

Public restrictions on transfer of agricultural lands in Turkey

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Key words: agricultural land, public restriction, heritage, land division

SUMMARY

Heritage policies accepting the concept of equal sharing was implemented in Turkey for many years. This policies has led to the fragmentation of agricultural land over time and led to higher costs and decrease productivity in agricultural enterprises. Therefore, Soil Protection and Land Use Law entered into force in order to prevent fragmentation of agricultural lands. According to the law; division, sale and transfer of the agricultural lands are restricted brought various conditions. These conditions affecting ownership rights are considered as "*public restriction*". The restrictions arising from the law are not directly represented on the land registry. Because of this feature, it can also be called as "*hidden restrictions*". As a consequence of the increasing importance of agricultural land in the world over the next century, the restrictions on the acquisition and use of the ownership rights in agricultural lands are inevitable. In Turkey, the transferring of ownership in agricultural lands is restricted within the framework of these policies. The general framework of these policies is as follows: Minimum parcel sizes are defined. The concept of economic integrity assessment has been introduced for agricultural lands in fragmented structures. Thus, the agricultural lands that forms the economic integrity has been tried to be preserved as a whole. With another innovation, transferring of agricultural lands via inheritance has been turned into an inheritance obligation. In this respect, the competent heirs are given priority. However, all these restrictions can obtain in social consequences. As a result of these policies, informal trades may increase in the land market. In addition, ownership rights of other heirs except for the competent heir may suffer in the course of time. In this declaration, policies applied to the transferring of agricultural lands in Turkey are explained. In addition, solution proposals have been developed.

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1. INTRODUCTION

The rights and responsibilities on real estate in Turkey have been accepted as basic ownership rights and secured. As a result of this approach, the division, sale and transfer via inheritance of agricultural land have been regarded as basic ownership right and not been restricted for a long time. This understanding has led to the fragmentation of agricultural land over time (Ercan, 1970; Aksoy 1995). Besides these factors; highway, railway etc. investments, natural disasters, tenancy and high population density in the agricultural sector has led to fragmentation of land (Türker, 2011). This fragmentation has led to higher costs and decrease productivity in agricultural enterprises (Ekinci ve Sayılı, 2010; Yücer vd. 2013). Therefore, Soil Protection and Land Use Law (SPLUL) entered into force in order to prevent fragmentation of agricultural land in Turkey (Official Gazette, 2005). According to this law, the division, sale and transfer of agricultural land are restricted by bringing various conditions. These conditions affecting ownership rights are considered as "*public restriction*". The Restrictions arising from SPLUL are not directly represented on the land registry. Because of this feature, it can also be called as hidden restrictions (Yildiz, 2013). In future cadastral systems, it is foreseen that real estate owners will be informed about the region in which such restrictions are applied. In the land administration systems the tendency will progress from a parcel-based process to a land object-based process (İnan, 2010; Aydınoğlu 2009, CBSGM 2012a and b). According to (Kaufmann and Steudler, 1998), this phenomenon is defined as the 'land object'. In other international developments, the increasing importance of public right and restriction is being mentioned in notifications, reports and declarations (FIG. 1995; UN, 1996; UNECE, 1996; UN and FIG, 1999; PCCEU, 2003; EU, 2004) published by international organisations such as the International Federation de Geometres (FIG), the United Nations, the European Union and the World Bank to enhance the effectiveness of land administration systems (LAS (Çete and Yomralıoğlu, 2011)).

In Turkey, 27.7% of the total population live in rural areas. In addition, about one third of the territorial existence of the country is consist of agricultural land (Miran, 2005). After 2014 when the SPLUL was changed, the number of deaths seems to exceed one million within three years. It is seen that about half of the deceased have agricultural land (Türker 2017). From this point of view, it can be seen that the SPLUL has an effect upon real estate ownership interms of scope and that large masses are affected by the law. Various works on these new policies in Turkey are drawing attention. The negative effects of SPLUL were investigated in a large scale research conducted by Yücer et al (2016). In another study, Çoruhlu and Yildiz (2017) realized object-based modeling of these restrictions. It will be present restrictions on the acquisition and use of agricultural land in Turkey in the working.

2. RESTRICTIONS ON THE DIVISION AND SALE OF AGRICULTURAL LANDS

Restrictions on agricultural lands in Turkey are formed around some concepts. These are:

- Minimum agricultural land size (MALS),
- Sufficient income agricultural land size (SIALS) and
- Economic integrity between agricultural areas.

The agricultural land in SPLUL is divided into various classes according to their importance and characteristics. The minimum sizes have been determined for each class of agricultural land. MALS is the smallest agricultural land size that can be operated efficiently. These sizes are as follows:

- 2 ha for absolute, marginal and special produce agricultural land,
- 0.5 ha for cultivated agricultural land and
- 0.3 ha for agricultural land for greenhouses (Official Gazette, 2005 ve 2014).

Another concept is also SIALS. SIALS was identified and published in the SPLUL across the county in Turkey. They are the minimum sizes of agricultural lands belonging to the same person and having economic integrity among them within the county. SIALS can occur from one or more plots. Therefore, SIALS is likened to agricultural enterprises. But it is not.

The economic integrity is the dependency between more than one agricultural lands belonging to the same person in terms of agricultural productivity. For the economic integrity, technically, the sizes of the real estates, the access distances between them, the stakeholder status etc. was determined. These are;

- Greenhouses lands 1 da, cultivated agricultural lands 5 da, irrigated and dry farming lands have to be larger than 10da.
- The distance between them has to be less than 10 km.
- The neighbor agricultural lands belonging the same person constitute economic integrity.
- If the agricultural land belonging to the same person is shared, when the economic integrity account is being made, the amount of the person's share in the agricultural land is taken into account (Resmi Gazete, 2005 ve 2014; Yildiz and Çoruhlu, 2017).

MALS and economic integrity are common for every region of Turkey. But, SIALSs are variable from region to region. SIALSs are implemented in the division, sale and inheritance of agricultural land. MALS is only used for share sales. For example, if the total area of the agricultural lands belonging to one person and having economic integrity exceeds the SIALS, the excess can be sold as a share. However, the size of the new share has to be above MALS. In a county with a SIALS of 10da, agricultural land in 20da can be divided into two.

In the process of selling an agricultural land, if the landowner does not have any other agricultural land in the same county, it is allowed to directly transfer of real estate by land registry Office. If the land owner wants to sell the all agricultural lands that he has in the same county, the transfer process is carried out directly. It is seen that both transactions have the liquidation feature. In another application, it is allowed to sales among stakeholders. When part of the agricultural lands belonging to a person is transferred, economic integrity assessment is done. The result of assessment, parts of the lands that do not provide economic integrity conditions are allowed to transfer (Resmi Gazete, 2014/b).

3. RESTRICTIONS ON THE TRANSFER OF AGRICULTURAL LANDS VIA INHERITANCE

All the rights and debts left behind by the legator transfer to legal heirs in principle. The principle is called as “*universal succession*”. In case of multiple heirs, the heirs possess to heritage together (Öztan, 2002). Article 649 of the Turkish Civil Code (Official Gazette, 2001), the legal heirs have equal rights on the heritage. However, the rights are restricted when it comes to transfer of agricultural enterprises (Erdoğan, 2017). The restrictions were also reconsidered in 2005 and 2014 in the SPLUL. According to the latest situation, the following principles are applied in deaths after 15.05.2014 in Turkey: The transfer process must be completed within one year after the legator's death. This transfer can be made (i) to one of the heirs, (ii) to more than one heir, in case of providing the SIALS condition, (iii) to family property partnership founded by the heirs, to profit sharing family property partnership, to limited company in which heirs are partners or (iv) to a third person. If the transfer of heritage does not take place within a year, the lawsuit is opened by the Ministry of Food, Agriculture and Livestock (MFAL). In case of sharing of heritage in agricultural land by the court, agricultural land is transferred in principle to competent heirs. Taking into account the individual talents and situations, heir receiving at least fifty points from Table 1 is called the competent heir (Official Gazette, 2014b).

Table 1. Competent Heir Determination Provisions

Provisions	Point
To providing their livelihood through inherited agricultural land	20
To those having no nonagriculture income	10
To those whose partner is engaged in agricultural activities	10
To those who have professional knowledge and skills capable of handling agricultural land	10
To those who reside up to six years in the county where the inherited agricultural land is located	5
To those who reside for more than six years in the county where the inherited agricultural land is located	10
To those without social security	10
To those with agricultural insurance	5
To those registered up to six years in the ministry's registration system	5

To those registered for more than six years in the ministry's registration system	10
To those registered up to six years in the agricultural organizations.	2
To those registered for more than six years in the agricultural organizations.	5
To those who have agricultural tools and equipment	5
To women	5

The heir is appointed by the court according to the following criteria: In case of multiple competent heirs, the agricultural land is firstly transferred to a competent heir who provides his/her livelihood from the land, secondly transferred to the heir who own land outside of the inheritance, otherwise, transferred to the heir offering the highest price among competent heirs. If the inherited agricultural land can be divided into more than one SIALS, it can be decided by the court to separate the heirs separately. If there is no willing heir, it is decided to sell the land to third persons (Official Gazette, 2005 ve 2014b) (Figure 1).

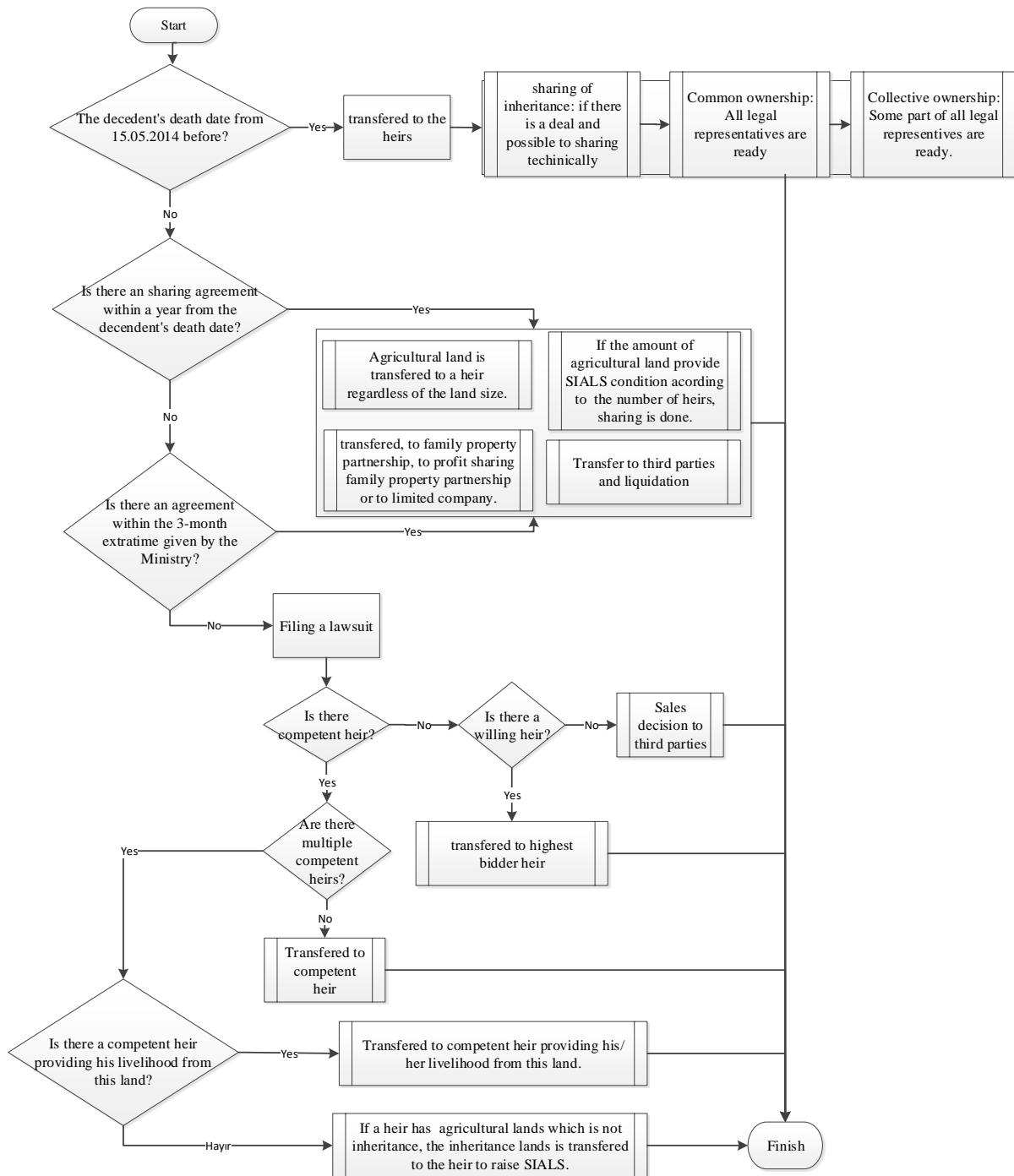


Figure 1. Heritage transfer process in Turkey (Yildiz et.all All, 2017)

Land valuation is made according to the agricultural income in the cases of done inheritance transferring through court. This value is obtain from multiplying the average annual net income from agricultural land by twenty years. However, twenty years after the transfer, if the value of

the agricultural land is increased due to the non-agricultural usage, this difference is paid to the other heirs. This situation is also recorded in the land register. Another important restriction on agricultural land is seen in disposition mortis causa. According to the restriction, the legator can appoint the heir only if there are more than one competent heirs. However, in case of objection of the other competent heir/heirs, the final decision is given by the court.

4. DISCUSSION

The average size of land in Turkey is about 59 da in three million agricultural enterprises. This size in EU is also 126 da. In addition, in Turkey, 3 million active farmers operate agricultural land which are possessed by 40 million people in land registry. These results show that agricultural enterprises in Turkey have structural problems such as scale, fragmentation, a lot of number of deed owner (Türker 2017). It is therefore understood that the restrictions imposed on the ownership of agricultural land actually originate from an urgent necessity. In the process of experiencing this issue in Turkey in recent years; it is seen that provide a balance between ownership rights and the protection of agricultural land. This finding can also be interpreted as a result of the approach of mixed ownership in Turkey.

Transfer of agricultural lands to the competent heirs is quite striking in Turkey. Throughout the history of the Republic, the approach equal sharing of inheritance has been abandoned. This approach largely overlaps with international practices (Table 2).

Table 2. Agricultural enterprises sizes and heritage sharing of some countries (Türker 2017)

	Number of enterprises	Average enterprises size (ha)	Methods of inheritance sharing
England	300.000	53.8	It is transferred to the eldest sibling.
France	527.000	52.1	One of the siblings pays the price to the others over the market value.
Germany	371.000	45.7	One of the siblings pays a little compensation to the others.
Spain	1.044.000	23.8	It is transferred to the competent heir.
Italy	1.679.000	7.6	It is transferred to the competent heir.
EU	13.700.000	12.6	-
USA	2.076.000	181.8	It is sold in exchange for a fee.
Turkey	3.022.000	5.9	It is transferred to the heirs according to their shares.

5. CONCLUSION AND SUGGESTION

When the policies applied to prevent the fragmentation of agricultural land in Turkey is examined, in principle the following findings make out:

- In case of the agricultural land is a subject of inheritance, transferring of ownership is obligation.
- Inheritance is in principle left to competent heir/heirs.
- The rights of the other heirs, other than competent heirs, are guaranteed for twenty years.
- It is allowed to be sold in liquidation shaped all of the agricultural lands.
- To selling among the stakeholders are allowed.
- Restrictions on ownership of agricultural land are not directly represented in the Land Registry.

As a consequence of the increasing importance of agricultural land in the world and Turkey over the next century, the restrictions on the acquisition and use of the ownership rights in agricultural lands are inevitable. The policies applied in this area in Turkey seem to become aggravate the restrictions on ownership rights. However, social justice needs to be preserved while people's property rights are restricted.

It is clear that policies aimed at preventing the fragmentation of agricultural land in Turkey will make an important contribution to increasing productivity in agricultural enterprises. However, these restrictions can lead to some economic, legal and social problems. It is foreseen that the restriction of division, sale and other similar transactions on agricultural lands will trigger illegal methods such as sales outside title system.

It should be foreseen that the social consequences arising from deprived of the inheritance right. In the application of laws having widespread impact such as SPLUL, social impact assessment should be done. New solutions should be produced by followed the application continuously.

The policy of the restriction of ownership rights on agricultural lands is aim the efficient and sustainable operation in the lands. On the other hand, the ownership rights, which is the fundamental human right, is guaranteed by the constitution. A better balance can be established between these two concepts. For example, instead of transferring the ownership rights of agricultural lands to a competent heir, only transferring of the usufruct right can be considered. Bare ownership can be left to all legal heirs. So, the loss of rights that may arise in the future arising from non-agricultural use can be prevented. At the same time, possible cases that may arise in the future can be avoided.

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