for the purpose of public interest with the accordance of the article 35 of the Constitution provision states that "*Private property right is only to be restricted for the purpose of public interest*."

The European Convention on Human Rights, Additional Protocol Number 1, Article 1 to the Convention on the Protection of Human Rights and Fundamental Freedoms states that "Any natural or legal person has right to demand respect for their property

and inviolability. A person may be deprived of his property only for the reasons of public interest and in accordance with the conditions stipulated in law and the general principles of the international law.

The limit of the property right use is, until the benefit of the society which is more important than the benefit of the individuals. The owner has to use his property for his own benefit and also for the benefit of the society, according to the needs of the society that he lives in. The use of the property right may be restricted for the purpose of public interest and within the framework of the principles determined by law [24, 25].

It is understood from this, that the right of property, which is the most fundamental right guaranteed by the laws, is not an eternal right, is to be restricted in need for the necessity of public interest.

The Constitution of Republic of Turkey has not accepted the right of property and the freedom of contract as absolute and unlimited. Conversely, the Constitution restricts right of property for the public benefit and prohibits the use of this right against the public interest. (Article 36); The Constitution also sets the rule that the freedom of contract could be limited in terms of public interest. (Article 40) ,Constitutional Court 14.09.1965, 1963/127 E, 1965/47 D.

2.2 Concept of Public Interest

Public interest is an important concept that is directly effective in the fulfillment of the actions and transactions of the public institutions on behalf of the citizens and therefore in their acceptance by the society as legitimate [3].

Public interest is also a criterion used to measure the compliance of the practices and processes of the public institutions with the legal order [4].

According to [27], using for public benefit means, using the benefit of the society above the benefit of the individual. The purpose of the word “public” is all humanity in deed. Restricting individual rights in any practice that results in public interest is also a constitutional practice in our country [24].

[9] defines public interest, as the interest in the preservation of the established order, in case it based on private property [24].

The concept of public interest generally constitutes the measure legal conformity of all state services and it makes in the case of practices or processes that require restriction of individual rights and freedoms congenial to law [6].

The public interest decision enables the institutions to be equipped with expropriation authority and initiates the process. Nevertheless the expropriation decision is aimed at completing the process as a result and continuation of the public interest in practice. The public interest decision should be taken after, the most appropriate limitations and method determined by considering, the targeted requirements of the service subject to the public interest, the location, area, borders and other dependent or independent features of the potential property involved with the project, either positive or negative scenarios and alternatives [26].

It is stated in 46th article of the Constitution that , "*State or public legal entities; if the public interest requires, is authorized to expropriate all or a part of the immovable private properties and to establish administrative easements on them, in accordance with the principles and procedures set forth by law, provided that the actual compensation is paid in advance*." Although this article has a legal basis for expropriation, it also states that the institutions can acquire neither immovable properties belonging to individuals or legal entities nor the immovable properties belonging to the State treasury or public or other institutions without a public interest decision which is obligatory.

The exercise of property right cannot be contrary to the public interest.

In case there is a public interest, the rights of the owner could be limited or completely removed. However, it has been decided by the European Court of Human Rights due to the provisions of European Convention on Human Rights which is considered above domestic (national) law that a reasonable and acceptable ratio should be established between the public interest and the right of the owner who has been partially or completely deprived of his property right [17]**.**

The fact that the public interest includes the general social interest that requires the limitation of the rights of individuals and their authorities over property. A linear relationship is established between the public interest and the interests of individuals in democratic political processes. Limiting the interests of the individual in order to maximize the benefit of the majority towards securing social justice, is the basic principle of public interest [5].

2.2.1 Authorities Deciding on Public Interest

Authorities, making public interest decision are defined in Article 5 of the Expropriation Law No. 2942 as,

a) Public institutions and public legal entities;

1. Ministry, in major projects accepted by the President,

2. Village council of elders, in expropriations for the benefit of the village,

3. Municipal committee, in expropriations for the benefit of the municipality,

4. Provincial permanent committee, in expropriations for the benefit of the special provincial administration,

5. Provincial administrative board, in expropriations for the benefit of the state,

6. The Council of Higher Education, in expropriations for the benefit of the Council of Higher Education,

7. Administrative boards, in expropriations for the benefit of the University and Turkish Radio and Television Corporation, (TRT), and Supreme Institution of Ataturk Culture, Language and History

8. District administrative board in expropriation, for the benefit of more than one village and municipality within the borders of the same district.

9. Provincial administrative board, in expropriations for the benefit of villages and municipalities in more than one district within the borders of a province.

10. President, in expropriations for the benefit of more than one public legal entity in separate provinces.

11. President, in expropriations for the benefit of the State within the borders of more than one province.

b) Administrative board or council, in the absence of these, the authorized executive organs, in expropriations for the benefit of public institutions,

c) In expropriations for the benefit of natural persons (individuals), private legal entities, the village, municipality, special administration or ministry to which they are subject to the supervision in terms of the service they perform upon the applications of their boards of directors or administrative councils, or in case they do not exist, their competent management bodies, are authorised to decide on a public interest, while the authorities to approve this decision are listed in Article 6 of the same law as,

Public interest decision is completed with the approval of,

a) District/provincial governor, (approves the decisions of village elder councils and municipal councils.)
b) Provincial governor, (approves the decisions of town administrative boards, provincial permanent councils and provincial administrative boards.)
c) Rector, (approves the decisions of University administrative board.)
d) Chairman of the Board, (approves the decisions of Higher Education Council.)
e) General Manager, (approves the decisions of Turkish Radio and Television Corporation administrative board.)
f) President of the Supreme Institution, (approves the decisions of Ataturk Culture, Language and History High Institution administrative board.)
g) Minister, (approves the decisions of Public institutions' administrative councils or competent administrative boards which are subject to be supervision of related ministry.)
h) Governor, (approves the decision made by village, municipality or special administration for the benefit of individuals or private law legal entities.)

In Article 6, it is stated that public interest decisions made by the President of the Republic or ministries do not need to be approved separately, and that there is no need

to obtain and approve a public interest decision for the services to be carried out according to the approved zoning plan or special plan and project approved by the relevant ministries, and in these cases, it is sufficient to obtain a decision indicating that the expropriation process has been initiated by the competent executive body; therefore, it is understood that the State and public legal entities can acquire immovable property based on a public interest decision or a project approval as shown in Figure 2.1.1 that replaces a public interest decision in other non-consensual immovable property acquisition methods.

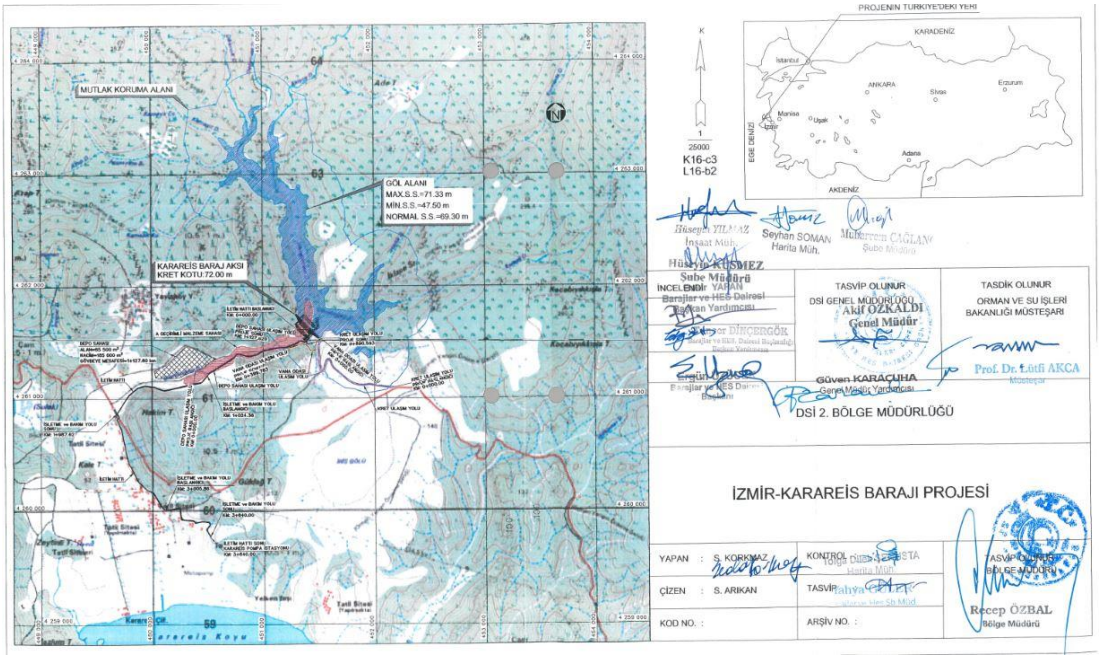

Figure 2.1: İzmir Karareis Dam, public interest decision sheet proposed by General Directorate State of Hydraulic Works and approved by Turkish Forest and Hydraulic Works Ministry

3. Acquisition of Private Property Methods in the scope of Public Interest

The immovable properties necessary for the state and public legal entities to perform their services, should firstly be provided from entailed properties belonging to the State Treasury or other public institutions by allocation or easement. Since amount of entailed properties are insufficient in large project areas, acquisition of private owned property is inevitable. In the event that sufficient entailed properties cannot be provided, donated private properties, properties of private and public legal entities should primarily be preferred in acquisition.

Apart from these, ways of acquiring property by temporary occupation or rental should be applied in accordance with the characteristics and qualities of the service provided. Since it is obvious that private properties cannot be acquired by gratuity, the State and public legal entities provide the immovable properties they need, by expropriation, zoning practices and consolidation, considering the public interest, as defined by the Turkish law in line with the services they provide.

3.1 Expropriation

3.1.1 Definition

Expropriation is defined as *"transferring immovable properties owned by individuals or private legal entities to the ownership of the State and Public Legal Entities in cases where the public interest requires it*." in the Expropriation Law.

Expropriation is the acquisition of immovable properties or resources belonging to natural persons (individuals) or private legal entities, by the public institutions or public entities for the purpose of public interest decision, regardless of the consent of the owner, to be allocated to carrying out a public service or undertaking or to be comprised in public property by paying the price in cash and in advanced or in instalment [39].

Expropriation is called by different names in different countries. It is called Eminent Domain in the United States while it is Compulsory Purchase in the United Kingdom or Compulsory acquisition in Australia or expropriation in the Republic of South Africa, and condemnation in some other countries. They all refer to the legal seizure of property in private ownership, without the consent of the owner [40].

[13] defines that the expropriation as the process of acquiring the property belonging to natural or legal persons in order to be carried out for state investments that public institutions are obliged to perform by using the public power of the state without asking and informing the owners, by keeping the public interest above the benefit of the owners and by paying the real value (price) of property in cash and in advance or in some cases in instalments stipulated in the law [21].

3.1.2 Legal Basis and Authorized Institutions

The legal basis of the expropriation procedures used in the acquiring of immovable properties depend on the physical space needed for the fulfillment of public investments is Articles 35 and 46 of the Constitution [18].

Article 46 of the Constitution states that "*In case public interest requires, State and public legal entities; are authorized to expropriate part or absolute amount of the immovable properties in private ownership or to establish administrative easement on the property to carry out investments, in accordance with the principles and procedures prescribed by law, providing the actual compensation is paid in advance.*

The expropriation (purchase) price and augmented price determined by a final judgement shall be paid in cash and in advance but, the method of payment, in which the costs of expropriated lands for the practising and execution of agricultural reform, large energy and irrigation projects and resettlement projects, for cultivation of new forests or for the protection of coasts and tourism is determined by law, is provided the cases where the law prescribes payment in installments. The installment period cannot exceed five years. In this case, the installments are paid equally. In any case, the price of the expropriated land, belonging to the small farmer who directly operates, is paid in advance. The highest interest rate foreseen, applied to public receivables for the installments of expropriation costs having not been paid for any reason.

This constitutes the basis of land acquisition by public institutions and public legal entities.

The expropriation procedures and stages are specified in the Expropriation Law No. 2942. Some of its articles were amended with the “Law Amending the Expropriation Law No. 4650” adopted on 24.04.2001 which is the legal basis of acquiring land by public institutions and public legal entities.

3.1.3 Practice

Major investor institutions such as the General Directorate of State Hydraulic Works, General Directorate of Highways, General Directorate of State Railways, Petroleum Pipeline Corporation, Electricity Generation, Transmission and Distribution Corporation and local governments use mostly method of the expropriation (purchase) Expropriation can be processed in rural or urban areas depending on the services to be provided by the public institution.

The institutions authorized to expropriate, should not commence the process without a public interest decision and should obtain sufficient funds for the expropriation.

Expropriation can be preferred as a method of both multiple property in large project areas and single property acquisition.

The institutions that expropriate, are obligated to produce or have the expropriation map produced in accordance with the cadastral base showing the property subject to expropriation within the project boundaries. Expropriation Maps are produced properly in compliance with the “Large-Scale Map and Map Information Production Regulation”, and the “Map and Plans Regulation subject to the Registration” and the “Map and Map Information Production Techniques and Special Technical Specifications” of competent institution. The registry declaration paper showing subdivision and land use conversions on property is also produced within this period. The purpose here is to determine the quantity of immovable property affected by expropriation and/or easement right and use. It is sent to local cadastre unit for technical controls with the expropriation maps and other relevant documents suc as registration declaration paper shown in Figure 3.1. Expropriation decision is taken by

the institution afterwards the document controlling is completed. Title deeds are annotated according to Article 7 of the Expropriation Law. This annotation does not restrict property or its owner, but acknowledges the institution in case of proprietor changings. Its validity is limited to 6 months. It could be annihilated ex officio or by request by Land Registry Offices at the end of this period.

Reg. Page No.	Sheet No	Block No	Parcel No	Surface Area			Kind	Owner	Thoughts and Procedure
				H	m^2	dm^2			
~~387~~	~~L19C24B2~~	~~100~~	~~1~~		~~2914~~	~~17~~	~~OLIVE YARD~~	~~NAME OF OWNER~~	Subdivision for Expropriation
	L19C24B2	100	A	-	0453	28	OLIVE YARD	NAME OF OWNER	
	L19C24B2	100	B	-	2460	89	CANAL	NAME OF OWNER	Expropriated Part
					This part will be named another block/parcel number and registered in the name of relevant intitution after expropriated.				

Figure 3.1: A Part of Registration Declaration Paper showing subdivision

In case there is a change in the geometric condition of the property during the expropriation period, the expropriation process can be continued by re-preparing the registry declaration paper for the newly formed property.

According to Article 8 of the Expropriation Law, it is essential that the immovable properties should be primarily expropriated by purchase method.

In the purchase process, price for the properties to be expropriated is appraised price, determined by the appraisal commission of the institution taking into account the islitigates specified in Articles 11 and 12 of the Law No. 2942. The appraisal includes the type of the land, its surface area, all qualities and elements that may affect its price, the appraisals made by the official authorities on the date of expropriation, if any, the net income that it will bring in case it is terrain, or in case it is plot, the purchase and sale price that may be a precedent, for buildings; the official unit prices at the date of expropriation, the building cost calculations (the "Communiqué on the Approximate Unit Costs of the Building to be Used in the Calculation of Architecture and Engineering Service Fees" published annually by the Ministry of Environment and

Urbanization) and the depreciation share, and determines the price of the property by giving the answers to these elements separately [30].

The Appraisal Commission; while appraising agricultural lands according to the income method, asks and documents the average product yields, production costs and wholesale prices received by the farmer during the harvest period for the products comprised in common (customary) rotation, Provincial / District Directorates Food, Agriculture and Livestock Directorates, Soil Crops Office, Agricultural Sales and Credit Cooperatives and Producer Unions, Agricultural Research Institutes etc. In the case of lands (plots), the appropriate precedents determined for the property to be valued are documented by asking from title deed records, from the zoning and real estate affairs units in municipalities, from the real estate offices engaged in independent purchase and sale, from builders and constructors. The Domestic Producer Price Index of the Turkish Statistical Institute is used to carry the actual sales price of the identified precedent property to the time of appraisal [39].

After the appraisal report is prepared, the owners of the properties to be expropriated by the institution are notified in accordance with the Notification Law, without specifying the price determined by the appraisal commission, owners are invited to reconciliation meeting which are held at the place, day and time specified in the notification. In case the property owners agree on the purchase price with the reconciliation commission formed by the institution, the agreement (reconciliation) report is signed by the commission members and the owners. The registry declaration paper that having be controlled by the cadastre unit, the agreement (reconciliation) report that is to say the purchase report, and the request letter stating that all encumbrances and rights on the immovable before expropriation have been cleared are sent to the relevant land registry office for the immovable property to be registered in the name of the institution.

Institutions, within forty-five days at the latest from the issuance date of agreement (reconciliation) paper, makes the price ready specified in the report avaible and within this period land registry office register or cancel the property on behalf of the institution. *(Expropriation Law amended sixth paragraph: 20 /8/2016-6745/31 art.)*

According to article 52 of the Public Financial Management and Control law No. 5018 and the institutions specified in the annexed schedules I, II, and III, the institutions in the name of which the expropriated properties in private, are registered vary. In the expropriation process carried out by the public institutions within the scope of the Central Government, comprised in the General Budget, private property is transferred to name of the State Treasury, while in the expropriations carried out by the institutions comprised in the Special Budget, the ownership is changed to the name of those institutions. Then depending on the purpose of use; the institution may abandon the expropriated property and leave it as a non-registered area. Thus, that property record is closed in the land registry. However, in case the same property left unregistered, is subject to re-registration; an indication that the registration of that property should be in the name of the expropriating institution is specified in the land registry.

In property expropriation, while the property is registered in the name of the expropriating institution or the State Treasury, the land use of property is changed in accordance with the registry declaration paper as e.g. Lake or pond area, canal, pylon place, pipeline, railway e.g.

The most important problem encountered in the acquisition of immovable property by expropriation is the determination of the expropriation price.

In the event that there is no agreement on the price offered by commission by purchase method; only the institution litigates at local Civil Court of First Instance and litigate "Price Determination and Registration "case against the owners.

The court invites the owner to attend the trial (hearing) day which is set for thirty days after litigation day of institution, by plenary summons including date of trial, statement of claim and a copy of documents submitted by institution or to those whose addresses cannot be found with searching by notification by announcement in accordance with the article 28 of the Notification Law No. 7201. The trial date is also notified to the institution. *(Expropriation Law article 10 amended: 24.04.2001-4650/5 art.)* In case the parties cannot agree on the price on the day held by the court, the judge appoints a reconnaissance day within ten days at the latest and the next trial day for thirty days later.

The experts, taking into account the statements of the parties and other interested parties, submits their reports stating the price of the property at the court within fifteen days, depend on Expropriation Law Article No. 11. The court notifies the parties of this report without waiting for the trial day. The judge summons the parties or their proxies and experts to the trial day. The objections of the parties to the expert reports, if any, are heard and the statements of the experts against these objections are taken in this trial day.

Per curriam, in case parties cannot agree on the price, a new expert committee is appointed by the judge to finalise the report within fifteen days when necessary. This price, determined by the Court with the help of the expert that is the expropriation price of the land, resource or easement right. The court gives 15 days to institution for the refund to deposit this amount. After the expropriation price is deposited or blocked in the bank, the property is registered de jure, in the name of the institution or public legal entity.(*Amended eighth paragraph: 19/4/2018-7139/26 art*.)

The dejure registration is the final and appeal right of the parties is reserved. In case the appealed expropriation price is less than the amount paid to the right holder in cash or in advance, the difference is claimed from the right owner. No interest is charged for the period between the date of payment made by the institution on behalf of the right owner and the date of the repayment notification that disclosed to the related person.

In case the property has been purchased by agreeing on the expropriation price, the process is completed in no later than 45 days from the date of the agreement report.

In case of disagreement on the price, the annex 6 of the Law No. 6459 which was adopted on 11.04.2013 and published in the Official Gazette dated 30.04.2013 and numbered 28633, states that " in case, a case of determination of the expropriation price claimed against the institution for not being concluded within four months, the statutory interest shall be charged on the determined price as of the end of this period.

However, the cases cannot be rescinded unfortunately within the specified period [41]. Since the “Price Determination and Registration” cases are executing according to the simple jurisdiction procedure, “Price Determination and Registration” case claimed at the Civil Court of First Instance of the place where the property is located. The case of

"expropriation annulment" is litigated in administrative justice and "error of fact" case is litigated in criminal justice regarding, Article 10 of the Expropriation Law within the thirty days from the date of court notification and the date of the announcement made by court in the newspaper replacing notification to those who is not notified. (*Article 14 of Expropriation Law)*

In case the property which is registered in the name of the institution as a result of expropriation, is not used for its intended purpose within 5 years, the former owner may request to pay the expropriation price together with the legal interest within 1 year after the 5 year period and take back the immovable property. The pre-emption right of the former owner lapses after this period. Even the institution no longer needs the expropriated immovable property having be used for its intended purpose, it sells the property directly and by competitive bidding in accordance with the Tender Law. The same procedure is followed for properties of which pre-emption rights have been revoked.

3.1.3.1 Partial Expropriation

Expropriation maps are generally strip-like maps. Strip-like maps that are produced to form a basis for projects such as roads, canals, tunnels, transmission lines, pipes and energy conduit lines. These are maps cover a certain area to the right and left from the project axis. From a technical point of view, the problem encountered in the acquisition of property by partial expropriation method is the fragmentation. The Figure 3.2 below is the expropriation map of a water pipeline. It is seen on the map that the lands with integrity are fragmented by the width of expropriation line. The indicated and gray-shaded B areas, are the parts of the lands to be expropriated where the water pipeline hits together with its width.

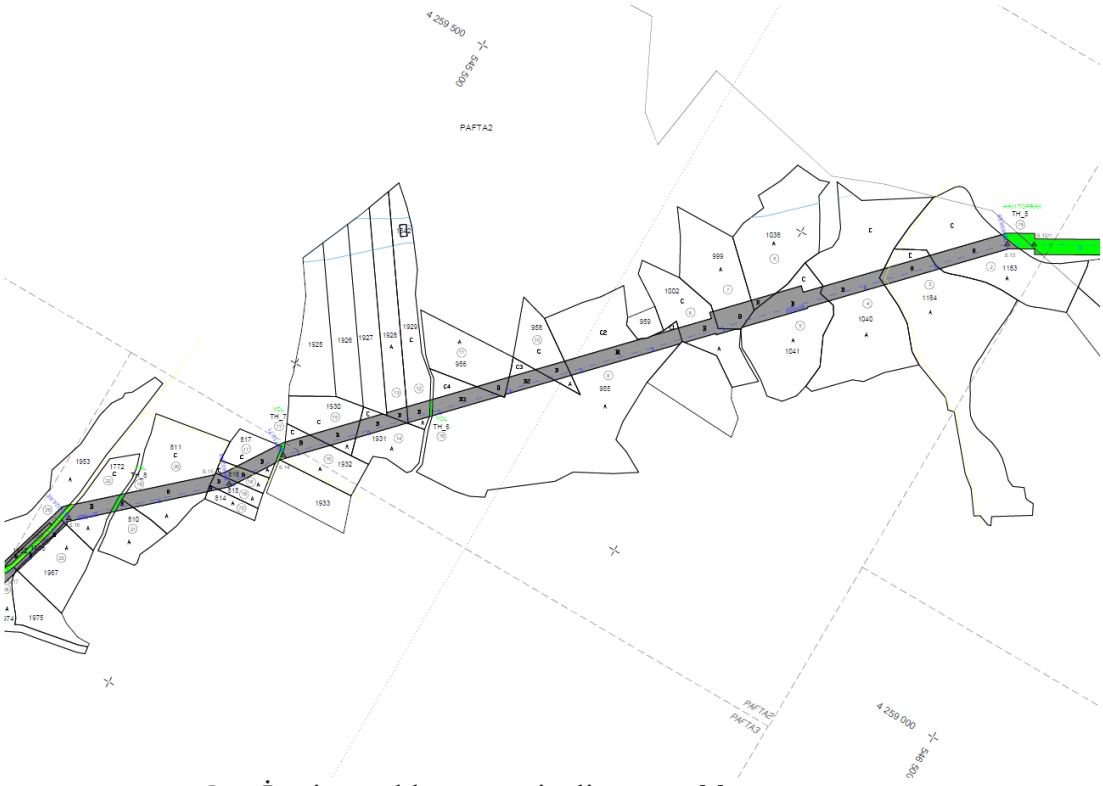

Figure 3.2: İzmir potable water pipeline strip-like expropriation map

The parts indicated “B” divide the property into two or even more parts. The remaining parts are those that remain in private ownership.

The whole property is inappropriately divided and land is fragmented in such expropriation. Considering that the water pipeline is a highway, the owner will not be able to reach the remaining part of the property in the easiest way. In case these properties are agricultural land, it would be difficult for the owner to operate the fragmented property. For this purpose, in case property acquisition by the way of expropriation method is considered, especially in irrigation projects, a process can be established in the form of easement right without disrupting the integrity of the land.

Partial expropriations are carried out within the expropriation of lands in the dam or pond area under the maximum impoundment level. In this case, the part of land on the maximum impoundment level remains as shown in Figure 3.3. Expropriation by considering criteria such as use, shape, transportation status, being a landslide area, etc. In case the property owner does not litigate an annulment case in the administrative justice against the relevant institution, it is obligatory to expropriate the remaining part due to written application of the owner to the institution within 30 days from the

expropriation day with a request letter during the reconciliation meeting. Expropriation of remainder part of land is regulated in Article 12, paragraph 5 of the Expropriation Law.

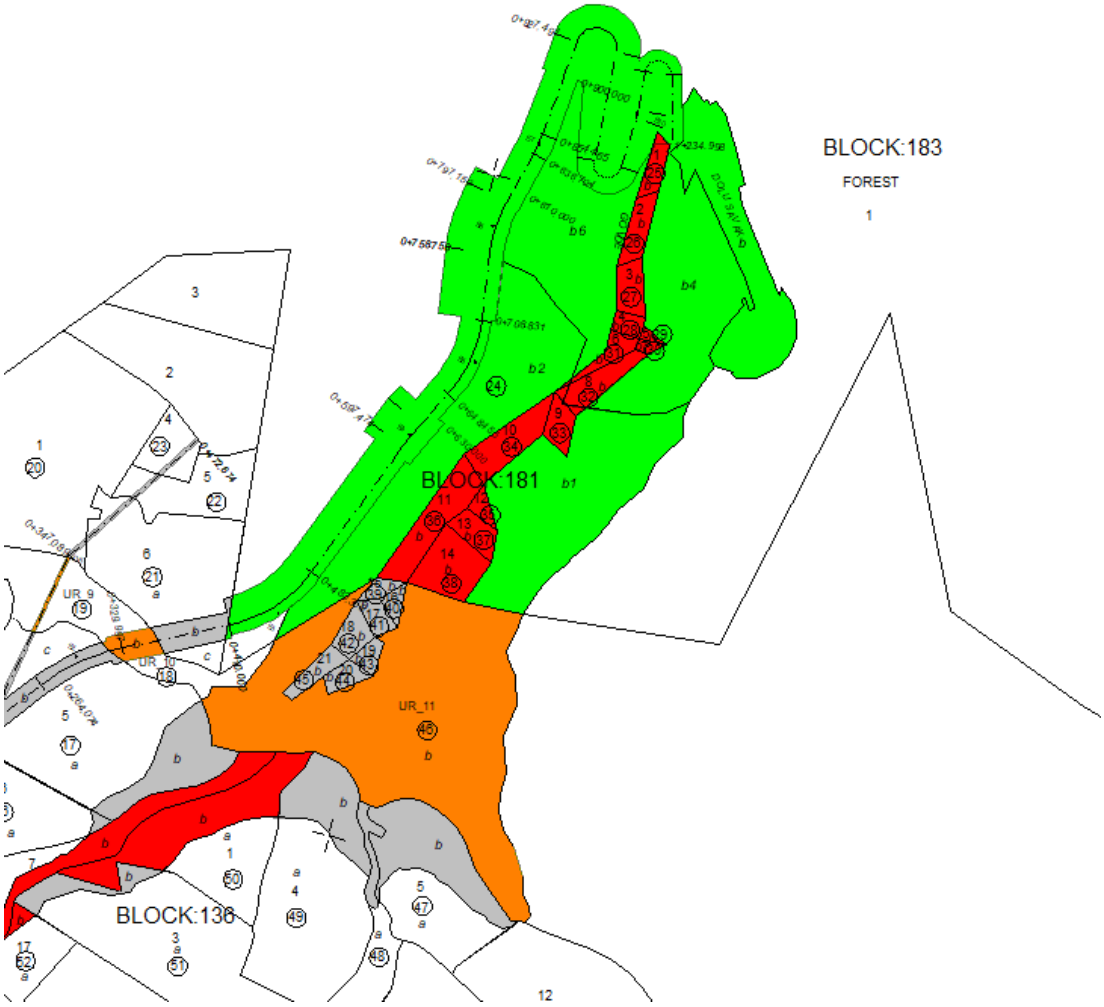

Figure 3.3: Bozalan pond expropriation map in Menemen, Izmir

3.1.4 Urgent Expropriation

Public institutions decide on urgent expropriation with the decision of the President by taking the power from the article 27 of Law No. 2942, when the investment contributes to the national economy, urgent construction is required.

Urgent expropriation method is defined in Article 27 of the Expropriation Law as *"in the implementation of National Defence Obligation Law No. 3634, the expropriation*

of immovable properties required for need of national defence or situations stipulated by special laws, the procedure other than appraisal shall be completed later, upon the request of institution, within seven days by the court the price of that property to be determined by the experts selected in accordance with the principles of article 10 and in accordance with the article 15, seized by the institution on behalf of the owner by depositing it in the bank specified in the invitation or announcement paper to be made in accordance with Article 10." (Amended phrase: 24/4/2001 - 4650/15 art.)

The institution litigates in the local Civil Court of First Instance in order to determine the urgent expropriation price to seize. In the event that relevant Civil Court of First Instance decides on the acceptance of Article 27 of the Expropriation Law; the immovable property is seized by blocking the seizing price, determined by the expert meanwhile. Thus, the institution urgently seizes the property without waiting for the deadlines in Article 8 of the Expropriation Law. Then, the institution starts the expropriation process in accordance with Article 8 at the latest six months later, first in accordance with Article 8, then according to article 10 in case of irreconciliation.

The case of "Stay of Execution" against the decision is litigated in the Council of State on urgent expropriation. The decision of the Council of State rejecting the execution of urgent expropriation, does not affect the ordinary expropriation process.

3.1.5 Analysis of Expropriation

Analysis Table of Expropriation is given in table 3.1 Expropriation process is questioned for 20 criteria and responded below.

Table 3.1: Analysis of Expropriation

APPLICATION NAME / CRITERIA	EXPROPRIATION
1. Type of Ownership	Person and Legal Entity Property
2. Application Area (Rural/Urban)	Rural and Urban areas
3. Special Share/Rate/ Deduction	There is no special rate.
4. Responsible/implementing Institution	Special Provincial administrations, Municipality, Village, Universities, Higher Education Council, Turkish Radio-Television Corporation, Atatürk Higher Council of Culture, Language and History. State Department, Institutions in the form of General Directorates (Directorates with Added Budget), those established for the protection of certain professions (Bar Associations, Chambers of Commerce and Industry, Stock Exchange and Union of Chambers of Turkish Engineers and Architects) State Economic Enterprises

Table 3.1: Analysis of Expropriation (continued)

5. Deduction Purpose	The public interest is at stake. There is no deduction.
6. Property Use Purpose	For public service purposes
7. Charge	The expropriation price is paid or there may be an exchange of property by barter.
8. Completion Period	Within forty-five days at the latest from the issuance date of agreement paper, there is no prescribed period, in case of dispute.
9. Types of property acquired (land, structure)	Land, independent section
10. Legal Basis	Expropriation Law no 2942

Table 3.1: Analysis of Expropriation (continued)

11. Scope of Objection to Institution	As a result of the dispute on the expropriation price, in order for the owner to file an annulment case at the administrative jurisdiction against the expropriation decision, Price Determination and Registration case must first be filed by the institution at the Court of First Instance with the request for determination and registration of the expropriation price. Within 30 days from the date of the notification to be made to the owner by the court regarding the price determination and registration case, the owner may file a case at the administrative jurisdiction requesting the cancellation of the expropriation decision. Objection of remaining part: it is obligatory to expropriate the remaining part due to written application of the owner to the institution within 30 days expropriation day with a request letter during the reconciliation meeting.

Table 3.1: Analysis of Expropriation (continued)

12. Scope of Litigation and courts	Litigation for urgent expropriation decision at the Council of State, Litigation for the expropriation decision at the administrative jurisdiction (Annulment of the expropriation decision cases), of the place where the property is located. Price Determination and Registration cases at the Court of First Instance (only by institution) The others (confiscating without expropriation cases, tangible correction cases etc. at the Court of First Instance
13. Single or Multiple Property Acquisition	Either single or Multiple property
14. Temporary/Permanent Ownership	Permanent ownership, provided that it is not used for any other purpose
15. Form of Announcement (official gazette, announcement, notification, ex officio)	The expropriating institutions determine the addresses of the owners by using"CPAS" and notify the parties.
16. Costs/ Expenses	Expropriation costs are covered by the relevant institution (Notification and case charges etc.)

Table 3.1: Analysis of Expropriation (continued)

17. Secondary Use	According to the article 23 of Expropriation Law; In case the property which is registered in the name of the institution as a result of expropriation, is not used for its intended purpose within 5 years, the former owner may request to pay the expropriation price together with the legal interest within 1 year after the 5 year period and take back the immovable property. The pre-emption right of the former owner lapses after this period. Even the institution no longer needs the expropriated property having been used for its intended purpose, it sells the property directly and by competitive bidding in accordance with the Tender Law. The same procedure is followed for properties of which pre-emption rights have been revoked. According to the article 22 of Expropriation Law ; Within five years from the date of finalization of the expropriation, If no operation or installation is carried out in accordance with the purpose of expropriation and transfer, or if the property is left as it is by not being allocated to a need for the public benefit, the owner or his heirs may take back the immovable property by paying the expropriation price together with the statutory interest to be processed from the day they receive it even though relevant institution notifies them.

Table 3.1: Analysis of Expropriation (continued)

18. Ownership of acquired property - Is it registered in the name of relevant institution, or State Treasury or other institutions depending on use? -Is it cancelled on the tittle deed?	The ownership of the expropriated property registered the name of the relevant institution according to the type of use.
19. Requirement of Public Interest Decision	Public interest decision required.
20. Scope of Ownership - Is the ownership transferred or left for its use to the public?	Title deed of the property registered in the name of the Institution or State Treasury, afterwards is allocated for the use of the relevant institution, or cancelled.

3.1.6 Easement by Expropriation

The institution may acquire property in need not in the form of property expropriation, but in the form of easement by expropriating the property on a certain part, depth or height, in case it is sufficient as shown in Figure 3.4

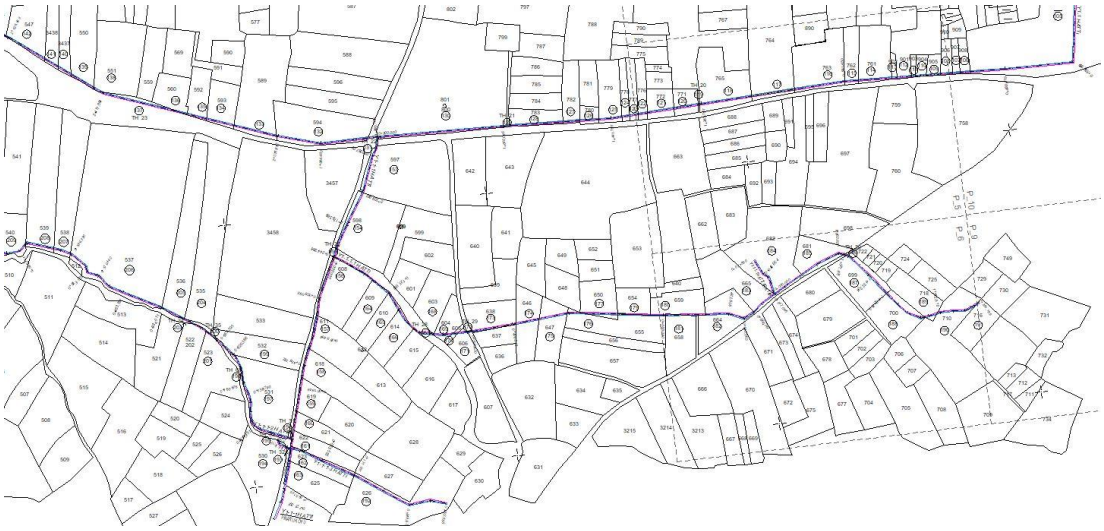

Figure 3.4: Easement Right Map of an irrigation pipe-line in Kemalpaşa, Izmir

The easement right in rem is defined in Article 779 of the Civil Law as;

"The right of easement in favour of the property is, a burden on a property in favour of another property and obliges the owner of the burdened property to refrain from using certain powers provided by the right of ownership or to tolerate the use of the burdened property in a certain way by the owner of benefited property."

The acquisition of property here is not in the form of acquiring the ownership but in the form of benefiting from private property under conditions to be determined by institution taking into account the nature of the project. The property remains with the owner. There is a benefit in favour of the institution in the area where the easement right is established.

Land registry is annotated that the easement right has been established, the stint, amount and price of easement right are indicated. The institution may establish permanent or temporary easement rights depending on the nature of the project to be carried out. In the establishment of a permanent easement, the stint is generally determined by considering the economic life of the facilities as shown in Figure 3.5

Reg. Page No.	Sheet No	Block No	Parcel No	Surface Area			Kind	Owner	Thoughts and Procedure
				H	m^2	dm^2			
387	L19C24B2	100	1	-	2914	17	OLIVE YARD	NAME OF OWNER	28.56 m2 easement right is established for 49 years in favor of relevant institution name.
								Ownership is not changed.	

Figure 3.5: A part of registration Declaration Paper for Easement Right

3.1.6.1 Analysis of Easement Right by Expropriation

Analysis table of Easement Right by Expropriation is given in Table 3.2 This process is asked for 20 criteria and responded below

Table 3.2: Analysis of Easement Right by Expropriation

APPLICATION NAME / CRITERIA	EASEMENT BY EXPROPRIATION
1. Type of Ownership	Person and Legal Entity Property
2. Application Area (Rural/Urban)	Rural and Urban areas
3. Special Share/Rate/ Deduction	There is no special rate.
4. Responsible/implementing Institution	Institutions authorized to carry out expropriation.
5. Deduction Purpose	The public interest is at stake. There is no deduction.
6. Property Use Purpose	For public service purposes

Table 3.2: Analysis of Easement Right by Expropriation (continued)

7. Charge	The price of easement is paid.
8. Completion Period	Within forty-five days at the latest from the issuance date of agreement paper, there is no prescribed period, in case of dispute.
9. Types of property acquired (land, structure)	A certain part, depth or height of a land
10. Legal Basis	No. 2942 Expropriation Law.
11. Scope of Objection to Institution	As a result of the dispute on the expropriation price, in order for the owner to file an annulment case at the administrative jurisdiction against the expropriation decision, Price Determination and Registration case must first be filed by the institution at the Court of First Instance with the request for determination and registration of the expropriation price. Within 30 days from the date of the notification to be made to the owner by the court regarding the price determination and registration case, the owner may file a case at the administrative jurisdiction requesting the cancellation of the expropriation decision.

Table 3.2: Analysis of Easement Right by Expropriation (continued)

12. Scope of Litigation and courts	Litigation for the public interest decision and urgent expropriation decision at the Council of State. Litigation for the expropriation decision at the administrative jurisdiction (Annulment of the expropriation decision cases), of the place where the property is located are in charged and authorized. Price Determination and Registration cases at the Court of First Instance (only by institution) The others (confiscating without expropriation cases, tangible correction cases etc. at the Court of First Instance
13. Single or Multiple Property Acquisition	Either Single or Multiple
14. Temporary/Permanent Ownership	Temporary and permanent ownership, provided that it is not used for any other purpose (permanency time: 49 years, temporal time is a few years)
15. Form of Announcement (official gazette, announcement, notification, ex officio)	The expropriating institutions determine the addresses of the owners by using ”CPAS” and notify the parties.

Table 3.2: Analysis of Easement Right by Expropriation (continued)

16. Costs/ Expenses	Easement costs are covered by the relevant institution,
17. Secondary Use	Easement right is established usually on a certain depth, part or height of a land. The owner can use property surface for farm in practice, providing that they will not plant tree or construct fixed facility on the easement right.
18. Ownership of acquired property - Is it registered in the name of relevant institution, or State Treasury or other institutions depending on use? - Is it cancelled on the tittle deed?	The ownership of property does not change in easement.
19. Requirement of Public Interest Decision	Public interest decision required
20. Scope of Ownership - Is the ownership transferred or left for its use to the public?	The ownership of the property remains unchanged, only the use of easement change to relevant administration for the specified period. The special condition "No Tree Planting, No Fixed Facility" is annotated on the title deed.

3.2 Barter

The other meaning of barter is exchange. Barter is comprised in more than one law in Turkish jurispendence. However, when it comes to the acquisition of property by public institutions by the method of barter, it stated in article 26 of the Expropriation Law No. 2942 that “In case the owner accepts instead of the expropriation price, the amount of the immovable property which is not allocated to the public service may be given partially or completely cover the price in Article 8 of Expropriation Law. It is also stated in Article 8 as, in case of institutions request to sell or barter the property subject to expropriation by purchase method, reconciliation meetings are held on the

date determined by the commission in case a reconciliation is provided on price or barter, not exceeding the price in appraisal report.

The value of the immovable property to be given instead of the expropriation price is determined by the tender commission of the institution, if not, by a commission to be established for this purpose. The difference between the prices of immovable property is covered by the parties in cash. However, the price of the immovable property to be given by the institution cannot exceed %20 of the expropriation price. The more valuable public property is prevented from being exchanged with this article. The institution determines its own property by the tender commission, while the price of the property to be purchased, determined by the appraisal commission. 20% price difference may also be requested from the private property owner. The price gap between the immovable properties is covered by the parties in cash.

After the expropriation decision is taken, in case owner of property applies to the institution within 15 days having been served process to exchange his immovable property depend on article 8 of the Expropriation Law No. 2942. In case of agreeing on the price with the owner so as not to exceed the price in the appraisal report prepared by the institution, this situation is recorded in the minutes and within 45 days from the reconciliation date, the immovable property is officially registered (in the name of institution) or cancelled in the title deed cleared of all encumbrances and rights on the property before expropriation. The expropriation price is paid to owner then by the registration or cancellation ex officio of the title deed. The property, easement or resource bartered in this way is deemed to have been acquired from the owner by expropriation and no objection is claimed against the expropriation carried out in this way or its price. *(Amended sixth paragraph: 20 /8/2016-6745/31 art.)* This situation is also suitable for expropriation by purchasing method.

Public institutions have to acquire a large number of immovable properties in large projects such as dam, irrigation, highway and railway etc. When considering from this point of aspect, leaving exchange of large number of immovable properties to the request and acceptance of the owner, and also pursuing a method similar to property expropriation in the process of appraising the price of the properties to be bartered, make property expropriation more attractive than barter.

3.3.1 Analysis Table of Barter

Analysis table of Barter is given in table 3.3. Barter process is questioned for 21 criteria and responded below.

Table 3.3: Analysis of Barter

APPLICATION NAME / CRITERIA	BARTER
1. Type of Ownership	Person and Legal Entity Property
2. Application Area (Rural/Urban)	Rural and Urban areas
3. Special Share/Rate/ Deduction	The difference between the immovable property costs is covered by the parties in cash. However, the value of the immovable property to be given by the administration shall not exceed 20% of the expropriation price.
4. Requirement of Public Interest Decision	Public interest decision required
5. Responsible/implementing Institution	Institutions authorized to carry out expropriation.
6. Deduction Purpose	The public interest is at stake. There is no deduction.
7. Property Use Purpose	For public service.

Table 3.3: Analysis of Barter (continued)

8. Charge	20% price difference may also be requested from the private property owner.
9. Completion Period	There is no prescribed period.
10. Types of property acquired (land, structure)	Land, structure
11. Legal Basis	Expropriation Law No. 2942
12. Scope of Objection to Institution	Since the barter option is a proposal, the owners who accept the barter, cannot object.
13. Scope of Litigation	Since the barter option is a proposal, the owners who accept the barter, cannot litigate.
14. Court	Litigation is impossible.

Table 3.3: Analysis of Barter (continued)

15. Single or Multiple Property Acquisition	Either singular or Multiple.
16. Temporary/Permanent Ownership	Permanent ownership, provided that it is not used for any other purpose
17. Form of Announcement (official gazette, announcement, notification, ex officio)	It is announced and notified to the property owners that the property to be bartered.
18. Costs/ Expenses	Cost and expenses are covered by the relevant institution
19. Secondary use	It is not referred to non-purpose-use for private ownership-wise since the property barter is a kind of exchange. Institution is obliged to use bartered property on purpose instead.

Table 3.3: Analysis of Barter (continued)

20. Ownership of acquired property -Is it registered in the name of relevant institution, or State Treasury or other institutions depending on use? -Is it cancelled on the tittle deed?	The ownership of the bartered property is interchanged between person and institution.
21. Scope of Ownership -Is the ownership transferred or left for its use to the public?	Private property registered to the relevant institution.

3.3 Grant

Grant (donation) is the transfer of private ownership of required immovable property for the public services, from the owner, to institution ownership. At the planning stage of the facilities, a deed of commitment is obtained is from natural or public legal persons who claim to donate all or part of the immovable property required for the realization of the facility.

In the event that the properties promised to be donated for the public use during the planning phase, since the remise or avoidance of transferring the ownership to the institution affects the project economy and investment expenditures, and the annotation of grant on the title deed has no legal validity before construction is started, after the final project of investment where the donated property is located, is prepared and comprised in the construction program, before construction is getting started, it is registered to the title deed in name of institution [39].

3.4 Rental

Acquisition of immovable property needed by the institutions by rental method is carried out by the State Tender Law and related legislation. The process is completed by issuing a tenancy contract between the lessor and the tenant public institution. The rental price is calculated by the appraisal commissions determined for this work by the institution.

The Ministry of Finance Communiqué which is renewed every year, is complied with in case the tenancy contract is islitigated or renewed [39].

3.5 Temporary Occupation

It is a method applied for use of privately owned immovable property that is needed to provide materials such as stone, soil, clay, aggregate, lime etc. required by the institutions while carrying out their investment projects or for storage. Temporary Occupation procedures are carried out according to the provisions of Law on the Temporary Occupation of Private Land and Quarries for Matters of Public Interest dated 9 February 1331 (1915). A special form of temporary occupation is regulated in Article 28 of the Expropriation Law No. 2942. Temporary occupation method for the public interest decision, is applied in all kinds of private immovable except for the procurement of wood materials, licensed stone and aggregate quarries, vegetable and flower gardens.

The institution requests the Provincial Administrative Board to make a temporary occupation decision from the Provincial Authority with a letter stating the area of the property to be occupied by making a plan determining the location and boundaries of the property, the name and the family name and explicit address of the owner, the necessity of occupation, purpose and expected stint of use indicating the project that is in practice or to be practiced.

In case the owner deals with the temporary occupation price determined by the institution appraisal commission, the appraised price is paid annually without the need for expert election.

In case of dispute, the date and time of meeting the expert is notified to the highest local authority, where the property to be occupied is located with the letter about the election of the expert notified to the owner. There must be a period of 10 days between the date of the notification to the owner or his representative and the date of the meeting. Experts appointed by the parties, prepare their reports. In case one of the parties cannot find an expert in the appointed day, it is provided by the District Administrative Board within 48 hours.

In case the parties dispute on the price appraised by the experts, the governorship appoints a third expert within 3 days. This period for the third expert to appraise is 8 days. The expert submits the report to the governor's office. After this report is approved by the Provincial Administrative Board, a copy is sent to the institution. At the same time, it is sent to the highest local authority of the place where the property is located, to be notified to owner or legal agent. In case the decision cannot be notified, it is announced on the notice board of the district governor's office or at the community council office. The property is occupied based on the decision of Provincial Administrative Board, reserving the parties' right objection on price. In case the property owner prevents the occupation, it is ensured by law enforcement agency.

In the event that occupation in this regard continues in consecutive years, the claims incurred at the end of each year or in case the temporary occupation ends is paid directly to the owner annually by calculating the depreciation that is the appraisal difference between the situation of the property before and after occupation (when the property is abandoned in accordance with the method specified in articles 4, 5 and 6 of the law. This Circular dated 11.01.1984 and numbered 1984/0-M/3 published upon the decision of the 1st Chamber of the State Council with the decision numbered 1983/293. The temporary occupation procedure is repeated for each year again in case temporary occupation is needed to be extended over consecutive years. Moreover; in case a change is to be made in the property, the costs required to redingrate property to its former condition is to be calculated and paid as one off, or the property is restituted to its former condition by the institution's own feasibility. Cost is not paid to the owner in case of being restituted by the institution.

Considering that the need for raw materials and storage areas required for carrying out ongoing projects over consecutive years and running time procedure, the method of temporary occupation makes the property acquisition tough and aggravated for the institutions.

The premises are not subject to temporary occupation.

3.5.1 Analysis Temporary Occupation

Analysis table of Temporary occupation is given in table 3.4. It is questioned for 21 criteria and responded below.

Table 3.4: Analysis of Temporary Occupation

APPLICATION NAME / CRITERIA	TEMPORARY OCCUPATION
1. Type of Ownership	Person and Legal Entity Property.
2. Application Area (Rural/Urban)	Rural and Urban areas
3. Special Share/Rate/ Deduction	There is no special share/rate/deduction.
4. Responsible/implementing Institution	Governorship with the request of institution operating public works.
5. Deduction Purpose	Performed for the public interest. No deduction.
6. Property Use Purpose	To extract or prepare the materials such as stone, sand, lime, etc. or to store some tools and equipment during the public work service.

Table 3.4: Analysis of Temporary Occupation (continued)

7. Charge	Since the temporary occupation is an extraordinary power that limits the right to property, it should be limited to an area that will cause the least damage to the property right and the owner's damages must also be paid.
8. Completion Period	There is no prescribed period.
9. Types of property acquired (land, structure)	Land (except orchards and vegetable gardens)
10. Legal Basis	Law of 3 February 1331 (1915) on the Temporary Occupation of the Land and Quarries Belonging to Individuals for the Appendant Matters for the Public Interest.
11. Scope of Objection to Institution	It is not possible to object to Institution.
12. Scope of Litigation	It is not possible to litigate for the transaction, but the amount of price may be appealed.
13. Court	Local administrative court, Civil Court of First Instance
14. Single or Multiple Property Acquisition	Either single or multiple

Table 3.4: Analysis of Temporary Occupation (continued)

15. Temporary/Permanent Ownership	Temporary property is acquired
16. Form of announcement (official gazette, announcement, notification, ex officio)	It is announced to the owners of property which is determined as to be temporarily occupied.
17. Costs/Expenses	Cost and expenses are covered by relevant institution.
18. Secondary Use	Secondary use is impossible.
19. Ownership of acquired property - Is it registered in the name of relevant institution, or State Treasury or other institutions depending on use? -Is it cancelled on the tittle deed?	The ownership of property remains unchanged.
20. Requirement of Public Interest Decision	The public decision is required.
21. Scope of Ownership - Is the ownership transferred or left for its use to the public?	The ownership remains unchanged, only the use of land changes to the institution temporarily.

3.6 Registration by Court Decision

The property is acquired also as a result of enterpleading claimed by the institution. It is a particular circumstance to acquire property in individual.

3.7 Requisition

Public institutions, natural persons and legal entities are obligated to serve their belongings and ownings such as land, plot, building, facility, vehicle, equipment, food, medicine and medical equipment, clothings and other items for use of the state due to natural disasters and dangerous epidemics, in where emergency is declared according to article 7 of State Emergency Law.

The general and annexed budgeted institutions, state-owned enterprises, organizations and affiliated institutions and local governors in that region are consulted in case the

needs are not met sufficiently and on time from these resources, obligations are imposed on private organizations and natural persons in the region, taking into account their opportunities and resources. In case essential items such as food, clothing, tools, equipment, drugs and medical supplies cannot be provided within the boundaries of the region, they are provided from nearest regions by obligation by applying the provision of this Law [41].

Requisition is a method of acquiring the goods in line with the needs of the state in state emergency situations. Expropriation is acquisition of ownership in need for public interest. Only the right of property use and goods are acquired in requisition, whereas ownership is transferred to the state or public institutions and legal public entities for benefit of public in expropriation. Concordantly requisition is the way that state consults in order to acquire, goods and right of property use as in extraordinary situations, rather than the method of acquiring the ownership of the immovable property, which is needed for public interest to carry out state investments.

The competent authorities proceed to the payment phase, after determining the price of the obligations, However, unlike expropriation, there is no principle of advance payment in requisition. Since the State is struggling with the emergency, it is understandable that the obligation amounts to be paid to the parties within the scope of requisition should be paid in installments. However, the obliged parties should not be mistreated due to the payments to be made in installments.

In terms of the requisition, made after the declaration of the state of emergency, according to the State Emergenct Law, the price of the property and labor obligations determined by the emergency boards and offices shall be paid through the account deposited in the bank where the regional and provincial or district governors and are located The payment is made by the governors or by the persons authorized by them, directly to the account of the obliged persons, or in writing or by cheque. If payments are delayed or made in installments, cost is paid with statutory interest. In terms of requisition due to military services, the obligations imposed under the law must be paid in cash.

Requisition cost is paid from property funds according to the law. However, the legislator did not set any limitations on the deadline for payment. It is only stipulated

that treasury bills subject to five percent interest may be given to those concerned as the cost of requisition to be paid within one year from the end of the mobilization.

Movable and immovable properties temporarily used by the administration shall be returned to those concerned together with the usage (rent) fee after the event or its effect that caused the requisition has ended. It is stated that the goods that cannot be compensated or repaired shall be purchased by the administration [23].

3.7.1 Analysis of Requisition

Analysis table of Requisition is given in table 3.5. The requisition process is questioned for 18 criteria and responded below.

Table 3.5: Analysis of Requisition

APPLICATION NAME / CRITERIA	REQUISITION
1. Type of Ownership	Person and Legal Entity Property.
2. Application Area (Rural/Urban)	Rural and Urban areas.
3. Special Share/Rate/ Deduction	There is no special share/rate/ deduction.
4. Responsible/implementing Institution	In cases where a state of emergency or emergency response is required, relevant public institutions
5. Deduction Purpose	The public interest is at stake. There is no deduction.
6. Property Use Purpose	In extraordinary circumstances, for the purpose of public/state interest.
7. Charge	Requisition cost is paid.

Table 3.5: Analysis of Requisition (continued)

8. Completion Period	There is no stipulated period.
9. Types of property acquired (land, structure)	Land and structure, goods
10. Legal Basis	Law on Emergency No. 2935
11. Single or Multiple Property Acquisition	Property acquisition either individually or collectively is possible
12. Temporary/Permanent Ownership	Temporary ownership
13. Form of announcement (official gazette, announcement, notification, ex officio)	Public institutions and organizations and legal and real persons in the region where the state of emergency has been declared are obliged to provide land, land, buildings, facilities, vehicles, equipment, food, medicine and medical supplies, clothing and other materials to be requested or obliged from them.

Table 3.5: Analysis of Requisition (continued)

14. Costs/Expenses	Costs and expenses are covered by the state.
15. Secondary Use	Impossible
16. Ownership of acquired property - Is it registered in the name of relevant institution, or State Treasury or other institutions depending on use? -Is it cancelled on the tittle deed?	Temporary ownership is restituted after the state of emergency is over.
17. Requirement of Public Interest Decision	Instead of public interest, the declaration of the state of emergency will be sufficient.
18. Scope of Ownership - Is the ownership transferred or left for its use to the public?	There is no transfer of ownership, only the right of use temporarily passes to the state

3.8 Land Consolidation

3.8.1 Definition

Land consolidation is defined as taking technical, economic and social measures to increase the living standard of the farmer family by bringing together fragmented, dispersed and deformed parcels that prevent economic agriculture and make it difficult to take soil protection and irrigation measures [11].

The benefit of Land consolidation projects is providing access to parcels, efficient use of water resources, merging parcels, reducing the costs of irrigation and drainage projects [12].

3.8.2 Legal Basis and Authorized Institutions

General Directorate of State Hydraulic Works is assigned with the Law No 7139 that came into force having been published in the Official Gazette on 28 April 2018 to carry out Land Consolidation projects that priory carried out by General Directorate of Rural Service and subsequently by Provincial Special Administration and General Directorate of Soil Agricultural Reform.

State Hydraulic Works practices Land Consolidation in accordance with the technical instruction prepared in depend on the 23rd Article of the Land Consolidation and On-Farm Development Services Implementation Regulation which came into force with the publication of the official gazette dated 07/02/2019 and numbered 30679. This regulation has been prepared referring to Annex 9 of the Law on Services Provided by the General Directorate of State Hydraulic Works dated 18/12/1953 and numbered 6200, to article 6 of the Agricultural Reform Law on Land Arrangement in Irrigation Areas dated 22/11/1984 and numbered 3083, and to Article 24 of the Soil Conservation and Land Use Law dated 7/2005 and numbered 5403.

State Hydraulic Works is authorized to carry out Land Consolidation projects and on-farm development services. State Hydraulic Works is only legally responsible for the practices and transactions carried out on its own. Institutions and organizations other than State Hydraulic Works are authorized to carry out land consolidation projects and

on-farm development services as a project management, subject to the permission of State Hydraulic Works [36].

3.8.3 Practice

Land consolidation is practiced by request or compulsory within the framework of the aforementioned regulation.

3.8.3.1 Land Consolidation by Request

In case the justification report is deemed sufficient in consolidation by request applications in consequence of request of land owners who own more than fifty percent of the area, a consent letter is obtained from the land owners and a consent decision document is islitigated. In case of concurrence, the project area is determined as an optional consolidation area and a preliminary survey or justification report is islitigated.

The Concurrence List report is litigated subsequently. In case the consolidation process is carried out by another project institution other than State Hydraulic Works, the Project management is obliged to send justification report, concurrence certificate and Concurrence List to State Hydraulic Works. In case consolidation is deemed appropriate in the area where the preliminary survey is carried out; the consolidation area is, in pursuit of State Hydraulic Works proposal, upon the approval of affiliated ministry and with regard to Presidential Decision, set in concrete having been published in official gazette.

3.8.3.2 Compulsory Land Consolidation

The Land Consolidation is compulsory in case of non-concurrence or unprovided conditions, but the project is even required.

The decision of president is considered as public interest decision in terms of land consolidation and other transactions. Having been published in the Official Gazette, the title deeds of the immovable properties are annotated in the consolidation area that are in the scope of consolidation pursuant to Article 8, paragraph 1 of the Land

Consolidation and On Farm Development Services Technical Instruction. Until the completion of consolidation process, the property is prohibited to be allotted, subdivided without the permission of the project developer, and not to be promised any related sales, transfer, assignment or mortgage with this annotation. In this respect, this annotation restricts the ownership during the period of consolidation process.

Land consolidation is applied in areas where cadastre had been completed. Discrepancies in the cadastral data of all immovable properties comprised in the consolidation project area, such as border corrections, demarcation and surface area, are corrected by the Cadastre unit/directorate before the consolidation work. The title deed records of the immovable properties in the project area are provided by the project institution. The fixed facilities such as barns, haystacks, warehouse, licensed and active wells orchards or olive groves are determined. Lists and orthophoto maps of the properties with fixed facilities are posted on the website of the project institution and announced at the office of local authority for 30 days.

The cadastral maps of the project area are digitized and surface area is checked. Cadastral base sheets of the project area either provided by the institution itself or in case the project is carried out by tender, ensures that they are obtained from the relevant cadastre unit on behalf of the contractor. Property information is computerised. The final project boundary is the cadastral boundaries of the settlements where land consolidation is carried out. Administrative boundaries are not taken into account. The current maps are produced according to Large-Scale Map and Map Information Production Regulation and in accordance with the State Hydraulic Works land consolidation database land consolidation technical specifications. The maps produced within the scope of Land Consolidation Project are in UTM 3 degree projection and ITRS96 datum.

The land is graded by the grading commission of the project institution in order to distribute the lands of the same value. The parcel index value is determined by adding the soil index obtained as a result of the soil surveys carried out according to the Soil Survey and Grading Technical Instructions in the land consolidation areas, and the scores of the location and other features at certain rates. The parcel index values are multiplied by the regulated the areas of the cadastral parcels and the parcel value numbers of the parcels are obtainedas shown in Figure 3.6.

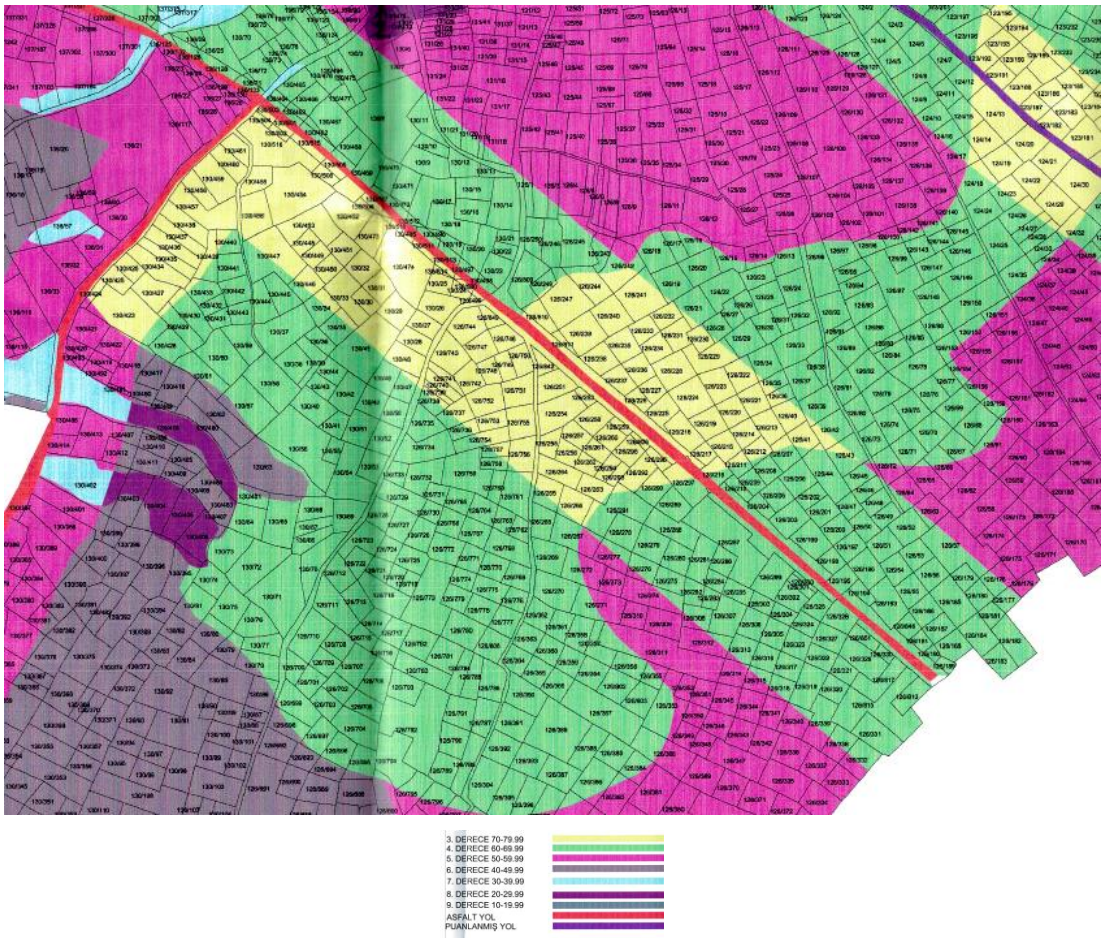

Figure 3.6: A part of Grading map showing parcel indices in different colours in Uşak Ulubey Hasköy land consolidation project

The grading maps are publicised for 30 days. The owners have right to object to grading maps until the close of next business day after deadline day. Objections in written are assessed by the project institution within 15 days and publicised again for 30 days. In case of second objection to the grading maps, the project institution concludes it within 30 days. Final decision is informed to the objector. In case of being rejected at this stage, the objector applies for cancellation of this process to Administrative Court within 60 days from the receipt date of the rejection of this transaction

New parcel areas are calculated by dividing the parcel value numbers by the indices of the location of the new parcels to be formed during the parceling plans. The roads are determined according to certain criteria and block plans are produced at the project

designing stage. The parcel planning is started after the block plans are approved by the project developer. How the blocks and parceling plans are produced, is specified in the Technical Specifications of Land Consolidation and On-Farm Development. The Participation Share for the Common facilities is calculated before producing parceling plan that is 10% of total parceling area. It provides the area that the project institution needs for the investment being carried out.

In case of not being provided by this method, the properties are acquired from allocation of properties of State Treasury, from non-registered areas or by expropriation. The places that are subject to licence and require subsequent legal procedures later such as transformer, pylon place, resting and storage basin, etc. that are registered in the name of the State Treasury.

Parceling maps are posted on the website of the producer institution and publicised at the local authority's office and on the notice boards of the district governorships for 30 days having been produced as specified in the Land Consolidation and On-Farm Development Services Technical Instruction. Land owners and other interested parties could object in written to State Hydraulic Works or to the Project institution from the first day of posting day until the close of next business day after deadline day. Objections in written are recorded and evaluated by State Hydraulic Works or the project institution within 15 days at least from the end of posting day, meanwhile parceling maps are posted for a second time for thirty days, using the same publicising methods. Land owners and other interested parties could object in written to State Hydraulic Works or to the Project institution from the first day of publicising day until the end of the next business day on which publicising cancelled. State Hydraulic Works or the project institution records these objections in written and decides on within thirty days at least from deadline day. The decision of State Hydraulic Works or the Project institution, is the final decision, and the parceling maps subject to registration are produce in complete and posted or publicised by way of the customary methods. Objection against final decision is litigated in the Administrative Court within 60 days. The 60-day period begins with the publicising date or the notification receipt date.

The final parceling plan is sent to the relevant cadastre unit for technical controls, and to the relevant land registry office for registration after technical control is completed.

The Parceling Plan is applied to the land and new immovable properties (parcels) are delivered to the owners.

The parceling maps as shown in Figure 3.7 produced as a result of land consolidation, having been completed registration procedures, replace the map or plan specified in the Turkish Civil Law dated 22/11/2001 and numbered 4721 and the Land Registry Regulation, which came into force having been published in the Official Gazette dated 17/8/2013 and numbered 28738, the Land Registry Plans Regulation published in the Official Gazette No. 26980, and setting out procedures of property are carried out depend on this map by the local land registry and cadastre unit [36].

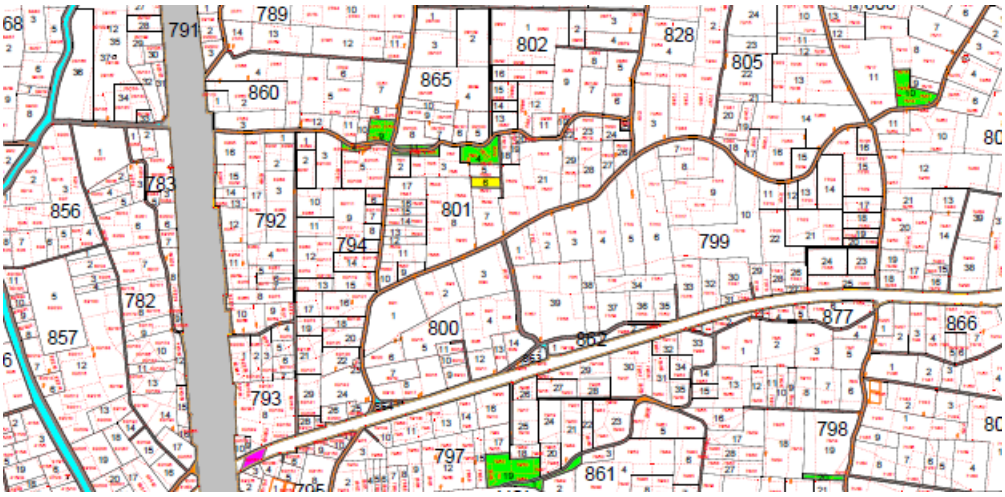

Figure 3.7: A part of Land Consolidation parceling plan in Manisa-Kırkağaç Highway Construction

The owners could litigate against the results of land consolidation within 10 years from the date of registration [36].

In case the consolidation works carried out so far by the General Directorate of Rural Services, Special Provincial Administrations, General Directorate of Soil Agricultural Reform and General Directorate of State Hydraulic Works are examined, it is observed that these works have been mostly carried out to strengthen the agricultural development in irrigation areas.

With the abolished regulation numbered 2009/15154 published in the Official Gazette dated 04.07.2009 and numbered 27298, it entered into force; The phenomenon of

"expropriation oriented-consolidation" has been put forward with the idea that land consolidation should be done not only for irrigation projects, but also for expropriation purposes, in order to reduce the cost, damage and problems experienced as a result of expropriation.

[19] In his master thesis named Land Consolidation for Expropriation Purposes; stated that expropriation should be the last preferred method for land acquisition, and that the immovable properties needed instead of expropriation could be obtained by land consolidation [19].

Planning and implementation of public investments together with consolidation; is of great importance in terms of reducing investment costs and accelerating investments and efficient use of public and private resources. The General Directorate of Highways has taken the first step to obtain the areas required for the 130 km Konya ring road route by land consolidation. General Directorate of Highways by the same method, signed a protocol in 2012 with the General Directorate of Agricultural Reform that was the institution authorised so far to carry out consolidation to construct of a total of 327 km of the Ankara-Niğde Highway route, a total of 75 km of the Istanbul-Izmir Highway route and a total of 30 km of the Malatya Northern Ring Road, together with the consolidation project. As a result of this protocol signed between General Directorate of Agricultural Reform and General Directorate of Highways, a total of 38,132 da (decare) of land was acquired without expropriation for a total 376.72 km of road route in provinces of Ankara, Aksaray, Niğde, Nevşehir, Malatya and Bursa where highway routes pass and which fall within the consolidation area [20].

The services, provision of public institutions are responsible to perform in the same field, not depend on each institutional responsibilities, but in an integrated manner by all public institutions by land consolidation makes it more attractive than expropriation.

This would only be possible with in case public institutions keep frequently in touch and consolidation is carried out by a single source that is a higher institution over all. Since public institution plans investments to complete within the periods determined in the investment program, in the most economical and in the shortest time, such a structuring prevents the realisation of Institution-based targets.

3.8.4 Analysis of Land Consolidation

Analysis Table of Land Consolidation is given in table 3.6. This process is questioned for 21 criteria and responded below.

Table 3.6: Analysis of Land Consolidation

APPLICATION NAME / CRITERIA	LAND CONSOLIDATION
1. Type of Ownership	Person and Legal entity property.
2. Application Area (Rural/Urban areas)	Mainly rural areas and partly urban areas
3. Responsible/Implementing Institution?	General Directorate of State Hydraulic Works/ Any other investor institution as a project manager
4. Special Share/Rate/ Deduction	For common facilities such as roads, irrigation pipe lines etc., a participation share for of up to %10 is deducted. No charge for participation share. If the amount of deduction exceeds %10, excess is covered from State Treasury Lands, if any, or expropriation is must.
5. Deduction Purpose	For common areas such as irrigation pipes lines, roads in the project area.
6. Property Use Purpose	For agricultural purposes or consolidation for expropriation such as state roads and highways expropriation.

Table 3.6: Analysis of Land Consolidation (continued)

7. Charge	Up to 10% free of charge, in case the amount of deduction exceeds 10%, the excess is covered from state treasury lands, if any, or expropriation is must.
8. Time	There is no prescribed deadline.
9. Type of property acquired (land, structure, etc.)	Land (terrain)
10. Legal Basis	Law No.7139 Annex 9 of the Law No. 6200 On Services Carried Out by the General Directorate of State Hydraulic Works Agricultural Reform Law No. 3083 on Land Regulation in Irrigation Areas Soil Conservation and Land Use Law No. 540F Technical instruction prepared in accordance with Article 23 of the Implementing Regulation on Land Consolidation and in field Development Service
11. Scope of Objection to Administration	Land owners and other interested parties may object in writing to the SHW or the project institution from the beginning of the announcement until the end of next working day on which the announcement is banned.

Table 3.6: Analysis of Land Consolidation (continued)

12. Scope of Litigation	Litigation for the application and the price (price of crop damage) is possible.
13. Court	Council of State (against presidential decree,) Administrative Court (for the cancellation of application), Civil court of Peace (against price of crop damage)
14. Single or Multiple Property Acquisition	Either single or Multiple property acquisition is possible.
15. Temporary/Permanent Ownership	Permanent ownership, provided that it is not used for any other purpose.
16. Form of Announcement (official gazette, announcement, notification, ex officio)	Official gazette, The announcement within the scope pf LC is notified to the highest administrative authority.
17. Costs/ Expenses	Cost and expenses are covered by the relevant institution, the transactions within the scope of the application are exempt from all kinds of expenses, taxes, duties and charges

Table 3.6: Analysis of Land Consolidation (continued)

18. Secondary Use	Property must be used on what purposed it is consolidated
19. Ownership of acquired property -Is it registered in the name of relevant institution, or State Treasury or other institutions depending on use? -Is it cancelled on the tittle deed?	The acquired properties are registered in the name of the State Treasury or cancelled. The properties belonging to State Treasury, afterwards are allocated to other relevant institutions depending on purpose use.
20. Requirement of Public interest Decision	Upon the request of the Ministry or the boards, public interest decisions may be taken. In the case of voluntary consolidation, it is done with the written consent of the land owners or their legal heirs who own more than fifty percent of the land they own in number and area within the project area. Presidential Decree is deemed as a public interest decision.
21. Scope of Ownership -Is the ownership transferred or left for its use to the public?	Title deed of the property registered in the name of the State Treasury and is allocated for the use of the relevant institution, or cancelled.

3.9 Land Arrangement

Municipalities, Provincial Private Administrations and governorships are authorized to produce zoning plans (maps) and to generate parcels in accordance with these plans. The relevant institutions get the power to produce and apply zoning plans from the Zoning Law No. 3194.

Land arrangement carried out in accordance with Article 18 of the Zoning Law, also known as Article 18 application; is practiced having been decided on determination of the arrangement area by the Municipal Council, by the municipalities within the boundaries of the Municipality and in the adjacent areas depend on the municipal committee decision, by the governorships in the outlying areas with the decision of the

provincial administrative board giving priority to 5-year zoning programs and a sufficient amount of parcels according to the development and need of the town; is obliged to determine the arrangement areas in a way to housing, service and other usage areas ready, and to produce the parceling plans according to the finalised implementation development plans [38].

Metropolitan municipalities produces master plans within the framework of the regulations of the Metropolitan Municipality Law No. 5216. Besides, metropolitan municipalities have the authority to supervise the implementary zoning plans of district municipalities. In addition, Provincial Special Administration in provinces that are non-metropolitan, is also authorised to produce zoning plans of outlying areas of municipality within the scope of Law No. 5302. [7]

It is stated that the provincial council has the authority to discuss and decide on the provincial environmental order and the zoning plan of the areas outside the municipal boundaries in Article 10/c of the same Law.

In accordance with the Zoning Law No. 3194; [22] classifies, the ways of practising zoning applications under 3 titles. The first, is the zoning applications practiced by expropriation. This practice comes to the fore in the establishment of public facilities or in order to accommodate the people to be resettled in extraordinary situations. Article 10 of the Zoning Law warrants it. The second is the zoning applied on owner's demand. The third is the way of partition that is, the land arrangement, which is the main method in the zoning applications [22].

3.9.1 Zoning by Request

Zoning by request are defined in Articles 15 and 16 of the Zoning Law. These applications are; border correction, subdivision and merger, renunciation and exclusion from the road. Such applications are not land arrangement but applied in the areas with an existing zoning plans.

The relevant administration is authorized to subdivide or merge ex officio the parcels that are not suitable for construction in their existing form depending on the actual situation by request of one of the owners or directly, in the event that the owners cannot

compromise within three months from the notification having been sent to the owners for an agreement among themselves.*(The Law No. 7181, adopted on 04.07.2019, on amending the title deed and some laws, entered into force by being published in the Official Gazette dated 10.07.2019 and numbered 30827.)*

Subdivision or Merger applications must be approved within 30 days by the competent authorities; and registration or renunciation must be completed within 15 days. A case of the dissolution of the partnership is litigated against the institution at the local Civil Court of Peace in case of irreconciliation between the owners of the properties.

The zoning plans are mainly produced as mean of communize with the application of the 17th and 18th articles. However, in cases where the application of the 17th article is delayed, relevant the person may request to get the zoning parcel or to construct at once. In case the existing parcel corresponds with an independent zoning parcel in the zoning plan, it can obtain this parcel upon request, in accordance with Articles 15 and 16 of the Zoning Law [8].

According to the 19th article of the Planned Areas Zoning Regulation; parcels on any zoning block without parceling plan, cannot be subdivided and merged [21].

It is stated that 15th and 16th articles could not be applied to the cadastral parcels, but to parcels formed in accordance with the 18th article in the circular of the General Directorate of Technical Research and Application of the Ministry of Environment and Urbanization and Climate Change, dated January 31, 2000 and numbered 2023. It is repeated in the Circular No. 3401 dated 05.04.2004

As it is seen from these regulations and circulars, the applications practiced in accordance with the articles 16 and 17 of the Zoning Law do not replace land arrangement applications determined in the article 18.

3.9.1.1 Analysis Zoning Application by Request (According to the Article 15 and 16)

Analysis table of zoning application by request (according to the article 15 and 16 is given in table 3.7. It is questioned for 21 criteria and responded below.

Table 3.7: Analysis Zoning by request

APPLICATION NAME / CRITERIA	ARTICLES 15 AND 16 OF ZONING LAW
1. Type of Ownership	Person and Legal Entity Property
2. Application Area (Rural/Urban)	Mainly Urban area and partially rural built-up areas (Unplanned Areas Zoning Regulation)
3. Special Share/Rate/ Deduction	There is no special rate (deduction is calculated from the property cut out for the road and green area)
4. Responsible/implementing Institution	Municipalities are responsible within the boundaries of the municipality and the adjacent area Governorships are responsible for the areas outside the municipality and adjacent area
5. Deduction Purpose	For establishment of facilities such as parks, green areas, playgrounds within the framework of the master plan.

Table 3.7: Analysis Zoning by Request (continued)

6. Property Use Purpose	For public service purposes
7. Charge	With and without charge.
8. Completion Period	There is no prescribed deadline.
9. Types of property acquired (land, structure)	Land
10. Legal Basis	Articles 15 and 16 of the Zoning Law and related regulations.
11. Scope of Objection to Institution	It is possible to object for the process is possible but there is no stipulated objection period.
12. Scope of Litigation	It is possible to litigate for the application and the pric.e
13. Court	Civil Court of First Instance, Council of State, Administrative Court.

Table 3.7: Analysis Zoning by Request (continued)

14. Single or Multiple Property Acquisition	Single property acquisition.
15. Temporary/Permanent Ownership	Permanent ownership, provided that it is not used for any other purpose.
16. Form of Announcement (official gazette, announcement, notification, ex officio)	The Claim of property owner to the relevant institution is required since it is an optional request.
17. Costs/ Expenses	The costs of procedure are paid by the claimant and also it is subject to the fee in accordance with clause 1/6-a of the tariff numbered (4) of Law No. 492.
18. Secondary Use	Impossible.
19. Ownership of acquired property -Is it registered in the name of relevant institution, or State Treasury or other institutions depending on use? -Is it cancelled on the tittle deed?	Among the areas allocated for the needs of the region, those related to municipal services are used for the purposes, registered in the name of municipality, Cancelled and left as road or green space in the title deed.

Table 3.7: Analysis Zoning by Request (continued)

20. Requirement of Public Interest Decision	It is not required to obtain directly public interest decision since the road abandonment was made with the consent of claim in accordance with articles 15 and 16 of Zoning Law.
21. Scope of Ownership -Is the ownership transferred or left for its use to the public?	Ownership is left for its use to the public.

3.9.2 Compulsory Zoning (Land Arrangement)

Land arrangement is practiced regardless of the owner's request. Municipalities or other authorized administrations subdivide properties within the zoning boundaries without seeking the consent of the owners or right holders in accordance with Article 18 of the Zoning Law. Thus, the areas that will belong to the common use of public are provided by deducting from the private owned immovable properties [42].

According to [22], since the zoning plans are produced on a block basis, zoning parcels are produced more properly than subdivision and merger. Thus, both cost is reduced and the area of usage is increased, and are finalised in a shorter time in larger areas causing fewer problems, therefore property owners obtain more beneficial results with the application of Article 18 [22].

Land arrangement in our country is carried out in accordance with the Regulation of Land arrangement. The provisions of this regulation are implemented by the Ministry of Environment, Urbanization and Climate Change. This regulation defines how the land arrangement to be practiced according to the 13th, 15th, 16th, 18th and 19th articles of the Zoning Law No. 3194. The areas that are in municipality zone or in its adjacent area or in outlying borders that are subject to implementary zoning plans with or without any buildings are comprised within the scope of this regulation. In addition the principles regarding the zoning plan are defined in the Regulation of Spatial Plans Production published in the Official Gazette dated 14.06.2014 and numbered 29030.

While the terrain is a piece of land on which zoning application has not been made, the plot is the property in the 1/5000 scale master zoning plan that falls within the

municipality and its adjacent area, on which zoning has been practiced or will be practiced and benefiting from municipal services.

The phrase “agricultural lands cannot be used for purposes other than agricultural purposes without the permits specified in the Law No 5403 on Soil Conservation and Land Use, entered into force in 2005“ is added to the first paragraph (c) of Article 8 of the Zoning Law No.3194. Thus, zoning of agricultural lands are averted by this phrase. Thus, the opening of agricultural areas for development has been prevented.

3.9.2.1 Development Readjustment Share

The Development Readjustment Share is the increase in value of property as a result of the article 18 application, and it is seizure of up to 45% of the property without paying any price to the owner. This seizure does not restrict property rights since DRS deduction is one of the requirements of the public interest and does not touch the essence of the property right [43].

It is calculated by subtracting the surface area of the parts parcelled out to the zoning parcels from the total area of the parcels comprised in the Development Readjustment Share arrangement area.

The Development Readjustment Share deduction cannot be used for purposes other than facilities related to public services. Otherwise, results in completely contrary to the purpose of public interest [44].

The “Development Readjustment Share” rate in the 2nd paragraph of Article 18 of the Law No. 3194 was raised up from 40% to 45% with the Law No. 7181 in the amendment of the Land Registry and Certain Laws published in the Official Gazette No. 30827 dated on 04.07.2019. The diversity of areas to be covered by the Development Readjustment Share have been expanded and therefore some changes have been made in some phrases [22].

These changes are defined in Article 11 of The Land Arrangement Regulation. It is ensured that the areas reserved for "state institution area", "entertainment, recreation and sports area", "health facility area affiliated to the Ministry of Health", "municipal

service area", "cemetery area", "social and cultural service area" and “excursion and picnic areas” is to be covered by the Development Readjustment Share deduction.

In accordance with Article 5 of the regulation aforementioned, the areas required for zoning plans and public services should be provided firstly with Development Readjustment Share in order of priority by applying according to the 18th article of the Zoning Law in case Development Readjustment Share rate exceeds 45%, the way of barter must be carried out first, then be acquired by the way of purchase in accordance with the law of Expropriation No. 2942. The expropriation is carried out with the smallest one initially among the parcels comprised in the arrangement area.

From the areas provided from the Development Readjustment Share deduction; while roads are deserted from registration, the properties allocated for social reinforcement areas serving whole city in the Metropolitan zone such as Municipality service area, sports area, municipality nursery area, market place, urban public transport stations and stops, afforested area, recreation area, promenade area, cemetery area , park, etc. are registered in the name of Metropolitan Municipality and the others in the district Municipality zone are registered in the name of the district municipalities.

The service areas, used by both the municipality and other public institutions such as the municipality sports area, technical infrastructure area, social and cultural facility area, and the parts reserved for places such as schools, places of worship are registered in the title deed in the name of the State Treasury. Afterwards, the relevant institution requests an allocation from the State Treasury on behalf of the administration or institution for the facility to be built.

The amount of shares other than Development Readjustment Share received from the parcels in the arrangement area for the places that need to be reserved for official institutions and organizations expect public service areas such as roads, squares, parks, green areas, police stations, in the arrangement areas are called Public Participation Shares that was abolished with the Law No. 7181 Amending the Land Registry Law and Certain Laws published in the Official Gazette No. 30827 dated on 04.07.2019. The properties provided for public facilities from the Public Participation Shares deduction are covered now then from Development Readjustment Share deduction that is raised up to %45.

Allocation to public facility is not a deduction but a distribution criterion. Since it is accepted that the public facilities serve owners within the arrangement area, this practice ensures that all owners within the arrangement area are allocated shares in proportion to each after Development Readjustment Share instead of causing the owners of properties subdivided or merged as zoning parcels to be aggrieved by giving them the shares only from these places. Public Participation Shares is not left to the public without charge, but in return for a price. Accordingly, as a result of the Public Participation Shares implementation, all owners within the arrangement become shareholders in the aforementioned public service facility areas in proportion to their shares, and they are paid a price when expropriation is made [45].

Since the Public Participation Shares deduction is no longer applied, in case there is an area to be reversed for public service within the arrangement area and even the amount to be deducted for this area exceeds the total Development Readjustment Share, the relevant municipality firstly brings the property into the public service by the way of barter, then expropriation and reduce the amount of Development Readjustment Share to the legal limit of %45. Thus, while the owners of private property in the arrangement area allocated for the public facility with Public Participation Shares deduction, are faced to share expropriation after the zoning plan, the owners of the properties allocated for the public facility is faced afterwards with the expropriation in this new process.

Provided that it is in compliance with the zoning plan and approved by the institution authorized to approve the parceling plan, the arrangement areas are also determined upon the request of the majority in terms of the land share ratio of the owners. In this case, the parceling costs are borne by the requesting owners [38].

3.9.2.2 Practice

Cadastral information and land registry records are obtained by the municipality and the arrangement maps are produced by considering the basic map of the arrangement area. The arrangement map is approved by the municipal committee. Annotation is added on the land registry of the parcels that are comprised in the arrangement. With this annotation, no other subdivision or merger applied on property. Zoning blocks and application charts are produced. The cadastral parcel areas comprised in the

arrangement are finalised and the cadastral parcel plans are arranged for each property. Zoning blocks are also finalised and Development Readjustment Share Ratio is calculated.

Development Readjustment Share Ratio is the ratio of the amount of Development Readjustment Share, to the total surface area of the cadastral or zoning parcels in arrangement area.

The (parceling) subdivision plans are approved by the municipality or governorship within 5 years after the Development Readjustment Share is deducted. Even the zoning plans are finalised in the area where Development Readjustment Share is deducted, not producing a subdivision plan within 5 years, restricts the property right of the owner continuously and severely. This situation may constitute seizure without expropriation and may require the institution to pay compensation [42].

The parceling (subdivision) plans are completed by generating zoning parcels accommodately with legislation after the zoning islands are finalised. Produced subdivision plans are approved by the municipal committee in the municipality and the adjacent area, and by the provincial administrative board in outlying areas in accordance with Article 19 of the Zoning Law No. 3194. In addition, in case the arrangement area is within the boundaries of the Metropolitan Municipality, it is approved by the Metropolitan Municipality Committee, either as it is or by changing it.

These plans are declared for a period of one month and posted on the website in addition announced by municipality or published on newspaper, etc. In case of having no objection at the end of this period, the plans are juristically finalised. In the event of an objection, the objections are evaluated by the relevant institution. In the event that the objections are out of favour, plans are finalised by the relevant institution and concluded with and decision stating the justification of rejection of objections [38].

“Annulment of the application” case can be litigated against this decision in the Local Administrative Court within 60 days from the date of its rejection. However, since the application to the institution is not mandatory in annulment action, litigation is possible within 60 days from the end of the proclamation period, even if there is no objection to the zoning plan.

In case the objections are in favour, the subdivision plan which is produced again having been revised, is approved by the relevant institution and the proclamation period and finalisation process is started again. Even there is a change in the parceling plan for any reason, the process is repeated.

The finalised parceling plan as hown in Figure 3.8 is sent to the relevant cadastre unit for technical controls, and to the relevant land registry office for registration ex officio.

Figure 3.8: A part of 1/1000 Scale Implementary Zoning Plan in Bergama, Izmir

3.9.2.3 Analysis of Land Arrangement

Analysis Table of Land Arrangement is given in table 3.8. Land arrangement process is questioned for 20 criteria and responds are in the next page.

Table 3.8: Analysis of Land Arrangement

APPLICATION NAME / CRITERIA	LAND ARRANGEMENT (ARTICLE 18 OF ZONING LAW)
1. Type of Ownership	Person and Legal Entity Property
2. Application Area (Rural/Urban)	In Urban Areas, in Rural Settings
3. Special share/rate/ deduction (DRS)	It is deducted free of charge from up to 45% of pre-arranged surface area of lands (terrain and plot) in arrangement area, according the use decision in the zoning plan for the benefit of public.
4. Responsible/implementing Institution	Municipalities are responsible within the boundaries of the municipality and the adjacent area. Governorships are responsible for the areas outside the municipality and adjacent area
5. Deduction Purpose	To obtain the public service and public service areas necessary for the residents of the city zone in arrangement area and the region to carry out their urban activities.
6. Property Use Purpose	For public service purposes

Table 3.8: Analysis of Land Arrangement (continued)

7. Charge	The Lands are acquired free of charge up to 45%, the amount of land exceeded rate of 45% is barted or expropriated at least and transferred to State Treasury ownership by the relevant public institutions and organizations within the scope of the Expropriation Law No. 2942 dated 4/11/1983.
8. Completion Period	There is no prescribed deadline.
9. Types of property acquired (land, structure)	Land
10. Legal Basis	Zoning Law No. 3194
11. Scope of Objection to Institution	Persons whose interests have been violated may object the transaction is unlawful in terms of at least one of the elements of authority, form, reason, subject and purpose. In addition, parcel plans posted for a period of one month at the relevant municipality or governor's office, or on web site if there is no objection at the end of the specified period, the parceling plans are finalised. The objections are evaluated by the relevant institution.

Table 3.8: Analysis of Land Arrangement (continued)

12. Scope of Litigation and courts	It is possible to litigate for application at Local Administrative Court within the 60 days of institution decline date, but claim to institution is not mandatory.
13. Single or Multiple Property Acquisition	Either single or multiple
14. Temporary/Permanent Ownership	Permanent ownership, provided that it is not used for any other purpose
15. Form of Announcement (official gazette, announcement, notification, ex officio)	Parceling plans are posted for a period of one month at the relevant municipality or governor's office or on website and/or announced, published etc.
16. Costs/ Expenses	Costs/expenses are covered by the relevant institution
17. Secondary Use	It is not possible to use for purposes other than public services and facilities related. Secondary use is offense and may be objected.

Table 3.8 Analysis of Land Arrangement (continued)

18. Ownership of acquired property -Is it registered in the name of relevant institution, or State Treasury or other institutions depending on use? -Is it cancelled on the tittle deed?	Among the areas allocated for the needs of the region, those related to municipal services are used for the purposes, registered in the name of municipality, on the other hand the areas allocated for the public use such sports hall, school, sanctuary registered in the name of State Treasury in the title deed and allocated afterwards for the relevant institution. E.g. school area is allocated to the Ministry of National Education. The areas for green spaces and roads are left unregistered and title deed cancelled.
19. Requirement of Public Interest Decision	Zoning Plan itself is a kind of public interest decision.
20. Scope of Ownership -Is the ownership transferred or left for its use to the public?	The ownership is either transferred or left for its use to the public.

4. Comparison of the Methods of Immovable Private Property Acquisition by Public Institution

4.1 Comparison with Public Interest

Public institutions and organizations need immovable properties for the facilities they will construct in order to provide services to the public. If these properties are subject to private ownership, it is necessary to provide an impersonal benefit since it will touch the property right, which is the most natural right of the real person and legal entity. The public interest and the common interest limit the individual benefit.

Institutions are obligated to obtain public interest, in case of seizing property in private ownership for the property acquisition, and restricting the rights and resources.

Article 46 of Constitution requires a public interest decision for acquisition of immovable property by institutions. Institutions cannot acquire immovable properties which are necessary for the works entrusted to them by law without this decision.

Public interest decision is taken by the highest authority of which institution to provide the service is affiliated. This public interest decision may be a project approved by a higher authority that replace the public interest decision, or it may be a decision made by the Presidency.

In terms of public interest, the concept is at the basis of all methods other than the applications related to article 15 and 16 of the Zoning Law. The applications related to these articles, need request. In return for the fulfillment of these request, the owner leaves a part of his property to the public at the determined rates. There is no need for any special request for other applications which are ex officio and mandatory.

4.2 Comparison with the Legal Legislation

Although main power of expropriation, as a property acquisition method, derives from Article 46 of Constitution, but the Expropriation Law No. 2942 amended by Law No.4650 binds all public institutions in terms of application and legally.

Zoning application derives its power from the Zoning Law No. 3194, it carries out the procedures in accordance with the land arrangement regulation. In addition to the Zoning Law, there are also legislations such as the Provincial Special Administrative Law No. 5302 and the Spatial Plans Construction Regulation that affect the applications.

The pursuance of Land Consolidation was transferred to the General Directorate of State Hydraulic Works with the Law No. 7139. The General Directorate of State Hydraulic Works carries out the application in accordance with the article annex-9 of the law on the Services Carried Out by the General Directorate of State Hydraulic Works dated 18/12/1953 and numbered 6200, and the article 6 of the Agricultural Reform Law on the Regulation of Land in Irrigation Areas dated 22/11/1984 and numbered 3083 and the Article 24 of the Soil Conversation and Land Use Law No. 5403 dated 3/7/2005, as well as the Land Consolidation and On Farm Development Technical Instruction.

In terms of legal legislation, some of the practices are implemented within the scope of a single law such as practices based on the articles 15, 16 and 18 of Zoning Law, expropriation, establishment of easement by expropriation, barter practices based on the Expropriation Law.

The others implemented by within the scope of more than one law such as land consolidation and requisition. Land consolidation is carried out in accordance with the "Article Annex-9 of the Law No. 6200 on the Services Carried Out by the General Directorate of State Hydraulic Works", the Agricultural Reform Law No. 3083 on the Regulation of Land in Irrigation Areas" and the "Soil Conversion and Land Use Law No. 5403. On the other hand, requisition is carried out within the scope of the "State of Emergency Law" and the "Law No. 4373 on Protection against Flood Waters and Floods". The constitutional basis is contained in Article 121, paragraph 2.

Accordingly, it is stated that in the states of emergency declared in accordance with Article 119 of the Constitution (that is, in the states of emergency declared due to natural disasters, dangerous epidemics and severe economic depression), money, property and work obligations can be imposed by law for citizens.

4.3 Comparison Property Acquision with “with / without Price”

While acquiring private owner shipped properties, public institutions often provide financial payments under various names e.g. expropriation or requisition price or, compensation, etc. whereas land consolidation and Land arrangement practices deduct property free of charge up to some special rates (e.g. development readjustment share, participation share for common facilities). In case of a situation above these rates, the excess part is acquired by expropriation and the expropriation price is paid to the owners. In these two applications, the main reason for acquiring immovable property free of charge at a certain rate is, increasing value of the property depending on the services to be performed in that application area. In other words, in return for the increasing value, a certain percentage of immovable property is left to the public.

Irreconcialition on expropriation price or compensation is a matter in practices where payment is made in return for acquired property, since the worth of property is underestimated. There should be a balance between the expropriation price and the worth of property acquired. Otherwise, unjust enrichment or public loss is in question, if this balance changes substantially in favour of either party. Paying high amount of expropriation price above its worth causes public loss and unjust enrichment of property owner without any reason whereas paying low expropriation price under its worth, the property loses its rights economically. Therefore, while calculating the value or price support should be obtained from experts in fields.

4.4 Comparison with Application Area

Applications enabling the public to acquire property can be practised both in rural and urban areas. While land consolidation is carried out in rural areas, zoning applications are carried out in urban areas and rural settings, but agricultural lands cannot be used

for purposes other than agricultural purposes without the permits specified in the Law No 5403 on Soil Conservation and Land Use, entered into force in 2005 is added to the first paragraph (c) of Article 8 of the Zoning Law No.3194. Thus, zoning of agricultural lands are averted by this phrase and the opening of agricultural areas for development has been prevented.

Expropriation is practiced both in rural and urban areas. In land consolidation and zoning applications, an application area is determined and the properties within the application area are affected by these applications. It is possible to acquire property without defining an application area in barter, temporary occupation or requisition in which of the area determined individually, except mass expropriations.

4.5 Comparison with Practicing Authorities

All public institutions and organizations, including State Economic Enterprises which are obliged to provide public services and local governments may acquire private properties in accordance with the Expropriation Law No. 2942. In addition, Local governments acquire immovable property according to the Zoning Law No.3194.

The General Directorate of State Hydraulic Works is only authorized to carry out land consolidation works. Even land consolidation is required to be carried out by another institution, the institution has to invoke to General Directorate of State Hydraulic Works as “designer/project institution”. The General Directorate of State Hydraulic Works is only legally responsible for its activities within the scope of consolidation carried out by itself.

Requisition, is the method used by the relevant public institutions only in cases where extraordinary or urgent intervention is required. Temporary occupation, on the other hand, is the temporary transfer of ownership of the immovable property needed during the public works servicing to the public institution that provide this service for a temporary period. Requisition and temporary occupation methods are less frequently used than the other methods.

4.6 Comparison with Announcement

Expropriating institutions send a notification to the owners of the property to be expropriated according to Article 8 of the Expropriation Law stating that it intends to purchase the property with reconciliation or barter it with other property without specifying the price. Thus, all the owners in the project area meet with the institution on the day and time specified in the notification and obtain information about the expropriation process.

Local governments carry out optional or compulsory zoning applications for land in urban and rural areas within the framework of the regulations of the Metropolitan Municipality Law No. 5216. Metropolitan municipalities produces master plans. In addition, metropolitan municipalities have the authority to supervise the implementation zoning plans made by the district municipalities. Therefore land arrangement applications are not announced before getting proceeded. Nevertheless, Concrete zoning plans are announced for one month at the board, published and posted on the local government's website.

Land Consolidation announcement is notified to the highest local administrative authority within one month following the publication of Presidential decree in the Official Gazette. Nevertheless during the process institution interview with the parties [38].

4.7 Comparison with Ownership

Even expropriating institution is, the institution that is included in the Annexed Schedules 2 and 3 of the Public Financial Management and Control Law No. 5018, that is, if it is an institution with a special budget (such as General Directorate of State Hydraulic Works, and General Directorate of Highway) or a Public Economic Organization (such as Turkish Electricity Distribution Corporation, Petroleum Pipeline Corporation), register the title deed in their own names, and the part that is excluded from expropriation remains in the name of the owner. Therefore, the General Directorate of Highways, usually leaves the property that is expropriated as an

unregistered area annotated that it will be registered in the name of the General Directorate of Highways in case of any registration.

Even expropriating institution is, the institution that is included in the Annexed Schedule 1 of the Public Financial Management and Control Law No. 5018, that is, if it is an institution included in the general budget, immovable property is registered on in the name of the Treasury of Finance. Relevant institution then requires to allocate the property to its own use.

The establishment of easement by expropriation is in fact not a method of acquisition property, but a right of use over the part or depth or height of the property. In the land registry, when an easement right established on the property, it is stated that no fixed facility will be built on the part, depth or height of property where easement right is established and perennial plants will not be planted. The right of way facility can be temporary or permanent. Permanent easement right is a situation related to the economic life of the investment. After the end of period, the right of easement is cancelled from the land registry.

Local Governments acquire property by zoning application from the areas provided by the Development readjustment share deduction; whereas the roads are left unregistrated, other acquired properties are allocated to facilities such as the municipal service area, district sports area, municipal nursery area, market place, city public transport stations and stops, afforestation area, recreation area, cemetery area, park, etc. and the social reinforcement areas serving the whole city are registered to Metropolitan Municipality and in the other areas are registered in the name of the district municipalities. The areas that may be in the use of both the municipality and other public institutions such as the municipal sports area, technical infrastructure area, social and cultural facility area and the parts allocated for mosques, schools, sanctuary, etc. is registered in the title deed in the name of the Treasury of Finance. Properties acquired by the development readjustment deduction are not used for any other purpose. Relevant institution, then requires to allocate the property to its own use.

In consolidation projects carried out together with irrigation projects now or in future the parts acquired by the consolidation deduction are separated as irrigation pipeline area and operation-maintenance road and left unregistrated. These unregistrated areas

are the spaces separating the blocks. In this case, institution has not acquired property in its name and has reserved a space for the service to be provided. Apart from State Hydraulic Works the institutions, which carry out the consolidation as a project institution, are also able to acquire property in the event that there is no sufficient State Treasury owned property in the consolidation project. They, for example, are left as the road or railway space and then this space is allocated for the service. Even the institution cannot find a sufficient number of Treasury of Finance property to merge within the project area, the method of acquiring property by expropriation becomes an obligatory.

4.8 Comparison with Objections

4.8.1 Objection to expropriation and establishment of easement right

Expropriation that is not completed by the purchase method in accordance with Article 8, an action is taken according to the Article 10 pursuant to Expropriation Law No. 2942.

According to the Expropriation Law No. 2942 amended by the Law No. 4650, if the institution and the property owners cannot agree on the price, the institution file a "Price Determination and Registration" case at the Civil Court of First Instance where the property is located. Property owners cannot litigate the institution for price determination and registration.

The Court sends a legitimised invitation to the property owner for a hearing date no later than 30 days from the date of the institution claim.

The property owner receiving the legitimised invitation litigate institution for the annulment of the expropriation within 30 days from receipt date of the invitation in administrative jurisdiction and/or for the correction of material errors in the judicial jurisdiction. Even owner claims an islitigate of stay order together with the annulment case, the price determination and registration case is suspended. If the court does not decide on annulment, the expropriation continues in accordance with the legislations.

In price determination and registration cases, the islitigate is that the irreconciliation on the price determined by the appraisal commission established by the institution. The Civil Courts of First Instance adjudges on the registration of property in name of the institution, taking into account the public interest, and carry out the litigation on the condition that the rights of appeal are reserved on the price.

The Court of First Instance adjudgement is appealed at the Court of Appeals.

Since expropriation cases are simple trial procedure, they are concluded in the local court more quickly than other cases, in an average of 10-12 months [46].

Urgent expropriation is filed in Civil Courts of First Instance. The period for making a registration decision on behalf of the administration is 6 months. The annulment of urgent expropriation decision case is filed at Council of State.

4.8.2 Objection to Zoning Applications (Land Arrangement)

According to [10] many of law cases filed against zoning applications are related to many development readjustment share and public partnership share, yet nominal.

According to the zoning application studies, it is stated that significant technical and legal errors are encountered in zoning application the application is annulled especially in the cases filed at the courts against the land arrangement [28].

Zoning plans are accepted as general regulatory action that must be promulgated by jurisprudence. There is no specific decision on the Zoning Law regarding the time limit for filing a case against zoning plans. Therefore, the time limit for filing a case against the development plans, which is regulatory acts that need to be announced, is determined in accordance with the Administrative Procedure Law No. 2577 [47].

Approved zoning plan is objected within the 30-day period during announcement. It is not obligatory for the property owners to object to the institution for the zoning plans. Even a law case is to be filed without applying to the institution; deadline for filing a law case is the last day of the announcement date. Institution is litigated in 60 days from last day of announcement. In the event that an objection has been made to institution against the plan but the property owner is not responded within 60 days, or

the day the objection is notified to the property owner that the objection is rejected, a law case is filed within 60 days.

With the paragraph 8 added to Article 8 of the Zoning Law with the article 6 of the law dated 14/2/2020 and numbered 7221" *A law case is filed against finalised zoning plans or parceling plans within five years from the date of finalization*," in any case, law case is filed for a period of five years from finalization date of the zoning plans. There is no restrictive period for litigating against unfinalised zoning plans and whose announcement requirement has not been fulfilled.

4.8.3 Objection to Land Consolidation

It is also possible to litigate against consolidation procedures in the Administrative Jurisdiction. Parceling plans and grading maps are announced for a period of 30 days. The institution evaluates the objections at the end of 30 days within 15 days. Even the objection does not change the result, the parceling plan and grading map is finalised without a second announcement period. Even a change occurs as a result of the objection, it is announced again for 30 days. Property owners and other interested parties object to the project administration until the end of the working day after the end of the announcement date. The institution evaluates the objections for the second time and decides on objections within the 30-day period. The decision of the institution is the final at once a result is notified to the parties or promulgated by law. Even the objection to the land grading and parceling plans is rejected by the institution, a law case is filed for annulment of process. In this case, the annulment of the grading or parceling map is requested, not the annulment of consolidation. The 60-day period starts from the date of objection result is notified to the owner or legally announced.

The rule on how long the administrative cases filed in Administrative Court will last and in how many days / months they will be concluded is specified in the Law No. 2577. Accordingly, the files are concluded in the order in which they are initiated and within six months at the latest from the date of initiation. Although there is a six-month rule in the law, in practice these periods are actually exceeded. When the relevant article of law is examined as a whole, it's understood that the six-month period is actually the judge's decision-making period. Administrative cases in our country are actually concluded within an average of 1 year [48].

5. Assessment, Conclusion and Recommendations

5.1 Assessment

5.1.1 Assessment from a Technical Point of View

Although expropriation, land consolidation and zoning application methods in acquiring property, are related to the legal disciplines in terms of their results, they are the methods that require engineering services and practices. Barter, requisition and temporary occupation are methods that involve less details than compared to other methods. Land consolidation and zoning application are carried out in areas whose boundaries have already been determined. The current location, area and ownership of the immovable properties within these areas may change. An application area is generally not determined in expropriation except mass expropriation of dam, highway, pipe line etc. It is more often the case that ownership of immovable property is to change completely or temporarily is individually determined in such methods as barter, temporary occupation etc.

Producing process of expropriation maps requires geomatics engineering services on the other hand it needs interdisciplinary practices afterwards. Land consolidation requires both geomatics and agricultural engineering services when considering block/parceling plans and soil grading maps. Besides, zoning plans are produced by both geomatics engineers and city planners.

Land consolidation for irrigation or expropriation and zoning application processes in producing of parceling maps is more elaborate, detailed, long term and requires different disciplines and more parameters than producing expropriation maps when compared with the same area.

Provision of cadastral bases is required during the map or plan production process (digitisation of graphic, prismatic, tachometric cadastral bases), elimination and

correction of measurement, drawing, surface area and other technical errors, waiting periods depending on the fact that the correction of errors arising from boundary and surface area cannot be made without the consent of the owner.

Since the expropriation maps and parceling plans are the main maps that are subject to registration, technical control is an obligation in cadastre units. Control process and subsequent registration procedures in land registry offices delay and pend the expected approval and registration time period which also causes correspondingly delay in the processes related to maps and plans.

When producing strip-like expropriation maps, they should be passed by the parcel boundaries in a way that will cause the least damage to the property if it is not possible for the lines to follow the cadastral roads as much as possible. Planning should be made in such a way that no parts remain that reduce agricultural activity and insufficient size in terms of use afterwards the project is completed as well as using establishment of easement by expropriation, if the project is appropriate.

In consolidation and zoning applications the properties that cannot be acquired by the amount of the legal deduction, are provided from the properties of State Treasury that fall within the application area, and if this is not sufficient, the properties are acquired by expropriation.

5.1.2 Assessment of Social Aspect

The methods of immovable property acquisition are socially quite inadequate. The fact that suggestions and complaints of citizens are not taken into consideration in practice. The process that providing certain person or group benefits weakens the social bond between the citizen and the public and is not fair enough.

The main basis for the public to acquire immovable property is the concept of public interest. Public interest is decided entirely by the authorized boards of the relevant institution. However, it is decided without consulting the public. It is a contradiction to decide a public interest without the positive or negative opinion of the public.

[17] states that in our country, unlike developed countries, expropriation map are not produced with participation of the owners, who are not informed of the expropriation

area and the project qualifications in advance. The owners are only notified having been withdrawn to them, which has a negative effect on reconciliation in meetings.

Since property owners are coerced to accept the result of expropriation process without being informed about expropriation process under what conditions, when, how much and at what value the expropriation process is being carried out, what positive and negative effects of the expropriation process are not known in advance by the property owner, and it may lead to consequences such as not recognized the expropriation [17].

Property owners who deny this practice, hereby usually reveal their reactions by stating that the expropriation prices are insufficient.

In case of irreconciliation, as a result of increasing in expropriation price in Price Determination Cases in the Civil Court of First Instance, property owners having been reconciliated in the same position, feel resentment with institution and the belief that the court appraises one or two times more price, adversely affects the future expropriations in the places with intensive investments and constantly raises the bar.

A part of the property remains in the arrangement area while the other part can remain outside in zoning applications, although this statutory and proper with regulations; the property owners object to arrangement area has been determined incorrectly. While the property is a cadastral parcel with single-share, land arrangement, may cause discontent among the property owners when it is divided into a new zoning parcel [22].

The problems caused by development readjustment share deduction within the scope of Laws No. 6785 and 3194 are explained and land arrangement which is the most comprehensive study of zoning applications, is mentioned. The importance of equitable and fair distribution in land arrangement is emphasized and it is stated that inexperienced people should take this [14].

The problems arise depending on disapprobation by the owner when newly formed parcels are delivered afterwards both consolidation and land arrangement applications completed.

The fact that, some property owners, affected by these applications which are practiced ex officio, without any request by considering the public interest decision, are

dissatisfied with the un-acceptable application is the situation that the public pretends while practising the application. As a matter of fact, in the practices for public benefits, there will necessarily be individual discontents.

5.1.3 Assessment of Legal Aspect

Any application that changes the geometrical and ownership status of the property restricts the right of ownership and disrupts the usual situation is not appreciate by property owners. The fact that the application is carried out ex officio by the state makes the property owners more resistant to that application. However, since the State (public institutions) and Public Legal Entities perform the services they are responsible for by taking a public interest decision in order to acquire properties, the annulment of application case filed at the administrative jurisdiction is unable to go beyond being formality.

The form of a law case to be filed against the processes such as expropriation, non-issuance of a license, etc., by the corresponds, is unable to go beyond a formal law case. The owners cannot file a law case against the zoning plan on which is the legal base of the zoning application even if the zoning plan is contrary to law, the case is rejected, since the zoning plan has already been finalised [47].

In expropriation process, the period for filing a law case against the expropriation process itself at the administrative jurisdiction is within 30 days from the day on which this process is notified to the owners by the court as a result of irreconciliation with the parties and price determination and registration case filed by institution. As well as a case against material errors at the judicial jurisdiction may be filed meanwhile.

The period for filing a law case against land consolidation and zoning application at the administrative jurisdiction is as defined in Article 7 of the Administrative Proceedings Law unless a separate period is specified in the special laws, sixty day at the Council of State and administrative courts and thirty days at the tax courts.

For regulatory acts requiring announcement, the period of litigation begins from the day following the date of announcement day. However, upon practice of these acts, the persons concerned may file a law case against the regulatory act or the practice or

both. The fact that the regulatory act has not been annulled, does not prevent the annulment of the process. In addition, it is stated in the second part of the land consolidation regulation, in paragraphs 5 and 12 that the deadlines for filing a law case against the result of land consolidation within 10 years from the date of registration.

5.2 Conclusion

Public interest is at basis of private property acquisition by public institutions or organisations. Even though the public property is not sufficient for the provision of a certain service, the institutions may permanently or temporarily acquire property in private ownership transfer the title deed into its ownership regarding public interest on the condition of paying its value. The value of the acquired property is paid both as a price and as a service provided. Here, real and private legal entities cannot raise objections in the public interest, but the price and form of acquisition of the property can be objected.

[15] Expropriation is sharpest method in property acquisition, protecting the common interests of the society, even though it is the most expensive, longest lasting method for the realization of public services and public purposes, which should be preferred in case of failure of more human-oriented zoning application, and should be in last order of preference which gives the public the authority to intervene in property, protects public as well, but is heaviest interference in private property [25].

Although concluding the law case Price Determination and Registration filed, according to the Article 10 of the Expropriation Law the property takes a year, property is acquired more quickly since the decision given by the court is the final decision in terms of registration. As a matter of fact, the parceling maps in the process of both consolidation and zoning application are produced as a result of multi-parameter calculations compared to expropriation maps. This shortens the time for map production and registration.

The law cases regarding the price may continue with appealing in expropriation, after the registration decision is made, the continuation of the price determination cases does not constitute an obstacle for the institution to seize the immovable.

Although it is not one hundred percent accepted, expropriation, which is accepted by everyone as the most severe interference with the right to property in the determination of the fate of the land, has been applied as one of the most important method. In fact, expropriation is the gateway of last resort where other means are shiftless and is expected to arise out of necessity required by the public interest. Expropriation, which is the process of placing the immovable properties owned by the real or private legal entity partially or completely under public ownership by the methods specified in the relevant law, provided that public institutions pay their real provisions in advance when the public interest necessitates it, is an important urban land policy, although it brings the debates about human rights come to fore [25].

Expropriation has also always been the most effective method used in case the deduction rate exceeds the amount stipulated by the law in the methods which property is acquired by applying deductions. For this reason, expropriation will continue to be a rescuer method in Land Consolidation and Zoning applications. Plus this expropriation will be the most effective method in private property acquisition even the property cannot be acquired by methods such as grant, barter or rental etc.

5.2.1 Recommendations

In order to avoid legal consequences of expropriation, and to minimize the effect of expropriation on the property, the institutions should firstly apply the acquisition methods that laid them by law other than expropriation, and should prepare their optional surveys, studies, and plannings. Project design phase should be carried out accordingly in whichever economical, fastest and most effective and cheapest method suitable for the project characteristics.

In cases where other methods of property acquisition cannot be applied or, preferably, where expropriation is determined to be appropriate in terms of speed and efficiency, projects should be prepared in such a way as to cause the least damage to the geometric condition of the property, necessary measures should be taken by the institution to minimize the problems arising from the expropriation process at the appraisal phase and should elaborate the expert selected by the courts.

A new interdisciplinary or supradisciplinary profession should be established under the name of expropriation expertise or there should be at least one educated or trained expert who had courses from sociologists and psychologists and passed socio-technical tests such as geomatics, agricultural engineer, civil engineer, urban planner, property appraiser and lawyer. [25].

Public institutions have to determine by the researches exactly what the owner has sacrificed with expropriation in accordance with the state's absolute liability and ensure the balance of blessings and burthens in a way that will not cause social problems [25].

It is a requirement of justice that institutions operate according to public interest. Since public institution is in a strong position compared to individuals, public institutions can sometimes ignore the public interest. In order to prevent this, the public institution should use its power in fair. This ensures that the power held by the public institution is accepted as legitimate by the society [3].

Zoning applications and land consolidations, which are among the immovable acquisition methods of the public institutions, appeal to wider societies than other methods. In this context, social opinions should be taken into account in determining the public services to be brought to the field of application area and the relevant community should be included in all decision-making processes by out the application.

The application should only not be considered technically, regardless of the method used by the institutions to acquire immovable property, based on public interest, but technical, legal and social contents should be carried out together.

In many of the applications aforementioned, a price is paid under the name of expropriation price or compensation for the properties acquired by the public. This price is appraised by considering value of the property. However, the calculated value is usually appraised far below the marketing value. In this context, it is necessary to update the legislation by taking into account today's conditions and to train experts in the field. In cases where there are no or insufficient experts in the field, services should be obtained from appraisers licensed from capital markets boards.

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