

An Innovative Way for Resolving of the Coastal Land Conflicts in Turkey

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

SUMMARY

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.

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1. 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 «gecekondu» 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 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.

2. 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.

3. 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”.

4. 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.

4.1 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.

4.2 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 methods 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).

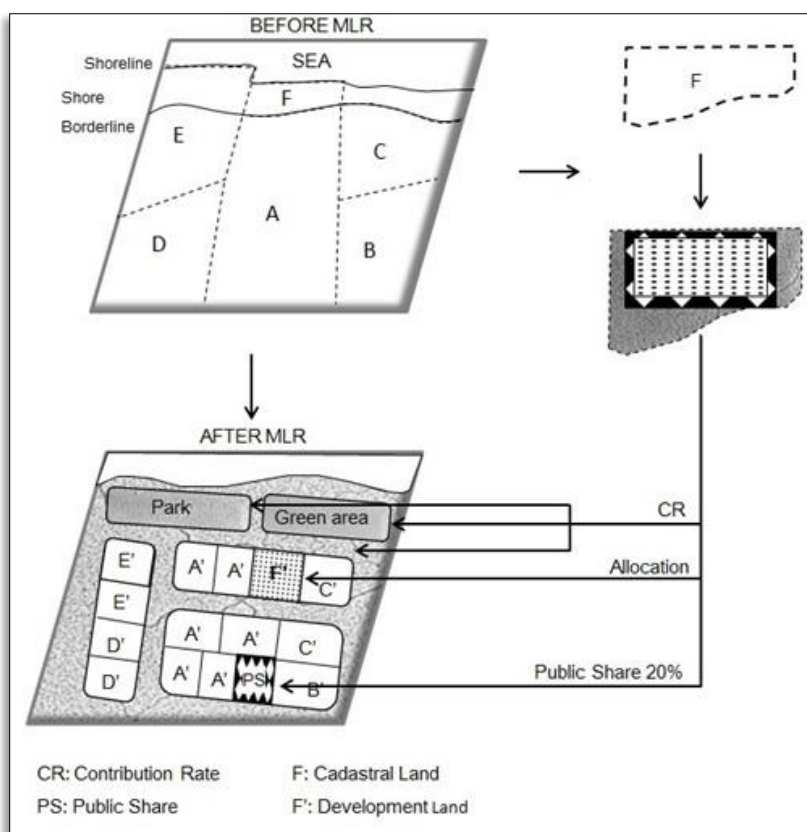


Fig. 1. Recommended Modified Land Readjustment mechanism (Uzun and Celik, 2014).

4.2.1 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.

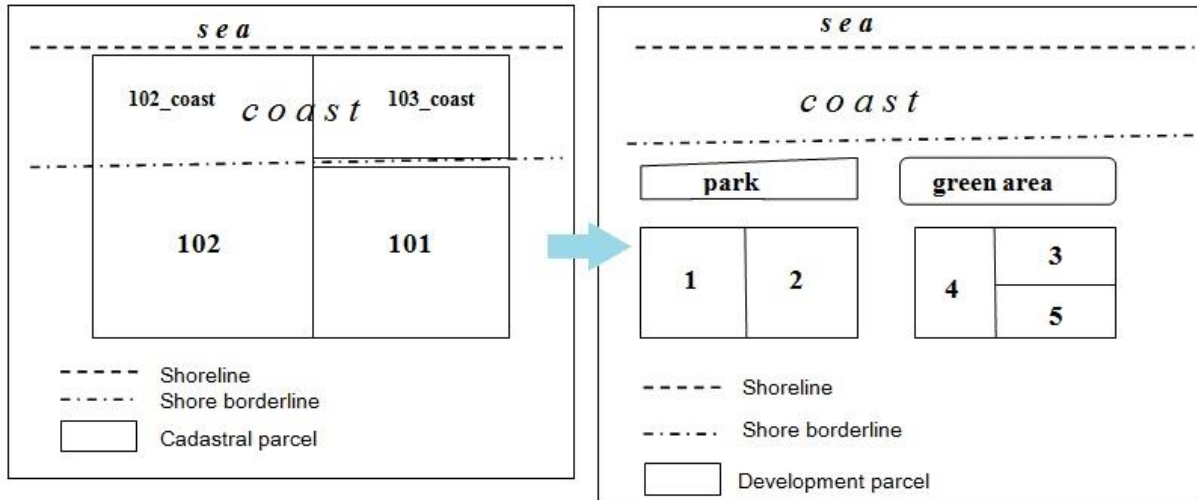


Fig. 2. MLR region before and after the implementation

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 (m ²)	CR 40% (max.)	1 st Allocation (m ²)	PS Deduction 20%	2 nd Allocation (m ²)	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

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 gains new plots from cadastral parcels remaining 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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BIOGRAPHICAL NOTES

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