FIG Working Week 2012
Rome, Italy 6–10 May
Knowing to: Manage the territory Protect the environment Evaluate the cultural heritage

Cultural Heritage versus Property Rights

Nida CELIK and Bayram UZUN, Turkey
Karadeniz Technical University, Geomatics Engineering
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Karadeniz Technical University,Geomatics Engineering
http://www.harita.ktu.edu.tr
GISLab Ar-Ge Laboratory, Trabzon
http://www.gislab.ktu.edu.tr

CULTURAL ASSETS OF TURKEY

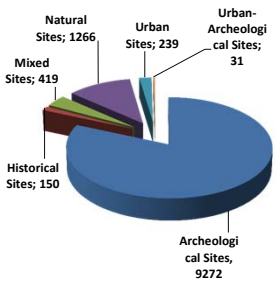
Turkey has a rich cultural heritage as a result of hosting several civilizations for centuries.

Nemrut Dağ

Ephesus

Archaeological Site of Sagalassos

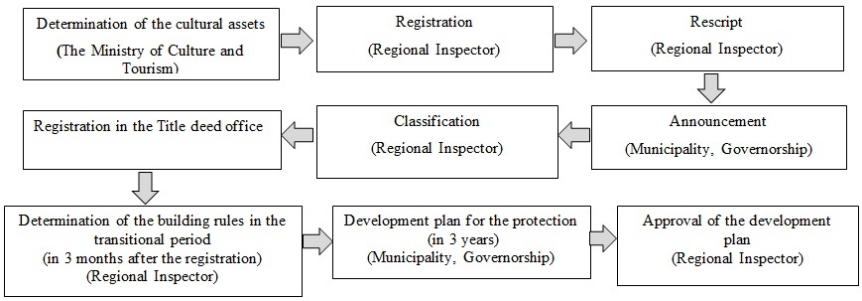
PRESERVATION OF CULTURAL PROPERTY



- **Cultural and Natural Heritage (Protection) Act (Law no. 2863 of 21 July 1983)**
- **The Expropriation Act (Law no. 2942 of 4 November 1983)**
- **International Conventions:**
  - **The Council of Europe Convention for the Protection of the Architectural Heritage of Europe, adopted on 13 April 1989.**
  - **The Council of Europe Convention for the Protection of the Archeological Heritage, adopted on 16 January 1992.**

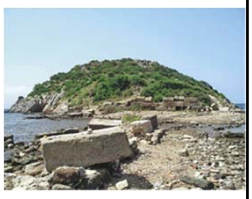
PRESERVATION OF CULTURAL PROPERTY

The administrative process of the cultural assets in Turkey



Judicial Circumstances of the Cultural Assets

- The immovable cultural assets belong to the State (article 5 of Protection Law).
- Public institutions can expropriate the cultural property required for the preservation.
- The age, rarity and artistic features are not considered in calculating the compensation for expropriation.
- Cultural properties are exposed to some restrictions according to their classifications;
  - All kinds of construction, repair and building works are subject to permission of the Ministry.
  - The immovable property cannot be sold or donated without the permission of the Ministry.
  - Agricultural and livestock farming activities in the rural sites are allowed to a certain extent.
  - In some sites partial or certain construction is prohibited.(first and second degree archaeological protected sites)
  - These sites are under a tighter control when compared to other sites.



The European Convention on Human Rights

ARTICLE 1 OF PROTOCOL No. 1

"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."

- In the light of the *ARTICLE 1 OF PROTOCOL No. 1;*
- The aforesaid deprivation is in the public ineterest and serves for a legitimate purpose.
- At the same time the state have to be enabled the balance between the deprivation and just compensation.

So, the state aims to enable this balance by using different transformation tools from private ownership to state ownership.

TRANSFORMATION TOOLS OF THE PRIVATE OWNERSHIP INTO THE STATE OWNERSHIP

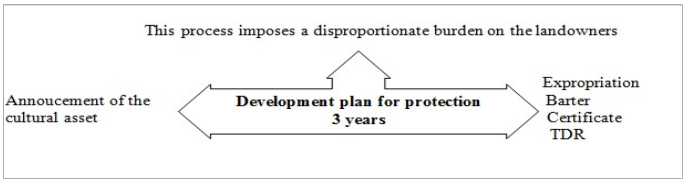
- Barter (is not useful)
- Site certificate (is inactive)
- Expropriation (is used in practice)
- Transfer of Development Rights (TDR) (couldn't be implemented in Turkey sufficiently)
- **Implementations according to years:**

Years	The immovable cultural asset subject to private property	
	Numbers	Implementations
1990-2000	519	Expropriation
1992-2005	1055	Barter
1998-2005	3093	Site certificate

But unfortunately these acquisition tools have lost their effects on the protection of the cultural heritage.

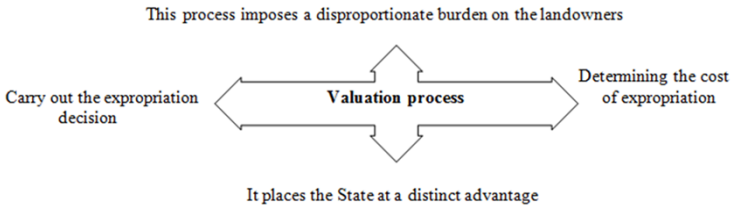
TROUBLES IN TERMS OF THE PROPERTY OWNERS

- **The <u>development plan</u> for protection is the starting point of the transformation process :**
- But waiting for completion of this plan and expropriation subsidy impose a disproportionate burden on the landowners.
- Property rights are restricted in the line of the plan decisions.
- Especially in the rural lands, people feel these restrictions seriously;
  - They have to get permission from the security forces in order to plant.
  - They couldn't able to fix their houses and chicken coops.
  - They are deprived of electricity and irrigation water.
  - Most of them have been judged in High Criminal Courts.



TROUBLES IN TERMS OF THE PROPERTY OWNERS

- **The valuation system used in expropriation of the cultural property:**



The valuation System Used in Expropriation of the Cultural Property

- *The fundamental data that is used in the expropriation of the immovable cultural assets is the market value. which can be calculated on the basis of a statistical analysis of the market*
- N*either the rarity of the expropriated building nor its architectural or historical features are taken into consideration* in calculating the amount of expropriation compensation.
- *The precedent sales take into account in its neighbourhood.*
- *The building's depreciation justified a reduction of the cost while any eventual appreciation is considered irrelevant* in determining the compensation for expropriation.

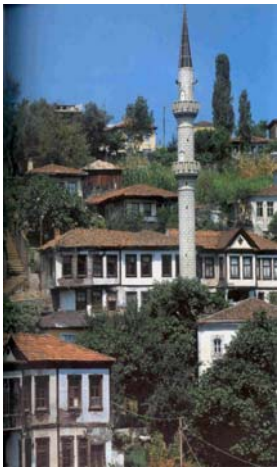
The principle of proportionality, an amount of compensation in different States

- ‘’possible historical status’’(Greece)
- “fair and payable in advance” (France)
- “fair and payable immediately” (Estonia)
- “adequate” (Slovakia)
- “appropriate” (Germany and Austria)
- “full value” (Albania)
- “fair price” (Italy)
- ‘’artistic, archaeological or historical value’’ is subject to a special procedure (Spain)
- **‘’market value’’(Turkey)**

ACCORDING TO THE EUROPEAN COURT OF HUMAN RIGHTS DECISIONS

- the relevant Turkish legislation is clearly defective and, accordingly, that the outcome of the domestic judicial proceedings is in contradiction with the Convention.
- this valuation system is unfair, in that it places the State at a distinct advantage
- the taking of property without payment of an amount reasonably related to its value will normally constitute a disproportionate interference under Article 1 of Protocol No. 1
- system likely to penalise those owners of listed buildings who assume burdensome maintenance costs, it deprives them of any value that might arise from the specific features of their property.
- the level of compensation must take into account the value arising from the expropriated building's specific features.

CONCLUSION



- Instead of assessing these immovable properties by comparing to other properties that are not in the same condition, the valuation should be made by considering both **national and international equivalents**.
- **Clear rules and common standards** should be used in order to assess and calculate the pecuniar value of unique historical and cultural objects
- Valuation system should be based on **objective data** and supported by **expert reports**.
- The valuation system of immovable cultural assets should be changed and **legalized** in line with the ECHR decisions as in some sample cases.
- Most importantly, the **valuation maps** should be created and a database consisting of valuation elements pertinent to the equivalents in the world should be modelled and created for all the registered immovable properties that are included in the **Council of Europe's inventory.**

THANK YOU FOR YOUR ATTENTION…

Nida Celik
Karadeniz Technical University, Turkey

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