

# **Land Valuation Issues of Expropriation Applications in Turkey**

**Tahsin YOMRALIOGLU, Bayram UZUN and Recep NISANCI**

**Key words:** Land valuation, Market value, Expropriation, Cadastre, Turkey

## **SUMMARY**

In Turkey, land expropriation applications have some problems both for the state and land owners. Basically, the origin of problem is the determination of land price in order to obtain the real value. Significant number of expropriation implementations cause disagreement between the state and owners and these cases are brought to court. With the process of be part of the European Union (EU), this national problem of Turkey will turn in to a part of international law. It is because of the fact that the lawsuits against the expropriation implementations in Turkey are started to be brought to the European Court of Human Rights (ECHR). These cases constitute more than 25% of the cases against The State of Turkey. Therefore, to avoid this problem the price of land should be determined according to some objective land valuation criteria. Actually the term “land value” in Turkey could be used in different meaning such as market value, registered value, real estate tax value, expropriation value, the value determined by the court etc and all of these values may be figure out in different ways. The main source of this problem is the lack of an efficient land assessment policy which can apply in the determination of real estate and the lack of data. In this study, the system for determination of land value in expropriation implementations in Turkey will be depicted and the actual process will be introduced. The actual land valuation criteria applied in determination of land value and the reason why the expropriation value is different from the market value are going to be discussed in the context of some civil jurisdiction. Finally, a way out for land expropriation matters will be proposed.

## **INTRODUCTION**

Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law. According to established case law of the Court and the former European Commission of Human Rights, comprise three distinct rules. The first rule, which is set out in the first sentence of the first paragraph, contains a general guarantee of the right to property. The second rule, which appears in the second sentence of the first paragraph, covers deprivation of possessions and subjects it to certain conditions. The third rule, which is contained in the second paragraph, recognises that the contracting states are entitled, among other things, to control the use of property in accordance with the general interest.

Under the Turkish law, the state is entitled to acquire private lands for a public purpose in return for payment to the affected owners and users of the land within the framework of the

expropriation law. Article 46 of the Turkish Constitution allows for confiscation of property with compensation by a public agency for the public benefit. Real estate subject to private ownership may be expropriated by the competent administrative authorities where required by public interest. Expropriation can be realised only for the purpose of conducting public service or public initiatives. Compensation for expropriated real estate shall be paid in cash and in advance or, in specific situations foreseen by the law, in equal instalments.

The seizure of movable and land property belonging to private persons by public corporations and bodies to be used for public purposes without the consent of the owner in accordance with the decisions made by authorized bodies and with the cost prepaid is called expropriation. Because of the nature of expropriation many land related disputes have been arisen in Turkey. As a result, The Expropriation Law No: 2942 in Turkey, has been recently subjected to significant amendments because a lot of case have been national court and The European Court of Human Rights (ECHR) and Turkish Republic paid the additional compensation.

## **BACKGROUND OF TURKISH EXPROPRIATION LAW**

During the Ottoman Period until the Administrative Reforms of 1839 no legal readjustment regarding expropriation or eminent domain is observed. In this period Islamic law was in force and expropriation through purchase of the land from the owner was very rare and that most of the public services were provided through charitable foundations. The concept of expropriation is first appeared in a legal document on Building Regulations (Ebniye Nizamnamesi) dated 1848. In the said paragraph of this regulation, which is drawn up only for the purpose of readjustment of the city sites demolished by fires and opening of roads in Istanbul, the following statements are made regarding expropriation; "...in case that the government intends to purchase a land, the owner shall be obliged to sell it or to demolish the harmful structure desired to be eliminated". The conditions, methods and authorities of and payments for expropriation are mentioned in different legal texts issued after this date. By Item 21 of the first constitution adopted in 1876, it was stipulated that expropriation could only be made on condition that it is for public interest and in return of cash payment.

"Decree on Expropriation In the Name of Public Interest" passed in 1879 is the first comprehensive law on expropriation and it has also been used in the Republican Era for a long time until it is replaced by "Municipal Expropriation Law" in 1939 and "Expropriation Law" in 1956 (Ersoy, 2005). Today, the Expropriation Law (Law No. 2942-approval date: 04.11.1983) and Laws concerning amendments to the Expropriation Law (which includes Law No. 4650-approval date: 24.4.2001 and other laws) have been used.

## **THE PROCESS**

### **Commencement of Expropriation**

The expropriation procedure in Turkey starts after the determination of state or municipal authorities due to the project, there will be a need to acquire land for public use (Uzun, 2000). The feasibility studies first carried out for each sub-project will provide information on the need to carry out an expropriation process. The main steps of the entire expropriation can be seen in Figure 1.

## Valuation

A valuation committee comprising relevant municipal and utility officials appraises the value of the land to be expropriated. As Article 8 of the Expropriation Law, expert opinion on the value of the land should be sought. This opinion may be provided by local and central agencies, real estate agents, and chambers of commerce. The standard applied in assessing value of land and property assets is that of full replacement cost. Valuation procedures, as specified by law, allow a fair and transparent process of compensation to all owners. The process of valuation begins with the selection of a Valuation Commission within the expropriation agency (Uzun and Yomralioglu, 2005; Yomralioglu et al., 2002).

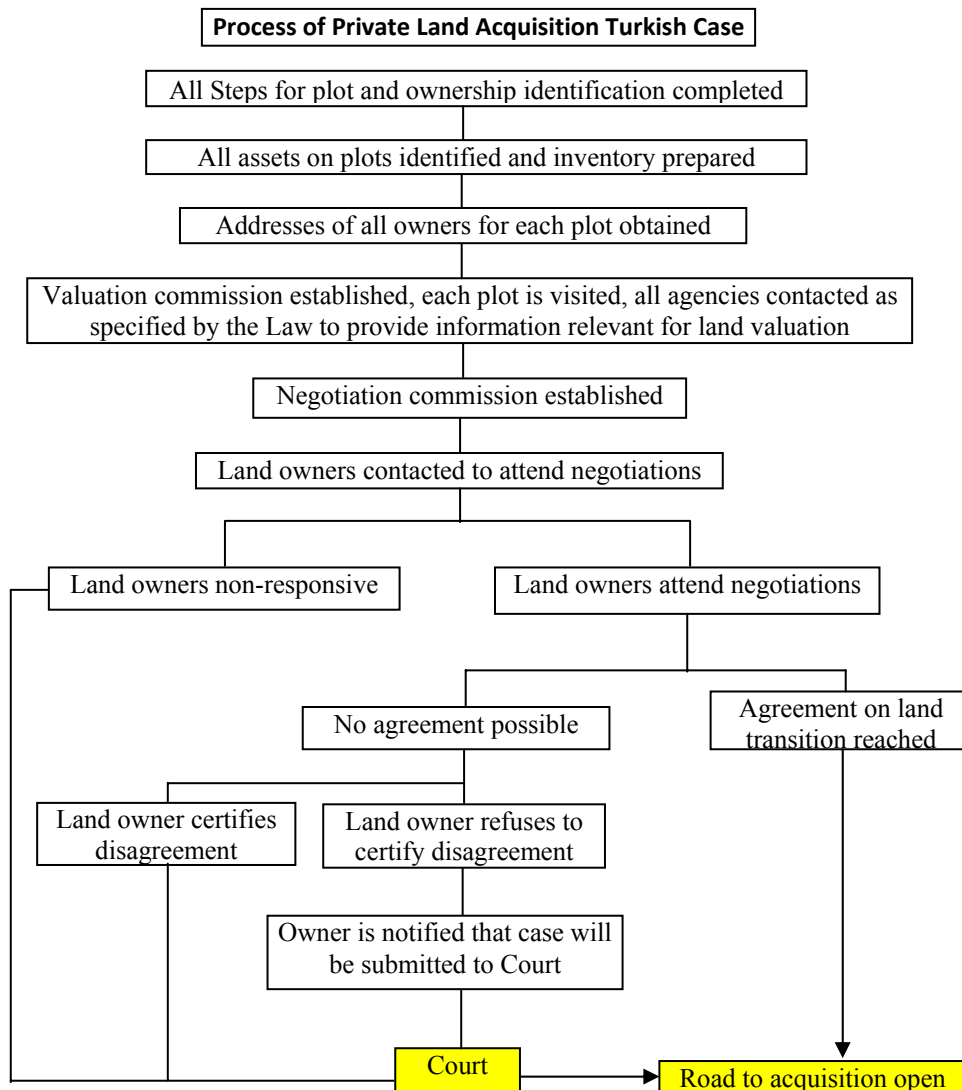


Figure 1. The main steps in private land acquisition process in Turkey (Anonymous, 2002).

Valuation commission's responsibility is to calculate, on a plot-by-plot basis, the capitalized income loss from assets. The Commission applies this principle to both temporary and permanent expropriations within the confines of the law. In calculating the net income from land, the following is taken into account.

- a. The type and quality of the property or resource
- b. The surface area
- c. The value of all distinctive characteristics that can affect the overall value of the land
- d. Tax statements, if any
- e. An estimate made by official authorities on the date of expropriation
- f. The net income of the land, immovable property or resources according to the locations and conditions valid on the date of expropriation, and the determination of its value based on its original condition. The formula used is  $K=R/f$ , where;  $K$  is the value (expropriation compensation),  $R$  is the net income (gross income minus production costs) and  $f$  is the capitalization rate (a type of risk related to the capital invested in agricultural land)
- g. The sales amount of similar land sold before the date of expropriation
- h. Official unit prices, construction cost estimates and depreciation of buildings on the date of expropriation; and
- i. Other objective measurements that can influence the determination of valuation.

The valuation of agricultural land rests on the capitalization of net income from the land. As such, it takes into account all of the above considerations. Urban land, on the other hand, is not value based on its net income, but rather on the comparison of its before and after construction market value (Nisanci, 2005; Yomralioglu, 1993).

#### Valuation Commission

A valuation commission is initially established by authorities with six participants assigned to undertake the task of evaluation and valuation of the land to be expropriated. The participants are nominated by authorities and include. The responsibilities of the Land Evaluation Commission are as follows:

- Assessing land value by conferring with relevant state authorities and local real estate agencies,
- Compiling the acquired data and analyzing it according to a prescribed methodology,
- Assigning monetary value to the land and other immovable assets.

#### **Announcement**

The municipality or the municipal utility notifies the owners of the property to be expropriated through an official registered mail. The notification should mention the intent of the municipality or municipal utility to purchase the land through a negotiated settlement and clearly describe steps in the land acquisition process and provisions for appeal available to the landowner at relevant steps.

#### **Transaction**

The purchase of land can take place through two processes: negotiated settlement; or court settlement.

#### Negotiated Settlement

If the owner of the land agrees to a negotiated settlement, then the discussions between the state and municipal utilities should take place to finalize the transaction. The state or municipal utilities should make it clear that negotiations will last for no more than 3 months and will provide the landowner a description of the land acquisition steps and the owner's

rights to due process and appeals at each step. Failure to reach a negotiated settlement will result in a court settlement. After there is an agreement on the price, the expropriation should be registered in the land office and the expropriation fee will be paid, as per Article 8 of the Expropriation Law.

### Court Settlement

A court settlement will occur if: a) the negotiated settlement fails; or b) the owner, after receiving notification from the state or municipal utility, declines to negotiate. Prior to requesting a court settlement, rights to due process and appeals will be explained fully to the landowner. A lawsuit will be filed by the state or municipal utility with a relevant court for valuation and registration, pursuant to Article 10 of the Expropriation Law. The basis for calculating the compensation payable for the land and property is full replacement value.

### **Non-Agreement**

In this event, institution applies to the court for a land appraisal and for registration of the land in the name of institution with rights of use, possession and control in authority. Public announcement of the process is made through the media and the court summons the landowner. A trial date is set within a 30 day period. If the landowner and institution do not agree before the court on the land price, the court assigns independent experts to appraise the land within 10 days. The court then sets a new trial date within 30 days and submits the results of the appraisal to institution and to the landowner. In the event of non-agreement on this court-supervised appraisal, the court can appoint other appraisers within a 15 day period. The court, following the second appraisal, will establish a final expropriation price. The following steps will then be taken:

- The determined price will be deposited in a national bank account in the name of the landowner,
- A bank receipt for the deposit will be submitted to the court, and
- The court will decide on the title registration change and relate the new title deed registration to the Land Registry Directorate; this completes the registration in the name of institution with rights of use, possession and control in authority. The landowner still has the right to appeal the valuation decided in the court, but not the expropriation of the land (Figure 2).

## **TURKISH EXPROPRIATION CASES IN THE ECHR**

There are some Turkish expropriation cases that have been involved in the ECHR between 01 January 1992 and 30 March 2003. The numbers of total expropriation cases are involved in the Court are 354 out of 1.357 cases (Table.1). It seems that within ten years almost ¼ land compensation cases of total files which related Turkey has been examined by ECHR. Distribution of number of cases in yearly and the applicants were paid the following aggregate amounts for pecuniary damage by Turkey's expropriating authorities is given in Table 2.

### **Types of Cases**

It is not the European Court of Human Rights task to rule on the land valuation and assessed by the valuations committee and determined by the domestic courts. That is to say the value of the land is not reassessed by the Court. The Court examines only whether a fair balance has

been maintained between the demands of the general interest and the requirements of the protection of the individual's fundamental rights in all cases of expropriation. The applications are lodged with the ECHR. The applicants rely on Article 1 of Protocol No. 1 (Protocol to the Convention for the Protection of Human Rights and Fundamental Freedoms. Paris, 20.3.1952), which reads insofar as relevant as follows:

*“Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law. The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties.”*

Based on the above ECHR Article 1 of Protocol No.1, the Turkish expropriation cases can be distributed and examine under the following case types. The cases of expropriation are categorized as three main parts in Turkey's actions (See Table.3).

Table 1. Distribution of expropriation cases in ECHR with respect to institutions

<i>Expropriating Authorities</i>	<i>Number of the cases</i>	<i>Percentage (%)</i>
National Water Board	206	58.0
National Roads and Highways	107	30.3
The Provincial Private Administration Offices	11	3.2
Municipalities	9	2.5
The Ministry of Construction and Settlement	8	2.3
Ministry of Defence	7	2.0
National Airports	6	1.7
<b>TOTAL</b>	<b>354</b>	<b>100</b>

a) Delay in payment of additional compensation for expropriation

In these cases the compensation applicant(s) can not receive the reflection of real increase in inflation during the period between the date the amount was fixed and the date of payment. Abnormally lengthy delays in the payment of compensation for expropriation lead to increased financial loss for the person whose land has been expropriated putting him in a position of uncertainty, especially when the monetary depreciation which occurs in certain States as Turkey is taken into account.

The applicant complained to ECHR that the additional compensation for expropriation, which should had been obtained from the authorities, had fallen in value, since the default interest payable had not kept pace with the high rate of inflation in Turkey. That is to say the injured party claims for loss sustained as a result of inflation. They rely on Article 1 of Protocol No. 1 (protection of property). The Court decisions that there was a violation of Article 1 of Protocol No. 1. This rule was changed by the new expropriation law which is concerning amendments to the Expropriation Law (which includes Law No. 4650-approval date: 24.4.2001).

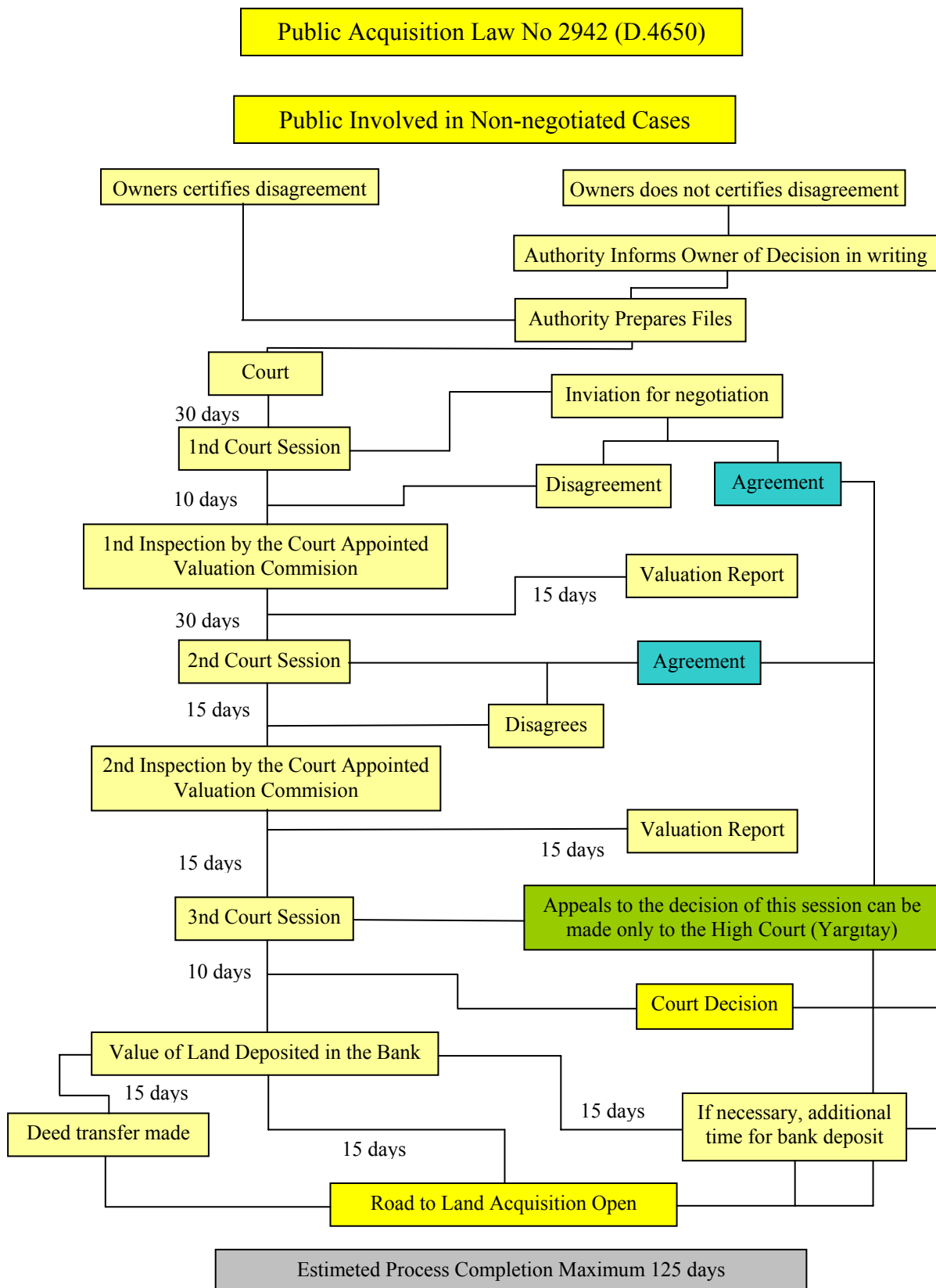


Figure 2. Steps and durations based on the Turkish Expropriation Law (Anonymous, 2002).

Table 2. Yearly distribution of Turkish expropriation cases with their pecuniary damage in ECHR.

<i>Years of Cases</i>	<i>Number of Cases</i>	<i>The total pecuniary damage (EUR)</i>
1992	140	1,042,134.-
1995	7	669,796.-
1996	13	6,755,569.-
1997	20	2,399,567.-
1998	19	2,271,984.-
1999	40	3,163,591.-
2000	14	1,630,370.-
2001	44	785,614.-
2002	36	249,059.-
2003	21	550,678.-
<b>TOTAL</b>		<b>19,518,362.-</b>

Table 3.

<i>Types of cases</i>	<i>Number of the cases</i>
Delaying in payment of additional compensation	344
Seizure without an official expropriation	9
De facto expropriation	1
<b>Total</b>	<b>354</b>

b) Seizure without an official expropriation

Plots of land had been illegally seized by the administrations for different purposes such as dam and road construction without any payment. Turkey's domestic courts cancelled the registration of the applicant(s) as owners of the land and transferred the property to the national authorities on the grounds that it had been occupied by them in the general interest for more than 20 years without interruption. It was time-barred since the authorities had been in possession of the land for more than 20 years. This rule set out in Article 38 of the Expropriation Law no. 2942. Article 38 of the Expropriation Act (Law no. 2942 of 4 November 1983) provides:

*“Extinction of rights*

*In the case of immovable property subject to expropriation where the expropriation procedure has not ended or of immovable property whose expropriation has not been requested but which has been assigned to public-service use or on which buildings intended for public use have been erected, all the rights of owners, possessors or their heirs to bring an action relating to that property shall lapse after twenty years. Time shall begin to run on the date of the occupation of the property.”*

They rely on Article 1 of Protocol No. 1 (protection of property). The Court decisions that there was a violation of Article 1 of Protocol No. 1. On 10 April 2003 the Constitutional Court annulled Article 38 of Law no. 2942.



### c) De Facto Expropriation

The applicants claim that they had been deprived by the authorities, without compensation, of plots of land which belonged to them, following de facto expropriation. The Court decisions done that administration must pay the applicant compensation, starting from the date of de facto expropriation.

## **MODIFICATIONS IN TURKISH EXPROPRIATION LAW**

The Turkish Constitution as amended in October 2001 includes major elements to protect the public interest and private owners during the expropriation process. Private users cannot benefit from expropriating public lands and assets without paying compensation to the public at large. Even when land is acquired for public interest, expropriation agencies cannot benefit from the expropriation of private lands and assets without paying into a private bank account, in advance of actual land appropriation and project construction, the value of the expropriated assets. On the other hand, the project gains use of the expropriated land and assets and project construction can begin once this legal path has been followed and completed.

The expropriation Law No: 2942 has been recently subjected to significant amendments that will provide major benefits to people affected by projects that require land expropriation. The authority carrying out the expropriation process is obligated to determine the value of immovable assets and then invite the land owners to negotiate if they disagree with the value proposed. The respective law stipulates that payment of expropriation costs to relevant people must be made within 45 days following the agreement date.

Until recently, the public Authority that needed land for “public interest” could acquire land without a genuine effort to establish “rightful owners” and without due process. The Turkish Law of Expropriation of 2942 has been significantly modified through the Law of 4650, effective as of April 2001.

The new law requires identification of owners and demands that their addresses are established. The Law demands that the owners are contacted in writing, asked to come forward and negotiate a price for their land. Should negotiations fail, the land cannot be acquired prior to a court decision. The court will seek proof that every effort has been made to locate the owner before making its decision. In addition, some meaningful modifications are also done on the new law. These are summarized in Table 4.

Table 4. Main modifications made in the Turkish Expropriation Law (Anonymous, 2002)

	<b>BEFORE</b>	<b>AFTER</b>
Respect for customary ownership rights and traditions	The earlier land acquisition practice did not require full investigation of customary right and rights of heirs. The Authority expropriating the land could obtain rights to its use by merely depositing the cash value of the land estimated by a local land commission and leave it to the owners to sort out their claims. Thus, rightful customary owners or heirs had to wait for the completion of lengthy legal processes before they could be paid.	The new Law no longer allows this to happen. It demands that the Authority, not the people, determine these rights. The Authority is responsible from the identification of rightful owners. It is responsible for locating these owners and proving that it carried out the negotiation process.

Putting people rather than their assets first	There was no need for dialogue and partnership with the people and their communities in the land acquisition and resettlement action plan preparation process. There was a clear assumption and practice that the people would not agree to the land valuation presented by the Authority. If the lost assets were of low value, as would have been in the case of linear projects, people were simply forced to accept the little they were offered; if the assets were valuable they were required to wait for never ending court procedures.	The new Law forces the Authority to treat all owners equally and with respect. It forces a partnership between the owners and the Authority. It also ensures that all claims to land are recognized and considered by the Authority. By making it difficult, time consuming and costly for the Authority to acquire land outside the framework of a negotiated solution, it forces the Authority to be far more people focused and far more participatory than before.
Assuming the financial burden of ownership establishment and non-negotiated solutions	The affected populations were required to bear the cost of non-negotiated solutions. This meant that the owners were responsible for seeking recourse. Even when they joined with other affected families to reduce the transaction costs, they still had to pay a significant portion of the compensation they received for legal fees. This situation created a particular disincentive for populations affected by linear projects as owners lost small portions of land and expected to receive a limited amount of compensation; as such they could not risk high legal expenditures.	The new Law passes the transaction costs of land acquisition from the owners to the Authority. It thus provides equal right to recourse to the poor and the wealthy. It also ensures equity among other social groups, regardless of ethnicity, etc. The cost of owner identification, owner notification and negotiation meetings are born by the Authority. If negotiations fail, it is the Authority who has to go to the Courts and thus bear the relevant expenses. The Authority also assumes the costs of the establishment of the customary rights and the rights of the heirs.
Land-for-land	Only cash payments are offered in return for expropriated land, except in cases where investment projects cause resettlement. International policies, however, favour land-for-land arrangements.	The land requirement of BTC from any single owner is relatively small; moreover, the land owners will be able to use their land once the construction is completed. Even when some small holders may lose a substantial portion of their land to the project, they rather receive cash compensation and buy replacement land themselves if they so wished. The past attempts to provide replacement land to the people have only met with discontent since the market performed better than the public agencies.
Interest income from compensati	In the past people could not earn interest payments at the market rate if they challenged their compensation payments. This caused major damage in an economy where banks offered nearly 100 percent interests.	Under the new law disputed payments kept by a trustee for an owner will earn interest at the market rate. Thus, by challenging the valuation decisions, owners will not accrue financial loss.
Payment for assets	Until recently, owners waited for long number of years to get paid if they disagreed with the initial price offered for their land and other assets. Each legal claim took years to get finalized in a highly inflationary economy. Even when the courts granted the claim of an owner, the compensation value would be eroded; thus, the owner had to initiate another appeal. It is well known that there are outstanding valuation claims associated with projects that started several decades ago.	The new Law does not allow this. It requires that full payment for the land/assets be made in the personal bank account of a legitimate owner before the Authority can acquire the land. It stipulates that the courts give priority to these hearings and obligates the legal system to act within pre-established deadlines. Valuation claims are heard and settled before the ownership transfers are made. No land/assets can be acquired or expropriated prior to full cash payment; thus there is no risk for the erosion of compensation payments.

## CONCLUSIONS

Turkey has a compulsory cadastral system with its great background. Land and human related activities are therefore very high in the country. Based on the Turkish Constitution every citizen has a property rights. These private rights can only be restricted when a public interest is occurred. To arrange these public land requirements the Turkish Expropriation law which title no 2942 has been acted since 1983. Since then, in many expropriation processes have

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been brought to the courts by landowners because compensation payment did not satisfied them as good enough. The origin of this problem is the determination of land price in order to obtain the real value. Significant number of expropriation implementations cause disagreement between the state and owners. With the process of be part of the EU, this national problem of Turkey will turn in to a part of international law. It is because of the fact that the lawsuits against the expropriation implementations in Turkey are started to be brought to the European Court of Human Rights.

In this study, the cases related to Turkish expropriation in ECHR have been examined for a ten years period of time. Data has been obtained from web pages of ECHR (<http://www.echr.coe.int/ECHR>). It has been seen that a quarter of total cases in the ECHR are all about Turkish compensation issues. After all these, Turkish authorities have realized this issue then some modifications have been done in the current law in order to reduce the number of objections to expropriation in courts. The Turkish Law of Expropriation of 2942 has been significantly modified through the Law of 4650, effective as of April 2001. Today, the public Authority that needed land for “public interest” could acquire land without a genuine effort to establish “rightful owners” and without due process. But still there are some needs to provide an effective land assessment procedure in expropriation works in Turkey.

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## **BIOGRAPHICAL NOTES**

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