

AN INNOVATIVE WAY FOR RESOLVING OF THE COASTAL LAND CONFLICTS IN TURKEY

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ABSTRACT

Turkey is a country well endowed with a wealth of coastal areas and an abundance of their coastal resources. However rapid urban growth presents challenges to sustainable management of coastal lands. The tendency for ever-greater numbers of people to migrate to the Turkish coasts is exerting serious settlement pressure on these areas. Following this the problem of privately owned coastal lands, lacking of cooperation between public works institutions, property right violation and the mistakes of cadastral determinations have been occurred. Recently, there has been no serious issues had arisen regarding the removal of coastal areas from private ownership, in terms of legal arrangement and the general principles of international law. The failure of traditional applications for solving such problems, integrated approaches will have to be used to manage these areas along the coastal lands. This study focuses on the coastal property, which we consider to be a serious hindrance to the application of the coastal policies and examines the different approaches that were taken to remove pertinent areas from private ownership and to decrease the burden of compensation which results from the cancellation of the land titles. One of these methods is based on the approach of the Modified Land Readjustment. This model could an advantageous tool because of the significant contribution to the coastal land planning by drawing its own sources, solving of the property conflicts between the public and coastal residents, providing reduction of compensation payments and providing an innovative solution with a holistic approach. This method would also make an important contribution to decisions about management tools, planning and the application phase in the sustainable management of the coastal areas.

Key words: coastal land, property conflicts, land readjustment, Turkey

INTRODUCTION

Coastal areas have considerable significance for both natural wealth and the contributions to the country's economy. Coastal areas have become the most attractive locations for centuries because of their aesthetics and the economic and geographic opportunities they provide for industrialization and urbanization. Because of these, coastal areas have become settlement places for many civilizations throughout history (Ceylan, 2006).

Speedy urbanization in Turkey, especially along the coastal zone, has caused several problems. Illegal and shabby private residential developments on public lands (called «gecekonu» in Turkish) on the periphery of the legal urban borders are a peculiar feature of

large cities. These districts often lack adequate infrastructure and sanitation facilities, and are one of the most important appeals to the municipal administrations. Recently, these progresses have been periodically authorized through amnesty declarations. (Baş, 2006)

Turkey, which has considerable marine orientation, has established a coastal area management system that relies on the use of advanced tools and instruments and the involvement of all relevant national and international actors in order to achieve a coherent management policy and the protection of its coastal areas (PAP/RAC, 2005).

However, no coastal management plans have yet been established within the planning hierarchy in Turkey. The most important reason for this management gap and also the greatest problem along the coast of Turkey arises from the property conflicts between the public and the private owners whose lands are on these shores. (Uzun and Celik, 2014)

The problem of privately owned coastal lands, lacking of cooperation between public works institutions, property right violation and the mistakes of cadastral determinations have been occurred. Recently, there has been no serious issues had arisen regarding the removal of coastal areas from private ownership, in terms of legal arrangement and the general principles of international law. The failure of traditional applications for solving such problems, integrated approaches will have to be used to manage these areas along the coastal lands. This study focuses on the coastal property, which we consider to be a serious hindrance to the application of the coastal policies and examines the different approaches that were taken to remove pertinent areas from private ownership and to decrease the burden of compensation which results from the cancellation of the land titles. One of these methods is based on the approach of the Modified Land Readjustment. This model could be an advantageous tool because of the significant contribution to the coastal land planning by drawing its own sources, solving of the property conflicts between the public and coastal residents, providing reduction of compensation payments and providing an innovative solution with a holistic approach. This method would also make an important contribution to decisions about management tools, planning and the application phase in the sustainable management of the coastal areas.

THE PRIVATE LAND OWNERSHIP IN THE TURKISH COASTS

A total of 99% of Turkey's cadastral works are completed. Particularly due to transport and other conveniences, as per laws no 2613, 5602,766 and finally 3402, ownership determinations were conducted firstly in coastal areas since 1934. Prior to starting property cadaster works in such an area, external data about cadaster works (shore border line, boundary of forests and etc.) are supplied from all other relevant institutions which are stipulated by cadastre legislation.

If shore border line is not determined during the cadastre, a property in coastal areas was identified on behalf of the possessor and since cadastre determination was not rejected in due time (30-day notice), title deed registry was formed. After the determination of shore border line, these erroneous determinations for coastal areas in cadastre determinations become apparent. So, why these types of cadastral determination mistakes appear? These mistakes fully stem from cadastral staff. Article 3 of Cadastral Law no 3402 stipulates the organization of cadastral team and commission. Cadastre team consists of 3 people including minimum

two cadastre technicians and district or village headman. Determination of cadastre is conducted under the supervision of this commission; by explanations of local expert and if any, in-situ application of documents (title deed registry, tax registry etc.). However, although determination properties of coastal character require specialization in a certain discipline, it was not envisaged that the members of shore border commission should be involved in these determination works. For this reason, it is understood from lawsuits filed for annulment of title deeds regarding the properties in coastal areas that, coastal areas were subjected to cadastre by considering them as culture land through misuse of power, mistakes, errors or for other reasons and that they were registered as private property on behalf of persons.

As explained above, it is known that the main reason for “ownership conflicts in coastal areas”, which is the subject of this paper, are caused by disorganized working of or lack of cooperation between public works institutions which are responsible for the determination of cadastre and shore border. In many regions of Turkey, long years after the determination and finalization of cadastre, shore border line was determined or could not be applied by the shore border commission on the same spot. As of May 2011, cadastral works of all coastal areas were completed; however, of Turkey’s 8592 km long shores, shore border line was determined in only 56% of these shores (İyimaya, 2011). It is quite likely that it will be understood that many properties will fall into in coastal area within the new shore line, which will be newly determined.

LEGAL ASPECTS OF COASTAL OWNERSHIP

Coastal lands which are the natural sources of Turkey have some restrictions in the Turkish juridical system.

- *According to the article 43 of the Constitution*; the coasts are under the sovereignty and disposal of the state and have a character of public property. So the coasts cannot be subject to private property rights.
- *According to the article 1025 of Turkish Civil Code*; the annulment of title deeds related to the coast by the courts is legal.
- *According to the Joint Civil Chambers of the Court of Cassation decision dated 27 February 1980*; there are no legal costs for coastal areas because it is not possible to expropriate a property which is already under the possession of the state.

Despite these limitations, people whose lands remain in the coastal areas, moved their objections to the ECHR. The first application to ECHR by the owners of the properties related to the ownership in coastal areas upon the exhaustion of domestic remedies was made in 1997 (See: N.A et al 37451/97, Application No 37451/97). By its decision dated 11.10.2005, ECHR determined the following in its first pilot decision for these types of cases.

According to the article 1 of the Protocol 1 of European Convention on Human Rights;

- The annulment of coastal title deeds by the courts was an intervention which resulted in “deprivation”. However since there is no hesitation that property owners were deprived of their properties with a judicial decision for public interest, deprivation of property had a legal objective.
- It was agreed that failure of payment of any compensation to the plaintiffs, “disturb the fair balance which should be established between the protection of ownership and general interest” against property owners.

- Turkish State should, if possible, either allow continuation of private property in the shore or if there is no possibility for the elimination of the results of the violation, should pay the compensation.
- The compensation amount does not have to reflect the full value and therefore, an amount which would satisfy the expectations of the plaintiffs should be determined. The ECHR specifies a compensation amount higher than the amount envisaged by the Turkish state and lower than the amount demanded by property owners. This ratio varies between 50 percent and 80 percent of the price.

In this context, almost 40 different cases in which ECHR decided to violation and approximately 2.453.849.00 Euro have been paid to the landowners.

After the first violation decision in 2007, Supreme Court 1. Civil Chamber made a case law amendment and made a very important new case law decision on the date of October 10, 2007. According to the case law;

- The plaintiff who is the coastal land owner has the right to file a new lawsuit to claim compensation.
- The Constitutional Court decision dated 12 May 2011 and numbered E:2009/31 and K:2011/77, the Treasury will continue to file lawsuits for annulment of coastal land titles even if 10-year foreclosure has expired from the finalization of the determination of cadastre.
- Constitutional Court dated 12 May 2011 and numbered E:2009/31 and K:2011/77, states that: “(.) although intervention in ownership rights in order to protect the shores is legal, it is apparent that this public burden cannot be fully charged to the property owners”.

RESOLVING OF THE COASTAL LAND CONFLICTS

The properties which remain in the shoreline in both areas are registered on the title deed both on behalf of public administrations and private property. There is no legal barrier to prevent the annulment of title deed registries of the properties registered on behalf of public bodies and institutions without any compensation. In this case, the problem involves the elimination of private property in planned-unplanned coastal areas where shore border line is determined.

Proposals for Unplanned Coastal Areas

In case of annulment of title deeds of the properties which are determined to remain in coastal areas in unplanned areas; an amount should be paid as compensation even if it does not reflect the entire value of the property.

*Land valuation maps should be formed for the coastal lands because of the further implementations.

*It should be possible to determine monetary compensation as a result of the lawsuit for annulment of the title deed by the Revenue Office.

*The compensation which is finalized over the possible value of the property offered by the parties or as a result of appraisal by the judiciary through an expert will undoubtedly be a monetary value which does not reflect the full value of the property. We can talk about three known methods; (1) direct payment of compensation amounts as in an expropriation, (2) the method of swap that involves payment in the form of a property and (3) the method of

certificate that is based on payment of the expropriation amounts of the properties that remain in protection areas by issuing a official document.

Proposals for Planned Coastal Areas

Instead of paying compensation amounts for the properties which remain in the coastal area, it is possible to present new approaches which generate its own source in itself. These approaches can be analyzed in two sections. The first method is “grant in return for development right”. Since the development right which will be given on the parcel as it remains in the coast, the property owner should be allowed to use this right either in another parcel belonging to him/her or to sell this development right to another person. This method should be used in coastal areas where the existing development plan is fully applied.

The second method is based on the implementation of the development plan. This method aims to transfer public areas (road, green areas, park, parking lot etc.) and private property parcels -which are subject to annulment- in the coastal areas without any compensation. The method named modified land readjustment (MLR) was developed based on article 18 of Development Law no 3194 (as seen Fig. 1).

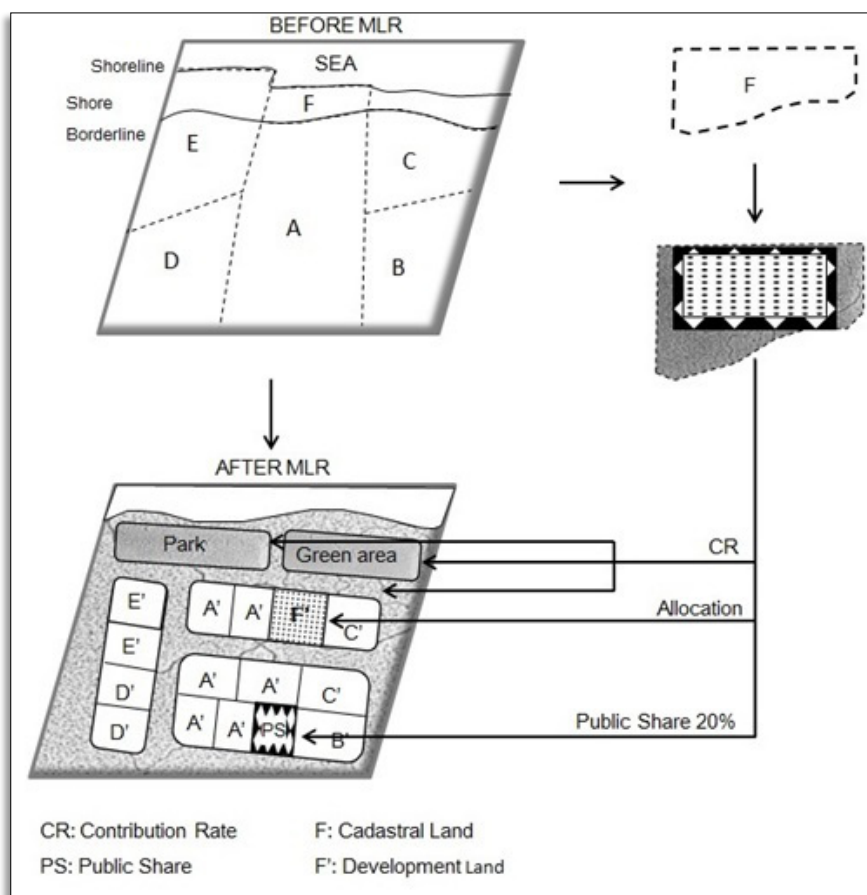


Fig. 1. Recommended Modified Land Readjustment mechanism (Uzun and Celik, 2014).

The Principles of the MLR Method

Modified land readjustment can be identified as a technique for managing the planned development of coastal land. This method was developed based on article 18 of Development Law no. 3194. This method could be used for purposes such as reopening of the coastal lands to the public use, improving shape and size of coastal land parcels, for the provision of open space and for large engineering structures like main roads and highways.

In the MLR method 40% contribution rate (CR) deduction is made over all of the parcels within the scope of implementation. Development parcels are allocated in return for the remaining 60%. After the first allocation, there is need to be done a second allocation for only coastal land parcels. So, the 20 percent of the first allocation is made for the development parcel on behalf of the Treasury. So, after the second allocation, coastal land owner gains a new development parcel that will be useful for building or other utilizations.

When the proportions in ECHR decisions related to Turkey in these types of cases were analyzed, it was found that the amount used for expropriation varied between 50-80%. Thus, in this model, it was thought that it would be fair to pay 80% value, which is the highest proportion, to the owner of the coastal property as a development parcel.

Sample Implementation;

As seen in the Figure 2, the properties with cadastral parcel no 102 and 103 are related to coastal area. Of these parcels, parcel no 103 completely falls into coastal area while parcel no 102, which is indicated as 102_coast, partially falls into coastal area. Besides, parcel no 101 does not show the characteristic of coastal land.

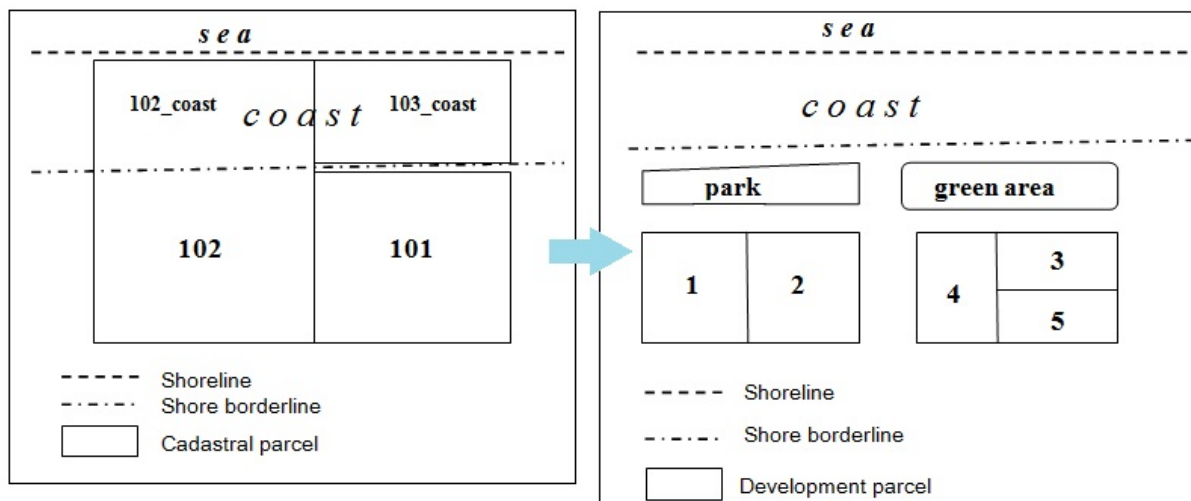


Fig. 2. MLR region before and after the implementation

In Modified Land Readjustment area, contribution rate (CR) is calculated as 40 percent. Calculation table indicating the deductions and allocation amounts of the parcels which fell into arrangement are presented in Table 1.

In return for 20% of allocation areas; in return for 2400 m² Public Share from parcel no 102_coast and 2880 m² Public Share from parcel no 103_coast; an independent development parcel of 1320 m² area was obtained from development parcel no 5 on behalf of the Treasury. The development parcels nos 1 and 2 are allocated to cadastral parcel nos 101 and 102. The development parcels nos 3 and 4 are allocated to cadastral parcel nos 102_coast and 103_coast.

Table 1. Arrangement data of the parcels falling within the MLR area.

Cadastral parcel id.	Parcel area (m²)	CR 40% (max.)	1st Allocation (m²)	PS Deduction 20%	2nd Allocation (m²)	New development parcel id.
101	7500	3000	4000	-	-	1
102	9000	3600	5400	-	-	2
102_coast	5000	2000	3000	(600)	2400	3
103_coast	6000	2400	3600	(720)	2880	4
Public				1320		5

CONCLUSION

Rapid urban growth presents challenges to sustainable management of coastal lands. The tendency for ever-greater numbers of people to migrate to the Turkish coasts is exerting serious settlement pressures on these areas. Recently, there has been no serious issues had arisen regarding the removal of coastal areas from private ownership, in terms of legal arrangement and the general principles of international law. The failure of traditional applications for solving such problems, integrated approaches will have to be used to manage these areas along the coastal lands. In recent years, it is possible to get compensation by the coastal land owners in the case of the annulment of title deeds. In this case landowners have to file a lawsuit in order to receive compensation. Even so, it is known that payment of compensation amounts will bring significant financial loads. In this context, it is necessary to find different solution methods apart from financial payment. The MLR method presented in this study shows that a fair, applicable approach is possible both for the public and property owners. The method will serve both public institutions and coastal land owners in terms of providing the following benefits:

- The implementation will greatly reduce the payment of compensation for coastal properties.
- Number of lawsuits filed for the annulment of title deeds by the Revenue Office and lawsuits filed for compensation by the property owners will significantly decrease.
- Work load of the judiciary will be reduced; time-economic losses by the administrations and individuals will be prevented.
- The fair balance which should be established between the protection of ownership and General interest pointed out by the decisions of the ECHR will be provided.
- The coastal landowners are provided with new, legal plots within the reconstituted area which, although smaller in size.
- Coastal land parcel is re-shaped and transformed into an adequate site lot. Each parcel is converted into building lots.

- The Treasury gain new plots from cadastral parcels remained in the restricted area. And these new plots can be evaluated in various ways. Such as; compensation arising from the coastal lands can be paid from the sales of these parcels, municipality can use these areas for the construction of social and technical infrastructure and for the expropriation of public facilities (hospital, cultural facility, etc.).

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CADASTRAL RENEWAL AND AUTOMATION PROJECT IN CYPRUS

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ABSTRACT

The right of the acquisition of property is one of the most basic rights that people have. Moreover, cadastre is the concept which developed in order to make the determination of the rights to immovable property. Early on, it is seen that cadastre concept is used for checking the taxation of immovable properties. However, the changes that occur over time in the human-land relationship in the developing world, ensuring the safety of the property has also been included into the basic tasks of cadastral concept. The importance of modern and sustainable cadastre over economic development, social stability and steady environmental management is accepted by all world and governments have speeded up their work about this concept. Within this content, establishment of a modern cadastral system for all the property activities connected to the ground which provides the protection of land rights legally and takes the state guarantee for operations like transfer transactions, trading etc., is became a highly desirable concept worldwide. In this article it is described all of the renovation and the automation works from the current system to the universal in order to establish a modern cadastral system in TRNC.

Key words: Cadastre, renovation, automation, Cyprus

ÖZET

Mülkiyet edinme hakkı insanların sahip olduğu en temel haklardan biridir. Kadastro kavramı da taşınmazlara ilişkin mülkiyet haklarının tespitinin yapılması amacıyla gelişmiş bir kavramdır. Kadastro kavramının başlangıçta taşınmaz malların vergilendirilmesinin kontrol edilmesi amacıyla kullanıldığı görülmektedir. Ancak, zaman içerisinde gelişen dünyada insan-toprak ilişkisinde meydana gelen değişimler, kadastro kavramının temel görevleri içerisinde mülkiyetin güvenliğinin sağlanması konusu da dahil olmuştur. Modern ve sürdürülebilir bir kadastronun ekonomik kalkınma, sosyal istikrar ve düzenli çevre yönetimi açısından önemi tüm dünya tarafından kabul görmüş ve devletler çalışmalarına hız vermişlerdir. Bu bağlamda zemine bağlı mülkiyet faaliyetleri için arazi haklarının hukuki anlamda korunduğu ve kişiler arasındaki her türlü devir, alım-satım vb işlemlerde devlet güvencesinin esas alındığı modern bir kadastro sisteminin tesisi bir tüm dünyada arzu edilen bir kavram olmuştur. Bu yazıda bütün KKTC kapsayan modern kadastro sisteminin kurulması için yapılan yenileme ve mevcut sistemden evrensel modern sisteme dönüşüm çalışmaları açıklanmıştır

INTRODUCTION

Cadasters are often seen as being one of the pillars of modern land administration systems alongside efficient land registration, property valuation, real estate taxation, and land use management systems. An effective land administration system, it is conventionally argued, is seen as being an essential prerequisite for an efficient property market. Such a system should include ways of ensuring that property rights are protected and that trading in land, the transfer of property rights, and the raising of capital by pledging property as security can take place efficiently. In order to achieve these ends modern land administration systems have land registration to record property rights, their ownership and transfer, and cadasters to map property rights and record their geo-co-ordinates.

Land registration is a process of official recording of rights in land through deeds or title (on properties). It means that there is an official record (the land register) of rights on land or of deeds concerning changes in the legal situation of defined units of land. It gives an answer to the question “who” and “how”.

Cadaster is a methodically arranged public inventory of data concerning properties within a certain country or district, based on a survey of their boundaries. Such properties are systematically identified by means of some separate designation. The outlines or boundaries of the property and the parcel identifier are normally shown on large scale maps which, together with registers, may show for each separate property the nature, size, value and legal rights associated with the parcel. It gives an answer to the questions “where” and “how much”. (Henssen and Williamson 1990, p. 20.)

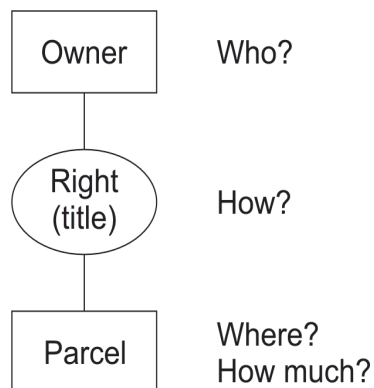


Fig. 1. Core entities connected (Zevenbergen, 2002)

In many cases the land registration and cadastral functions are organized independently, and regularly they are not co-operating in the most effective way. Improvements, both technological and others, in quite some cases only mend one or a few links in the chain formed by land registration and cadaster. Often not even the weakest link. To fully understand land registration and cadasters, however, it should be treated as an integrated system, and be studied, analyzed and improved in its wholeness (Zevenbergen, 2004)

The ownership structure in Turkish Republic of Northern Cyprus (TRNC) dates back to the Ottoman Empire which dominated the island between the years 1570-1878. Then the island came under British rule in 1878. The land classification and the first ownership determination for tax purposes were worked out in the that period by using methods such as simple triangulation, chain measurements, plane table. However only blueprint copies of the said maps come until today and most of which being unusable because they do not have measurement, bench mark and coordinate values.

Therefore, Land Registration is currently being executed under inappropriate conditions in TRNC. Although a register of property owner is kept, it is not possible to have access to owner information in a sound manner. With a view to remedying said deficiencies, protocols were signed from 1998 onwards between the relevant Ministries of TRNC and Turkey, spelling out the principles of working geared towards under a contract awarded by the General Directorate of Land Registry & Cadaster of Turkey at the beginning of 2013, works have commenced, covering up to 25 % of the project, envisaging renewal of 125 thousand parcels in the form of three packages.

Duration of the project is 1 year, and estimated cost of the project is approximately USD 5 million. The first stage of the works covering 61 villages has been completed and related announcement has been posted. Related works will be completed in 5 months, and the cadastral maps newly prepared in metric system, digital and certified outputs thereof and the books of real estate registers will be Furthermore, CORS-TR system surface network covering TRNC has been created, ensuring conversion from the British Imperial System into universal metric system. The paper covers the said works and the results obtained.

BACKGROUND

Cyprus, the third largest and third most populous island located in the south-eastern region of the Mediterranean Sea, with an area of 9251 km² and a population of approximately 793,000. Topographically Cyprus consists of two mountain masses (on the north - The Kyrenia Range and south - the Mesaoria Plain) and central lowland. Administratively Cyprus is divided into 6 districts named after the island's principal towns: Nicosia, Limassol, Larnaca, Paphos, Famagusta and Kyrenia. Nearest neighbors are; on the 70 km north Turkey, on the 100 km east Syria, on the 170 km southeast Lebanon and Israel, on the 370 km south Egypt and on the 950 km northwest Greece.

The history of Cyprus goes back 11,000 years to the Stone Age 4500 BC. At a strategic location in the Middle East, it was subsequently occupied by several empires; Roman and Byzantine administration (30BC-1191AD), the Crusaders, the Frankish House of Lusignan (1192-1489), the Republic of Venice (1489-1571), the Ottomans (1571-1878) and finally the British (1878-1960).

Island was conquered by Ottoman Empire in 1571 and stayed over three centuries of Ottoman rule between 1571 and 1878. However, in the aftermath of the Russo-Turkish War (1877–1878), Cyprus was leased to the British Empire which de facto took over its administration in 1878 (though, in terms of sovereignty, Cyprus remained a de jure Ottoman territory until 5 November 1914) in exchange for guarantees that Britain would use the island as a base to

protect the Ottoman Empire against possible Russian aggression. In 1923, under the Treaty of Lausanne, the new Turkish republic relinquished any claim to Cyprus, and in 1925 it was declared a British crown colony. British period ended on August 1960 with the Zürich and London Agreement between the United Kingdom, Greece and Turkey and Cyprus gained its independence.



Fig. 2. Political Map of the Cyprus Island (HGK, 2009)

Land use and tenure in Cyprus was on a totally communal basis before the year 1050 BC. The first idea of individual ownership was evolving after the period of this year. An inscription of the 5th century reveals certain important characteristics of land ownership in ancient Cyprus. It indicates that there were then not only royal lands but also private ownership, mentioned by owner's names. It also indicates the existence of land taxation and of inheritance in those days.

The period 1571-1878, Cyprus was under Ottoman Rule therefore, the most important legal provisions were contained in the Medjelle and the Ottoman Land Code (1858) (arazi kanunnamesi humayunu), which set land ownership on a more rational basis. There were five categories of land: Mulk, Arazi Mirie, Arazi Mevkoufe, Arazi Metrouke and Arazi Mevat. The Ottoman System may be described as a system of registration of deeds combined with the registration of title. The parcel boundaries are stated without any reference to a map or plan.

During the 19th century, the pattern of land tenure in Cyprus developed so as to serve the purposes of land use, within the framework imposed by the customs and traditions, and the economic, social, religious and political needs and circumstances of that time. In 1878, an

agreement between Great Britain and Turkey transferred administration of Cyprus to Great Britain. In 1907, the Immovable Property Registration and Valuation Law, was enacted (kanunlaştırmak). This Law introduced the registration of title and set the basis for the modern registration of all immovable property, based on the plan in use.

A gradual approach to a reform started with the revolutionary legislation of 1946. The Legislation of 1946 comprised mainly of two laws: The Immovable Property (Tenure, Registration and Valuation) Law and the Wills and Succession Law. The legislation was the first attempt by the State to put an end to the process of deterioration of the structure of land tenure that until then had been left to decline from generation to generation. It was a dynamic and positive approach to the problem of land tenure, offering ways and means to owners to achieve a remedy.

Records of the title deeds belonging to pre-1974 are generally divided into two categories:

A. Disordered System

The records made in this system, have been made on owner of immovable property's request without being connected to any regulations. As a result of such practices the deeds given to the owner called 'Kocan' and they were two-tier:

1. The ones which given by the organization according to study results without field survey.
2. The ones which given after the fieldwork. These feeds were recorded in 'Village Register Books' in the villages by the field officers.

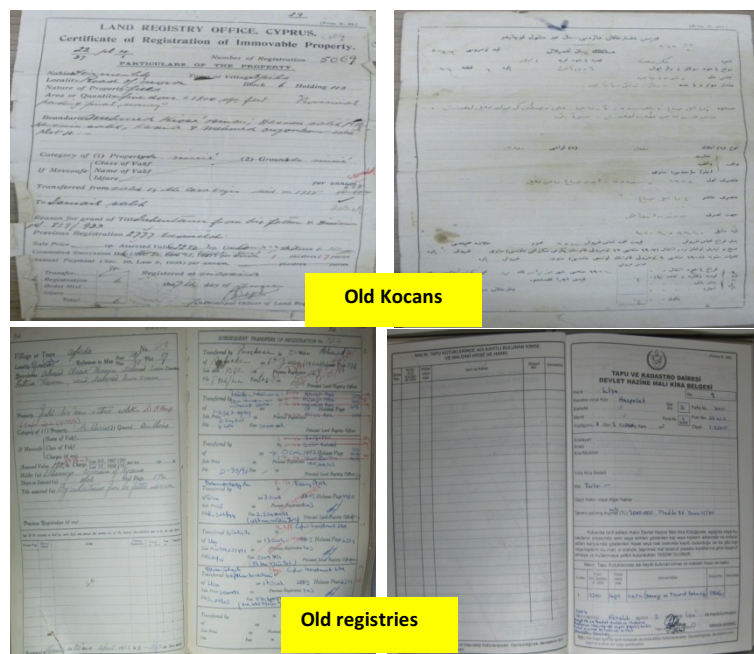


Fig. 3. Old Kocan and Records Examples

B. General Registry System

Studies that was in the scope of this system, conducted by the British legislation and based on generally maps in particular plane table maps. The books that these studies recorded called 'Field Book' or 'Land Register'.

Until today Cyprus has undergone four major stages in terms of land registry and cadaster works. These are;

1. Registered Period

Written cadastral works were carried out in the period of Ottoman Rule (1570 - 1910) in the Cyprus island. During this period, determination and registration of the real estates were performed. Legal validity of these registration records equals to the title deeds in Turkey. However, after the cadaster, land register entries based on the cadastral maps replace them.

2. Deed Records with Sketch

Beginning of the British dominion on the island (years of 1911-1912) in some areas, it is known that identification of the parcels was performed using scaled sketches. The only differences separating these works from written ones is sketches. However these sketches can not be replaced with cadastral maps.

3. Chain Survey

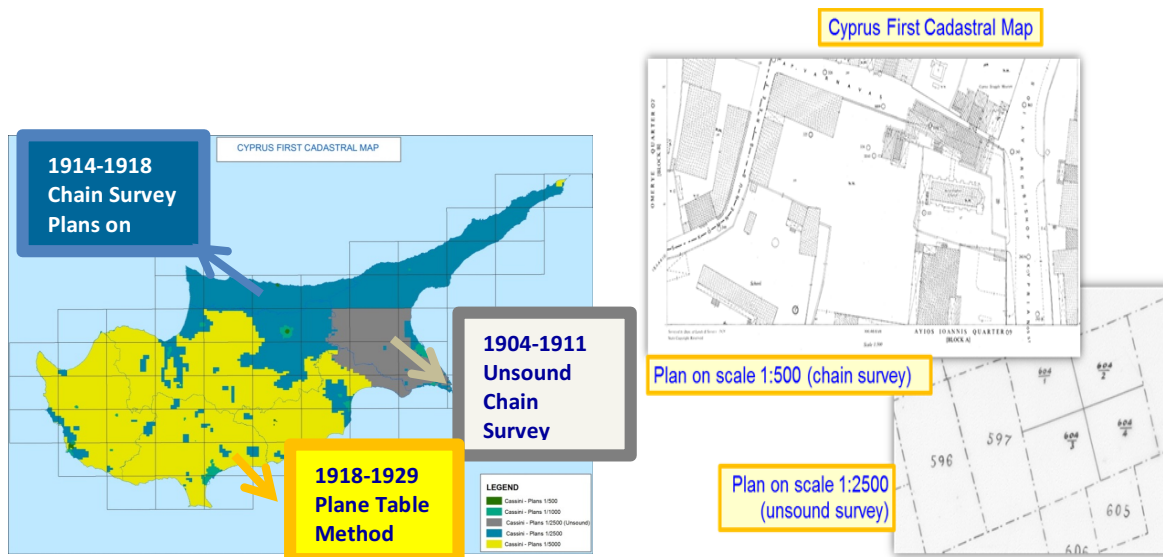
It is known that cadaster of the large part of the island was performed by using chain survey method which is preferred mostly by the British. This method was conducted in the period of the British Rule years between 1912 – 1929 and all field measurements were recorded in field books. Cadastral plans on scales from 1:500 to 1:2500 were prepared and used for the general registration. While doing this studies instead of triangulation polygons were used. In the course of time because most of these polygons is lost application has become impossible in most places.

4. Plane Table Survey

To speed up field studies between the years of 1929 - 1960 British rule, applied plain table measurement based on triangulation method. Plain table method is coarser than the chain method and with using this method 1/5000 scale maps are produced.



Fig. 4. Measurements with Plane Table



CURRENT CADASTRAL SYSTEM

Cadastral Systems are organized in different ways throughout the world, especially with regard to the Land Registration component. Basically, two types of systems can be identified: the Deeds System and the Title System. The differences between the two concepts relate to the cultural development and legal setting of the country. The key difference is found in whether only the transaction is recorded (the Deeds System) or the title itself is recorded and secured (the Title System).

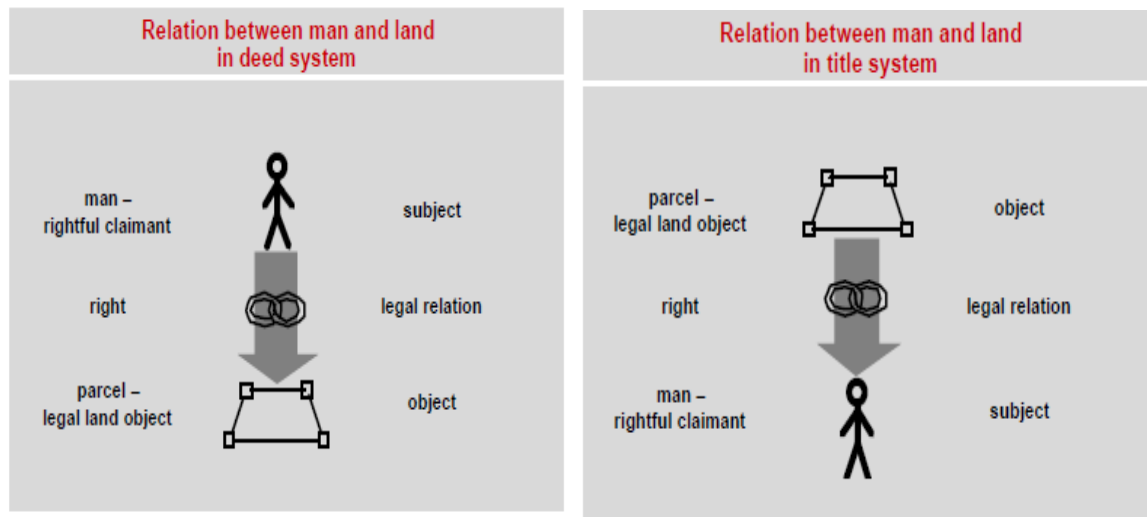


Fig. 5. Basic approaches of the two basis of Human-Land relationship a) Land Registration b) Land Recording

The Deeds System is basically a register of owners focusing on “who owns what” while the Title System is a register of properties presenting “what is owned by whom”. The cultural and judicial aspects relate to whether a country is based on Roman law (Deeds Systems) or Germanic or Common-Anglo law (Title Systems).

Deeds Registration

Deeds registration system is merely a registration of all important instruments related to that land. In order to establish one's title to the land, a person (or usually their purchaser's attorney) will have to ascertain, for example:

- all the title documents are properly executed;
- "a chain of title" is established, i.e. the proper ownerships from the granting of the land from the government to the present owner;
- there are no encumbrances on the land that probably will harm the title of the land.

What is registered is not the title but only the ‘evidence’ of title, namely instruments purporting to transfer or deal with various interests. Therefore a would-be purchaser has to decide, by examining these instruments, and by inspection of the property, whether or not the vendor is the owner and has the right to sell. On the other hand an advantage of deeds registration is that the procedure for accepting the deed by the registrar can be very quick. Only a short check might be made to see if the deed meets the formal requirements.

Title Registration

The most appropriate system of land registration can be described as the ultimate title registration. In a system of title registration one can immediately see who is the owner of certain property. The register therefore needs to be ‘parcel based’, and these parcels are well defined (usually through ‘title plans’).

Systems of title registration exist in many varieties. Especially with regard to the “insurance or guarantee principle” numerous variants exist. Furthermore there are great differences in the ways the parcels are described and identified. In some cases title plans are just copied from existing large scale topographic maps (like the English and Welsh Ordnance Survey maps). Others use precise boundary surveys which are laid down in a numeric cadaster.

In a system of registration of deeds it is the deed itself which is registered. (...) In a system of registration of title, however, it is the land parcel itself that is registered, thus effecting “the transference of primary attention from the mobile, mortal, mistakable persons temporarily possessing or claiming rights over patches of the earth’s surface, to the immovable, durable, precisely definable units of land affected and the adoption of these as the basis of record instead”. The register itself is proof of title and its correctness at all times is usually guaranteed by the State.” (Lawrance 1980: 2-3).

Countries which operate a system of title registration are often divided into three groups, even though this reflects more the differences in land law, than in registration principles:

- a. the English Group
- b. the German/Swiss Group
- c. the Torrens Group.

In the English Group use is made of the large scale topographic maps, in the German/Swiss Group use is made of parcel based cadastral maps, and in the Torrens group use is made of isolated survey plans (Henssen 1995: 8).

The English group does not involve a cadaster and knows very little boundary surveys. The process does not ask for preparing an index map of the area before registration can start. It uses existing large-scale topographic maps for this. The German/Swiss group uses good cadastral surveys and a well-functioning deeds registry. The title register is called ‘land book’ and very similar in structure to the land registers. The Torrens system resulted from Sir Torrens' desire to improve on the old English land law system which was very complex, time consuming and expensive. The purpose of the Torrens system is to simplify land transactions and to certify to the ownership of an absolute title to realty by having registered plans.

The land registration system in British Rule Cyprus maintained by English Deeds System. A registered person is considered to be the undisputed owner of the land and his title to ownership is absolute, subject to the Director’s power to correct errors or omissions under certain circumstances, and the inherent power of the Courts to order an amendment or cancellation of a registration. Title is not guaranteed by the State and there is no indemnity fund that means that the right holder is protected by ‘public faith’. Today every government

try to establish a modern cadaster system for social stability with managing land use information effectively.

After 1974, the island was divided into two political governance as Turkish Republic of Northern Cyprus and Republic of Cyprus. After the separation TRNC government agreed that current cadastral system should be change and should be modernized. Because the existing cadastral maps inadequate due to technical reasons, contain boundary errors and insufficient in practice, they need to be renewed. TRNC government is aimed to develop a similar approach like the system in Turkey. Although current legislation is based on the old system new regulations are considered according to the same approach in Turkish system. From this point if we will briefly mention about the system in Turkey;

The system take its source from the Constitution and the Civil Code and and the basis of the system is based on “State Guarantee”. Article 719 (old 645) of the Civil Code states that; “The boundary of immovable is determined with property deeds and boundary marks over the land. If the property deeds and boundary marks do not match , what property deeds say is accepted.” In Turkey government is absolute responsible for the regulation of the land registry. If real estate owners and rights holders have been damaged by a change made on the registers without the written permission or a court decision, the losses is compensated by the government. The main difference between the systems is based on that in Turkey there is a cadastral system based on the concept of a central Europe and existing of a legal structure. The structure called "Fix boundary" that is precision and accurate measurements are done and connected to the cadastral maps. However in TRNC there is a general understanding of the boundaries called "General Boundary" is arising from traditional British system. Cadastral Renovation Project with technical infrastructure is renewed based on the system in Turkey and a new cadaster concept that is compatible with EU aims to be developed.

Problems of the Existing System

Modern and sustainable cadaster term is relied on registration with legal assurance. Under most systems of registration of title, the information on the registers is guaranteed so that, in the unlikely event of fraud or error, anyone inadvertently suffering from the incorrectness of the information will be compensated (Dale and McLaughlin 1998). Therefore governments tried to implement the Title registration system for sustainable management of the land information. In TRNC existing deeds system is desired to be converted with title registration.

Deeds registration is a system for registering legal documents, not for registering title to land. A deed does not prove who owns the land ; it only records an isolated transaction (Dale and McLaughlin 1998). Systems of deeds registration are usually described with the main focus on their problems. These problems can be explained by the following defects (Zevenbergen 1994: 4):

- the fact that the deeds merely prove the fact that a transaction took place, without guaranteeing that the intended changes did really occur;
- the fact that it is not compulsory to register (all) changes of ownership, so that a correct impression at one moment may become erroneous later on;
- the fact that the object the deed refers to is not very well described;
- the fact that the chronologically stored deeds are badly accessible, sometimes only through poorly alphabetized name indexes.

H. M. LAND REGISTRY		TITLE NUMBER		
		CS72510		
ORDNANCE SURVEY PLAN REFERENCE	COUNTY	SHEET	NATIONAL GRID	SECTION
	CORNESHIRE		ST 1680	K
Scale: 1/1250	MARADON		© Crown Copyright	

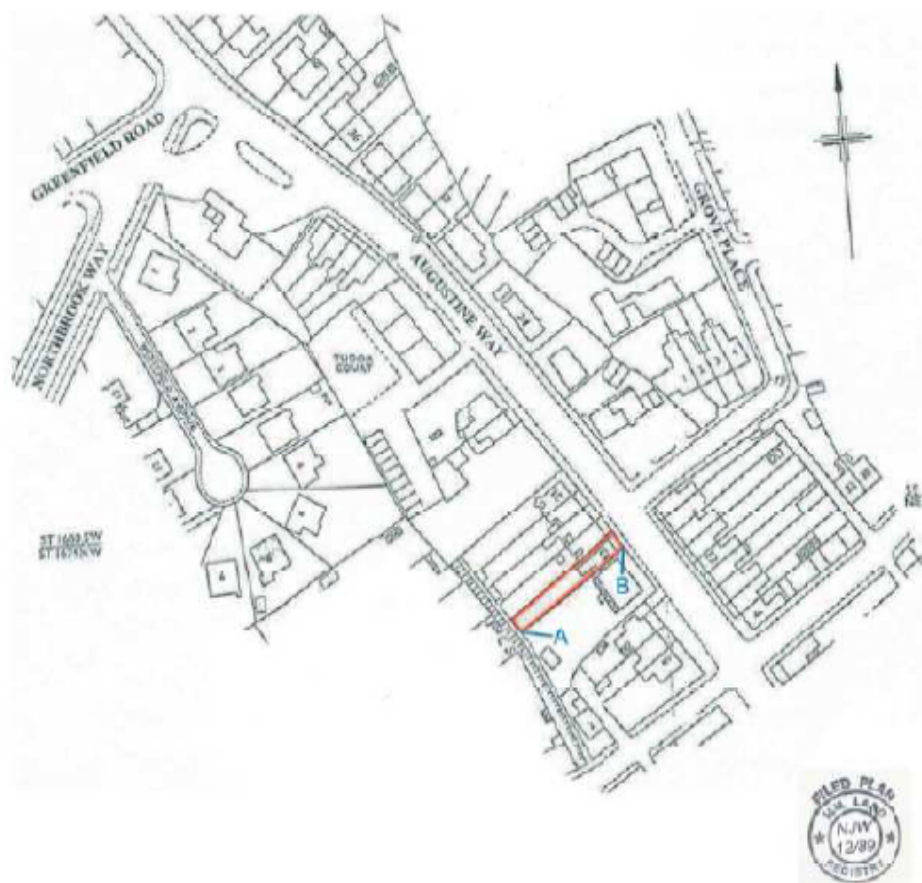


Fig. 6. H.M Land Registry

In other words; a deed, in itself, does not prove title. It shows that a transaction took place but does not prove that the parties are legally entitled to carry out the transaction (Palmer 1996: 63). What is registered is not the title but only the ‘evidence’ of title, namely instruments purporting to transfer or deal with various interests. Therefore a would-be purchaser has to decide, by examining these instruments, and by inspection of the property, whether or not the vendor is the owner and has the right to sell. Conversion from deeds registration to title registration is not easily succeeded due to different levels of accuracy of parcel plan for title registration as against the plan in deeds. The system is associated with long delays and frustrating processes and procedures leading to loss of public confidence in the system.

Because of the absence of the measurements, calculations, benchmarks and coordinate values existing sheets are accepted as graphic sheets. Nevertheless, this is the only available source; studies like municipal, urban planning, expropriation, etc are trying to run over according to these sheets. A lot of border violations have been occurred due to unhealthy application of the parcels. Land Registry is currently being carried out in unsuitable conditions. The owners registry is keeping recorded however the information belongs to the owners cannot be achieved healthily because of the "Surname Law» was adopted in 1983. Before that in place of surname for male father's name and for female first her father's name before marriage and after spouse's name is used. Sometimes the chattels belong to the same person is recorded on different pages on owners registry. After cadaster is done, land registers are done according to the demands however in the old villages before 1983 there is still parcels which are not recorded because of the absence the majority of the land registry.



Fig. 7. Old Maps

The determination of the status of the sheets and records which will be renovated before starting the study is important. It is needed that protection of the these information and the the rights acquired based on them, also retrieving all these information accordance with the new and modern technology. Therefore, renovation is a work that requires fund of knowledge. Being knowledgeable of the rights holders about the subject, to understand the nature of the studies, the necessity of working together, maintaining the existing legal rights, announcements, objections, legal procedure are the main processes of this work. Although old maps and records are being accepted as the only legal basis,; precision, needs, methods and production technology when they are produced need to be understand.

Table 1. Random errors and errors which can be calculated from distance measurements

Random errors and errors which can be calculated from distance measurements	
Length error of steel tape	Length strip counting error
Tilting	Reset (on steel tape start)
Tension and Sag	Reading and spelling errors
Temperature	Personal and other blunders
Deviation from the direction	Obstacle of product size

STUDIES ON THE FIELD IN TRNC

Relevant ministries of the TRNC and Turkey signed necessary protocols between the years 1998 and 2008 for renewal studies. In 1998 automating the renewal of cadastral maps and land register of studies in the TRNC which are foreseen in the protocols was started by the personnel assigned from the Republic of Turkey. However, in the past 11 years, only 21 thousand parcels could be able to renewed. In order to accelerate work with the tender made by the beginning of 2013 TKGM, renewal of the 125 thousand parcels are foreseen to be done in 1-year period as three packages and project cost estimated about 5 million TL. Also it is estimated that in 246 villages there are about 600 thousand parcels and 1.5 million land registry. The result of the tender made by TKGM, contractor company is determined and site delivery is done.

Studies were carried out with;

TKGM; 1 general coordinator, 1 coordinator, 3 engineers, 25 technicians,

TKMD; Advisory Committee (team consisting of TRNC Land Managers, Coordinators, engineers and lawyers)

CONTRACTOR; 3 project manager, 15 engineers, 60 technicians (35 technicians from TRNC), 35 GPS and electronic measuring instrument and around 20-terrain vehicle.

In villages and neighborhoods it is stated that studies will start firstly the participation of owners then with village headmen and expert witnesses from the region, also announcements about the nature of the work is made. To increasing the awareness of the project, it is publicized in the press and the public opinion and given briefings.

Border definitions are the most important factor in these studies. The result is specified with detailed research on the ground and determined by the Headman, local experts and property owners. It must be done by trained technical personal and very carefully.

Table 2. Boundary Definitions

Boundary Definitions;
Fixed Boundary : Indisputable boundaries which are available on the ground and determined have not changed after cadastral works.
Valid Boundary: This is the boundary established if the cadastral technical documentation and measurements are free of errors.
Boundary Considered Valid: This is the boundary created by the owners and other concerned based on the way of usage without any kind of disagreement.
Uncertain Boundary: This is the boundary which is not available on the ground but formed by the adjustment plan.
Arguable Boundary: This is the border which is available on the ground however, it's the subject of dispute between the sides.
Exchangeable Boundary: This is the boundary which is available on the ground and adjacent places ruled and controlled by the state.

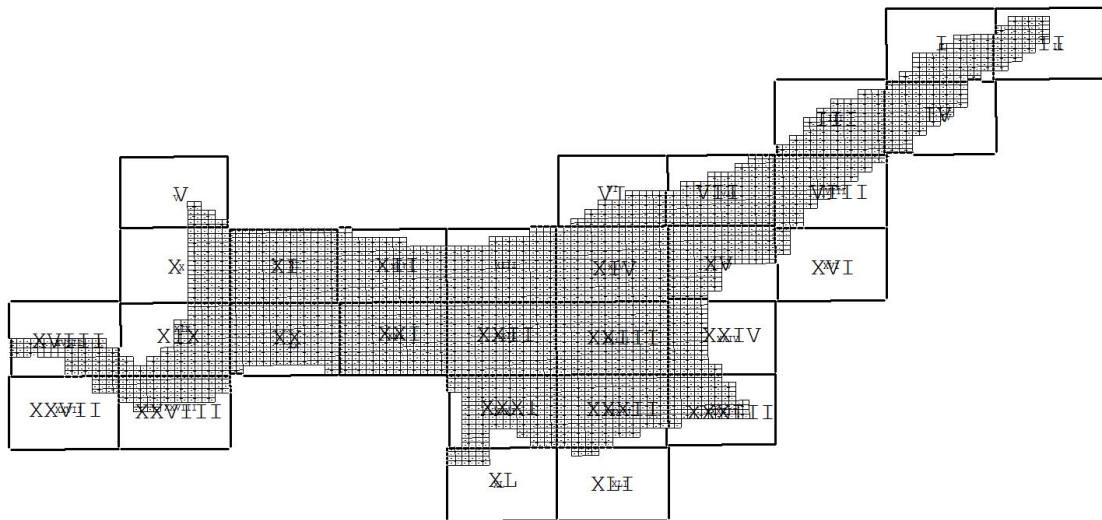
Technical Studies

Surface Network Creation Studies

Not only has the scope of the tender, GNSS and Leveling Network that covers all the TRNC surface been established in accordance with the system used in Turkey. All the milestones were built as a "bent bar". There are 4 CORS (Continuously Operating Reference GPS Stations) stations are available and based on these, in total 105 ground control points, 37 C2 stations (SGA- Densification GPS Network) as bent bars , 68 C3 stations (ASN- densification network for detail measurements) were established. Precision of the generated densification network is 1.55 cm in determining the spatial coordinates and 2.08 cm in determining height. Every hour of the day instant height and coordinate information can be able to determine within the TRNC borders and open for all the public and private sector users.



Fig. 8 Surface Network



Firstly the digital data of Cadastral Offices and the licensed surveying offices have been taken into consideration. The parcel edging have been provided accordingly and the adjacent parcels was evaluated upon this. Even though the former measurement points were present on the units being worked on and these points were measured by Cadastral Registry Directorate and Licensed Offices in CORS, ITRF, ED50 coordinate system, these have been taken as the same, after controlled. The unmeasured old measurement points (Traverse points) were found on the ground and measured. All the measurements have been converted to CORS system. If there is a parcel-ground point's harmony following the mapping than they have been taken as base during the evaluation. The existing cadastre maps have been made by taking the sets, arches, stone range, layered wall as fixed boundaries as base. The evaluation was made according to the block and parcel communities and the building and wall and the water wells of old times which are shown in the boundaries of parcel were taken into consideration.

W1	E1	1	W1	E1	2	W1	E1	3	W1	E1	4	W1	E1	5	W1	E1	6	W1	E1	7	W1	E1	8
W2	E2		W2	E2		W2	E2		W2	E2		W2	E2		W2	E2		W2	E2		W2	E2	
W1	E1	9	W1	E1	10	W1	E1	11	W1	E1	12	W1	E1	13	W1	E1	14	W1	E1	15	W1	E1	16
W2	E2		W2	E2		W2	E2		W2	E2		W2	E2		W2	E2		W2	E2		W2	E2	
W1	E1	17	W1	E1	18	W1	E1	19	W1	E1	20	W1	E1	21	W1	E1	22	W1	E1	23	W1	E1	24
W2	E2		W2	E2		W2	E2		W2	E2		W2	E2		W2	E2		W2	E2		W2	E2	
W1	E1	25	W1	E1	26	W1	E1	27	W1	E1	28	W1	E1	29	W1	E1	30	W1	E1	31	W1	E1	32
W2	E2		W2	E2		W2	E2		W2	E2		W2	E2		W2	E2		W2	E2		W2	E2	
W1	E1	33	W1	E1	34	W1	E1	35	W1	E1	36	W1	E1	37	W1	E1	38	W1	E1	39	W1	E1	40
W2	E2		W2	E2		W2	E2		W2	E2		W2	E2		W2	E2		W2	E2		W2	E2	
W1	E1	41	W1	E1	42	W1	E1	43	W1	E1	44	W1	E1	45	W1	E1	46	W1	E1	47	W1	E1	48
W2	E2		W2	E2		W2	E2		W2	E2		W2	E2		W2	E2		W2	E2		W2	E2	
W1	E1	49	W1	E1	50	W1	E1	51	W1	E1	52	W1	E1	53	W1	E1	54	W1	E1	55	W1	E1	56
W2	E2		W2	E2		W2	E2		W2	E2		W2	E2		W2	E2		W2	E2		W2	E2	
W1	E1	57	W1	E1	58	W1	E1	59	W1	E1	60	W1	E1	61	W1	E1	62	W1	E1	63	W1	E1	64
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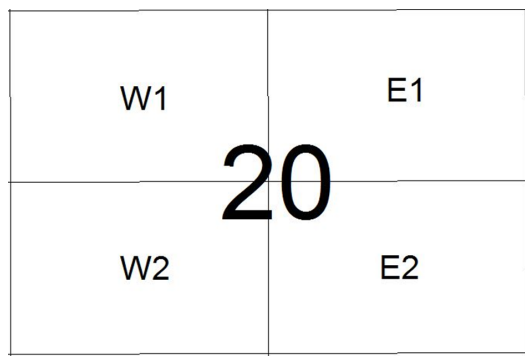


Fig. 9 Map Index for Old Maps

The boundaries which were used to be the walls in the old parcels were not shown via special mark. Therefore the walls which are thought to be existing in the land previously was taken as notes and considered in the evaluation. In case the parcel and land book show different boundaries the land books and Land Registry Books were decided to be superseding. The facade length written in the land books have been preserved in the evaluation. The breaches and right of ways stated in Land records have definitely been observed. The given “Director’s Decisions” which had been awarded for the disputed parcels have been investigated and these decisions were observed. When a certain difference have been found to exceed the margin of error in measurements such as wall, fence and building positions, re-measurement or control measurement have been performed. The parcel boundaries have been determined by taking the road width into the consideration in places where structured and digital data could not be found.

Automation Studies

Automation studies that is started for archival purposes, were used for the renovation of the existing documents. These studies are based on the principles of taking the picture of the registers, indexing them in computer and after that making data entry.

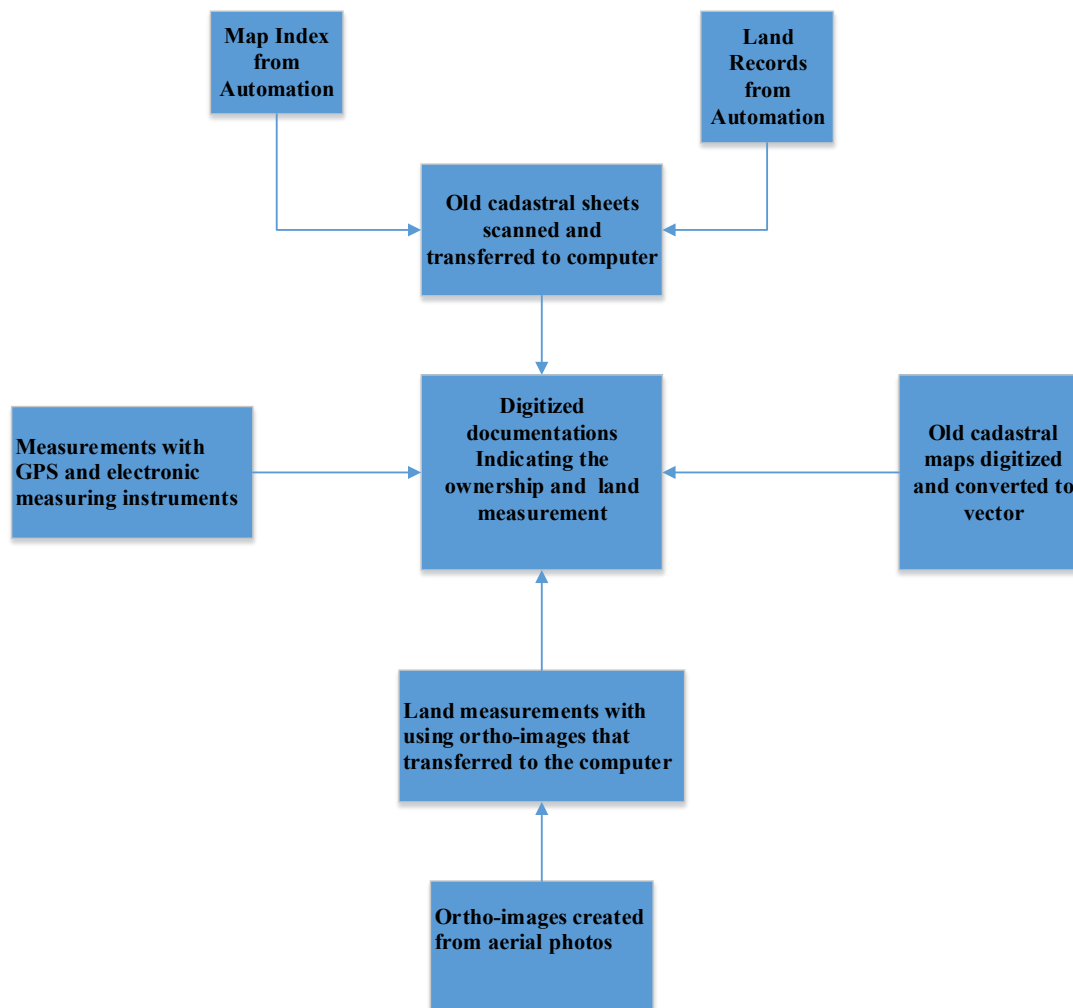


Fig. 8. Workflow of the renovation project

The first three-four months of the work has not been efficient at the desired level due to the adaptation of the study area and TRNC. However; in terms of the subsequent process parallel to the appointments, a business plan covering the duration of the project is prepared by TKDM, project coordinator ship, engineers and technicians and this program has been strictly obeyed.

The parcel number in the parcel/map system have been formed as 456/4, 456/4/1,...etc., and registered to the land book. These parcel numbers have been accepted as key data in the type of “old parcel no” and it has been re-numbered in a system starting and continuing as the Province, District, Block and Parcel number from to infinitive continues number. The land books were scanned and loaded to a computer as raster via an index.

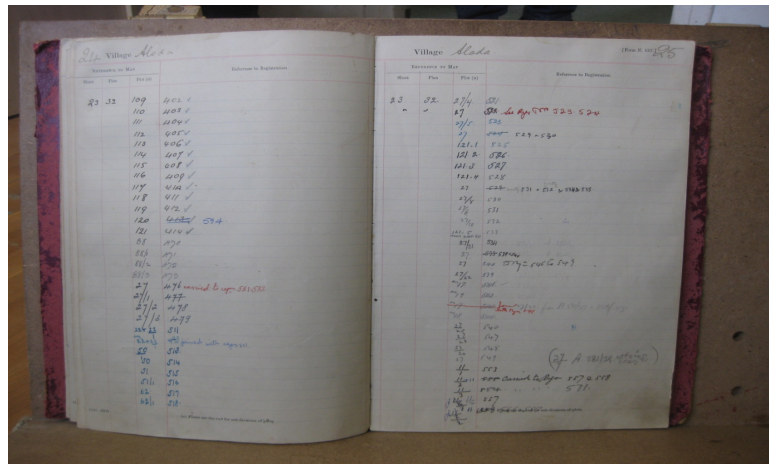
The parcel boundaries have been measured literally as to the original boundaries depending on the statements of the experts and owners and have been evaluated as per the border descriptions within the technical regulation. The works made on the land and in the office have been recorded via a report and the mukhtar and witnesses' signatures were taken. The colored ortho-images of the working places have been taken as basic data during the measurement and evaluation. A new software has been developed in order to match the graphic data and deed registry, and the work has been performed in a more controlled and fast manner without any data loss. Total Parcel 129 962 (there are 1 307 sheets with the scale of 1/1000 and 1/2000) . Land Registry 1.398; Common hold Registry 155 and totally about 1 570 new registers were transferred. Commissions examined the objections and they have been concluded.

CONCLUSIONS

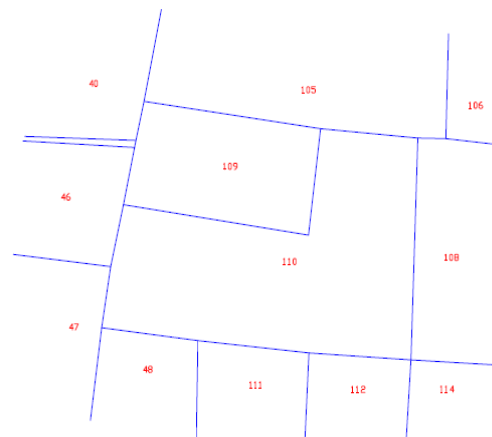
The cadastral renovation project in TRNC, has the characteristics of a property conversion. Cadastral sheets and property records that is produced according to British imperial system were transformed a base that is updated, numeric, in the metric system, legally valid and may constitute investments related to the land. Urbanization, construction, expropriation, consolidation such as urban regeneration activities may result in a short time, more economical and effective. Property cases will diminish greatly and renovations also will help the development of relevant legislation in TRNC. To be able to complete the studies carried out laboriously and intensely at the estimated time, has a prestigious importance to both countries.

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Map Index taken from Automation



Scanned old and new cadastral sheets



Old polygon sample

KÜRESELLEŞEN MÜLKİYET

Fidan Elçi, Güven Nazmi Demiralp

TKGM, Ankara, Türkiye.

ÖZET

Bilgi, sermaye ve insanın eskiye nazaran çok daha mobil hale geldiği günümüz dünyasında, mülkiyete ilişkin hususlar da artık ülkelerin siyasal sınırlarının ötesine taşınmaya başlamıştır. Ayrıca dünyada mülkiyet konusu, tüm ilişkin dalları ile bir bütün olarak algılanmaktadır. Mülkiyetin tespitinin ilk adımı olan kadastral çalışmalardan, mülkiyetin nasıl vergileneceğine dair mali çalışmalara, mülkiyetin hukuki altyapısından, finansal ölçütlerle objektif olarak nasıl değerlendirileceğine kadar çok sayıda başlık, topyekün düşünülmekte ve eylem planları buna göre biçimlendirilmektedir. Tapu ve Kadastro Genel Müdürlüğü de bu kapsam ışığında yol haritasını belirlerken, daha evrensel, bütüncül düşünmek ve bu ilkelerle hareket etmek zorunluluğunun bilincindedir. Bu doğrultuda atılan çeşitli adımlardan sadece birkaçına değinmek gerekirse, "yabancıların taşınmaz edinimi ve etkilerinin değerlendirilmesi" isimli projeden ve "yurtdışı temsilciliklerde tapu işlemlerinin yapılması Berlin pilot uygulaması" çalışmasından bahsetmek yerinde olacaktır.

Anahtar kelimeler: Yabancıların taşınmaz edinimi, Yurtdışı temsilcilik, Tapu, Mülkiyet, Edinim, Yabancı

TÜRKİYE’DE YABANCILARIN TAŞINMAZ EDİNİMİ VE ETKİLERİNİN DEĞERLENDİRİLMESİ PROJESİ

Yabancı İşler Dairesi Başkanlığınca izlenen ve alanında ilk olma özelliği taşıyan, AB müzakereleri çerçevesinde Genel Müdürlüğümüzün sorumluluğunda bulunan “Sermayenin Serbest Dolaşımı Faslı” başlığındaki “Yabancıların Ülkemizde Taşınmaz Edinimi” konusunda, fasıl müzakereleri esnasında AB tarafından talep edilen yükümlülüklerin yerine getirilebilmesine altlık oluşturmak üzere Kamu Kurumları Araştırma ve Geliştirme Projelerini Destekleme Programı (KAMAG) 1007 kapsamında TÜBİTAK tarafından desteklenen ve Ankara Üniversitesi, Fen Bilimleri Enstitüsü, Taşınmaz Geliştirme Anabilim Dalı tarafından hazırlanan bir projedir. Projenin ana hedefi yabancılar konusunda büyük önem arz eden “yabancıların taşınmaz ediniminin” bütün yönleri ile ele alınarak, uygulamada karşılaşılan ve gelecek yıllarda oluşması olasılığı yüksek önemli sorunlara çözüm üretmektir.

Projenin onay tarihi 24.01.2011 olup, proje başlama tarihi 01.03.2011 ve proje bitiş tarihi 30.09.2014 tür. Başka bir deyişle proje 3,5 yılda tamamlanmış; uzun soluklu bir çalışmadır.

Bu kapsamda Proje, “Bazı ülkelerde yabancılar ve Türk vatandaşlarının taşınmaz ediniminin analizi, Türkiye’de yabancı gerçek ve tüzel kişilerin taşınmaz ediniminin tarihsel gelişimi ve seçilmiş ülke örnekleri ile karşılaştırmalı analizi, Türkiye’de yabancıların taşınmaz ediniminin

etkilerinin değerlendirilmesi (etki değerlendirme ve norm analizi çalışması), İdarenin izleme ve değerlendirme altyapısının geliştirilmesi, Türkiye’de yabancıların taşınmaz edinimine yönelik ulusal strateji modelinin geliştirilmesi”, alt bileşenlerinden oluşmaktadır. Proje sonuçlarının, karar organları ve paydaşlar için yol gösterici olması, toplumsal fayda sağlayıcı ve uygulayıcı kuruluşlar için de eyleme yönelik çıktılar ortaya koyması ve ulusal norm bilgilerinin tarafsız bir araştırma ekibi tarafından ortaya konulmasına olanak vermesi öngörülmüştür.

Proje kapsamında, hem yurtiçinde yabancıların taşınmaz edinimi tüm detaylarıyla incelenmiş, hem de yurtdışında seçilmiş olan örnek ülkelerdeki durum gözden geçirilmeye çalışılmıştır.

Eldeki verilen ışığında anlaşılmaktadır ki, bugüne kadar gelişmiş ve gelişmekte olan ülkelerde yabancı gerçek ve tüzel kişilere taşınmaz edinimi konusunda sağlanan kolaylıklar ve getirilen kısıtlamalarla ilgili yeterli ve kapsamlı karşılaştırmalı bilimsel araştırma yapılamamış ve bu alanda önemli bilgi asimetrisinin (veya çarpıklığının) olduğu gözlenmiştir. Proje kapsamında Avrupa Birliği (AB) müktesebatı ve uyum açısından örnek ülke seçiminde AB’nin kurucu üyeleri ile yeni üye ülkelerin temsil edinmesine özen gösterilmiş ve AB ülkelerine ilave olarak Orta Doğu, ABD, Rusya, Azerbaycan ve Körfez ülkelerindeki durum da incelenmiştir. Ülke örneklerinin incelenmesinin temel amacı; yasal ve fiili karşılıklılık ilkesinin uygulanmasındaki temel ölçütler (tam ve kısmen uygulamalar), yabancılara getirilen kısıtlamalar ve bunun nedenleri, Türk vatandaşlarının taşınmaz ediniminde uygulanan işlemler (sağlanan kolaylıklar veya çıkarılan güçlükler ile taşınmaz edinim istatistiklerinin derlenmesi gibi), ulusal ve bölgesel düzeylerde yabancılara getirilen taşınmaz edinimine ilişkin üst sınırlar veya kısıtlayıcı ölçütler, kısıtlama nedenleri ve gerekçeleri, ulusal ve bölgesel düzeylerdeki normların tespiti ile yabancıların taşınmaz ediniminde uygulanan iş ve işlemlerin akış diyagramları (yapılan uygulamalar, dayanakları ve gerekçeleri gibi), mümkün olduğu ölçüde incelenmiş ve Türkiye uygulamaları ile karşılaştırmalı olarak değerlendirilmiştir. Bazı ülkelerde mülkiyet yaklaşımındaki farklılıklar (İngiltere, Azerbaycan, Dubai, Danimarka, Özbekistan, Kazakistan, Türkmenistan gibi) ile karşılıklılık ilkesinin yorumlanma ve uygulanma biçimlerine yönelik yaklaşımlar tartışılmış ve bu durumun yabancıların taşınmaz edinimine olası etkileri değerlendirilmiştir.

Ayrıca ülkemizde yabancıların taşınmaz ediniminin yaratmış olduğu sosyal, ekonomik, hukuki, yönetsel vs. gibi çok çeşitli alanlarda etkiler gözlemlenmeye çalışılmış, bu doğrultuda 26 ilde incelemeler, mülakatlar ve anket çalışmaları gerçekleştirilmiştir. Sahada gerçekleştirilen bu çalışmalar, ciddi bulgular ortaya çıkarmıştır. Bu bulgular, devlet mekanizmasındaki karar alma süreçlerine sağlayacağı katkının yanı sıra, bu alanda akademik çalışmalar yapan bilim insanlarına da faydalı olacaktır.

Proje sonuçları, karar organları ve paydaşlar için yol gösterici olacak, toplumsal fayda sağlayıcı ve uygulayıcı kuruluşlar için de eyleme yönelik çıktılar ortaya koyacak ve ulusal norm bilgilerinin tarafsız bir araştırma ekibi tarafından ortaya konulmasına olanak verecektir. Bu nedenle paydaş kuruluşlarla görüş alışveriş süreci başlamış olup, proje çıktıları 40 tan fazla kuruluş ile paylaşılmıştır.

Yurtdışı Temsilciliklerde Tapu ve Kadastro İşlemlerinin Yapılması Projesi

Tapu ve Kadastro Genel Müdürlüğü'nün mülkiyete ilişkin hususları ülke sınırlarının ötesine taşıma hedefi doğrultusunda yurtdışında yaşayan Türk vatandaşları ile yabancı gerçek ve tüzel kişilerin Türkiye'de bulunan taşınmazların mülkiyetine ilişkin işlemlerin yurtdışından da yapılabilmesini sağlamak amacıyla Berlin Başkonsolosluğunda pilot çalışma başlatılmış ve başarılı bir şekilde tamamlanmıştır. Takbis sisteminin gün geçtikçe artan gücü ve TKGM'nin teknolojiyi kullanmak konusundaki yüksek kabiliyeti sayesinde böyle bir açılımı sağlamak, mobilitenin arttığı ve sınırların kalktığı dünya düzeninde oldukça önemli bir yer edinecektir.

Tapu ve Kadastro Genel Müdürlüğü, Teknoloji, Kalite, Güven ve Memnuniyet(TKGM) ilkeleriyle hareket ederek, sürekli kurumsal gelişim mantığıyla ülkemizde her yıl 7 milyon işlem hacmi ile yaklaşık 20 milyon kişiye, %95 memnuniyet oranıyla hizmet vermektedir. Ülkemizdeki bu hizmet kalitesini yurtdışında yaşayan Türk vatandaşları ve ülkemizden taşınmaz edinmek isteyen yabancı gerçek ve tüzel kişilere de taşıyabilmek amacıyla tapu ve kadastro işlemlerinin taşınmazın bulunduğu yere gelmeden yurtdışında da yapılabilmesi olanağını sunmaktadır.

10.12.2010 tarihinde yürürlüğe giren 6083 sayılı Tapu ve Kadastro Genel Müdürlüğü Teşkilat ve Görevleri Hakkında Kanununun 5/2. maddesinin ç/4 fıkrası "*Yurtdışındaki Türk vatandaşları ile yabancı uyruklu gerçek ve tüzel kişilerin her türlü tapu ve kadastro işlemlerini, buldukları ülkede yerine getirebilmesi için gerekli düzenlemeleri yapmak, iş ve işlemleri yürütmek*" hükmü gereğince gerekli çalışmalar yapılmış ve başarılı bir şekilde sonuçlandırılmıştır. Dünyada ilk kez Tapu ve Kadastro Genel Müdürlüğüne gerçekleştirilen bu çalışma kapsamında, yurtdışında yaşayan vatandaşlarımız ve ülkemizden taşınmaz edinmek isteyen yabancı gerçek ve tüzel kişiler işlem yapmak için taşınmazın bulunduğu tapu müdürlüğüne gelmeden buldukları ülkedeki tapu ve kadastro temsilciliğine başvurarak işlemlerini yapabilmektedirler.

Çalışmaya altlık oluşturmak ve oluşabilecek teknik, hukuki ve mali konulara ilişkin sorunları tespit edip, çözüm üretebilmek amacıyla öncelikle pilot çalışma yapılmıştır. Pilot çalışma için Dışişleri Bakanlığı ile ortak yapılan çalışmalar sonucunda hem Türk vatandaşlarının yurtdışında en çok yerleşik bulunduğu hem de ülkemizden en çok taşınmaz edinen uyruk listesinde ilk sırada yer alan ülke olduğundan Almanya tercih edilmiştir.

Dışişleri Bakanlığının verilerine göre Almanya'da yaklaşık 3 milyon Türk vatandaşı bulunmakta ve bununla birlikte Türkiye'den yabancı uyruklu gerçek ve tüzel kişilerce edinilen 119.182 taşınmazın 32.134'ü Alman uyruğundaki kişilere aittir. Bu veriler çerçevesinde Almanya'da Türk vatandaşlarının yoğun olarak yerleştiği bölgelerin başında gelen Berlin'de pilot çalışmanın yapılmasına karar verilmiştir.

Berlin Başkonsolosluğunda yapılan pilot çalışma kapsamında görevlendirilen tapu ve kadastro temsilcisi aracılığı ile satış, bağış, intikal, ipotek gibi Türkiye'de yapılan tüm tapu işlemleri ile Kadastro verilerine ilişkin bilgi amaçlı aplikasyon ve harita örneği verilmesi gibi işlemler de TAKBİS (Tapu ve Kadastro Bilgi Sistemi) aracılığı ile yurtdışında da yapılmaktadır.

Berlin Başkonsolosluğunda yapılan 1 yıllık pilot çalışma süresince 156 adet akitli tapu işlemi (intikal, satış, hibe vs.), 20 adet akitsiz tapu işlemi (tapu senedi, tapu kaydı talebi ve beyan, belirtme işlemi vs.) ve 1250 adet bilgilendirme, danışmanlık ve kayıt sorgulama hizmeti sorunsuz bir şekilde yapılmıştır.

Tapu ve kadastro hizmetlerinin yurtdışında yapılması çalışmasında hedeflenen, yurtdışında yaşayan yaklaşık 3.7 milyon Türk vatandaşı ve 726 bin civarında izinle Türk vatandaşlığından çıkmış vatandaşımız ile ülkemizden taşınmaz edinen yaklaşık 120 bin yabancıya buldukları ülkeden tapu ve kadastro hizmetlerinin verilebilmesi, ülkemizdeki gayrimenkul hukukuna ilişkin doğru bilgilendirme yapılarak oluşabilecek olumsuzlukların önüne geçilmesi, ülkemizde yatırım yapmak isteyen uluslar arası yatırımcıların doğru yönlendirilmesidir. Bu çalışma ile birlikte her yıl sadece tapu işlemlerini yapmak için ülkemize gelmek zorunda kalarak maddi ve manevi zorluklar yaşayan vatandaşlarımıza bu hizmeti en yakın hizmet noktasından sunmak ve ülkemizden taşınmaz edinmek isteyen yabancıların ülkemizdeki gayrimenkul hukukunu bilmemesinden kaynaklanan olumsuzlukları ortadan kaldırarak doğru ve sağlıklı bilgi alabilecekleri resmi bir mercii oluşturmak amaçlanmaktadır.

Her alanda olduğu gibi bu konuda da vatandaşlarımız ve insanlık için “hizmet”i bir adım daha öteye taşıyarak hızlı, kaliteli ve güvenilir hizmet vermek adına pilot çalışması başarıyla tamamlanmış olan bu çalışmanın ihtiyaç duyulan tüm temsilciliklerde yaygınlaştırılması için gerekli mevzuat hazırlıkları yapılmaktadır.

SONUÇ

Uluslar arası alanda gün geçtikçe değişen şartlar dahilinde ihtiyaçlara cevap verebilmek ve sorunlara çözüm üretebilmek amacıyla geliştirilen ve TKGM için oldukça önemli bir yere sahip olan bu projelerden edindiğimiz tecrübelerimizin uluslar arası boyutta paylaşımının büyük kazanımlar yaratacağı düşünülmektedir.

REFERANSLAR

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